

ACC

10000/142/1007

LEGAL S/C OF A
OCT. - DEC. 1943

10000/142/1007

LEGAL S/C OF ACC, MERCHANT NAVY DELINQUENTS
OCT. - DEC. 1943

Army Form A3091 (2001)

HERALD NAVY
DEVELOPMENTS

Cover for Documents

4042

Nature of Enclosures.



ANALYTICAL STUDIES ON LIMITED CONTROL COLLECTION

Notes or Letters written.

0909



LEGAL SUBCOMMISSION ON UNITED STATES CONSTITUTION

Notes or Letters written.

52 *Brigade* 10000 142 1007

THIS FILE IS
CONTAINING
OCT - 43
DEC - 43

202
File: RLE C13.01/WRJ

1st Ind.

202
ALLIED MILITARY GOVERNMENT SICILY REGION HEADQUARTERS 28 Dec. 1943

TO: C.L.G. AMG HQ. APO 394.

1. Forwarded.
2. AMG Courts have from the occupation of Sicily dealt with offenses by British Merchant Seamen.

For Lt. Col. POLETTI, RCAC:

William R. Jordan
WILLIAM R. JORDAN,
Lt. Col. C. A. C.,
Regional Legal Officer.

jd

2 Incl.

Enclosure No. 1 to Commander-in-Chief, Mediterranean's Letter No. Med.927/2/7
of 8th November, 1943.

FROM: DIVISIONAL SEA TRANSPORT OFFICER, SOUTHERN ITALY.

DATE: 7th October, 1943.

175/116A

TO: PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.

(Copy to: Allied Force Headquarters, Algiers.

Commander-in-Chief, Mediterranean Station;

H.Q. No. 1 District, Fortbase.

Flag Officer, Italy.

H.Q., A.M.G.O.T.

A.W.T. Representative, Algiers.)

SUBJECT: Merchant Navy Delinquents

Guidance is sought as to the proper procedure to adopt in dealing with Merchant Navy personnel who commit offences against the Civil Law while ashore in Italian ports.

2. The position before the capitulation of Italy was simple, as A.M.G.O.T. Courts were sitting and cases were dealt with by these courts, the Superintending Sea Transport Officer at the port sitting as an assessor to assist the Court and ensure that no action was taken which would delay the ship from sailing. Now that there are no courts set up by A.M.G.O.T., there only remain the Italian Civil Courts or Naval Courts convened by the Senior British Naval Officer. It is not known whether Naval Courts have power to try a delinquent for an offence committed ashore, or if these Courts have the power to compel the attendance of civilian witnesses. No copies of Instructions for Naval Courts vide Art. 491 K.R. and A.I. appear to be held by any R.N. Authority with whom I have been in touch, and a supply of this book is urgently required for use in Italian ports.

3. In an endeavour to avoid going wrong on this question the procedure at present being used is based on the principle that Italian ports are to be regarded as operational ports under Military Control. It has therefore been arranged that Merchant Navy delinquents if arrested by the Civil Power are handed over to Military police for custody pending decision as to how the case shall be dealt with. But this is only a measure to prevent any further action by the Italian Civil Authorities and still leaves open the question of how a merchant seaman is to be dealt with who commits a serious crime ashore such as murder.

4. It is requested that this matter may be regarded as urgent, as the behaviour of both merchant seamen ashore and certain elements of the

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4. It is requested that this matter may be regarded as urgent, as the behaviour of both merchant seamen ashore and certain elements of the civil populace leave much to be desired and serious incidents are liable to occur any day.

(Sgd.) Cdr. R.N.V.R.
For CAPTAIN, R.N.
DIVISIONAL SEA TRANSPORT OFFICER,
S. ITALY.

Enclosure No. 2 to Commander-in-Chief, Mediterranean's letter No. Med.
927/2/1 of 8th November, 1943.

COPY

From: Principal Sea Transport Officer, Mediterranean.

Date: 16th October, 1943.

Ref. No. 1081/162/47.

To: Commander-in-Chief, Mediterranean Station.

With reference to No. 175/116A from Divisional Sea Transport
Officer, Southern Italy, addressed to me and copy to you.

It is requested that I may be given guidance as to the
procedure to be followed. As the matter is of some urgency and such
questions when placed before the legal authorities take months before
an answer is obtained, it is suggested that a ruling should be given
that such offenders are to be brought before a Naval Court, and
instructions given accordingly to Flag Officers and Naval Officers in
charge.

The legal question can be considered later - in any case
the offender will have been tried and the desired result obtained.

It is further considered that with close co-operation with
the Italian authorities, civilian witnesses could be compelled to attend
the Court.

(Sgd.) C.V. Danby

REAR ADMIRAL
Principal Sea Transport Officer,
Mediterranean.

CONFIDENTIAL.

62nd Special Investigation Section,

Reference: - SIS62/43/J/1.

C.M. Police, C.M.F.

Subject: - Merchant Seamen - Procedure.

To: -

The D.P.M.,

No. 2 District, C.M.F.

The attached file is forwarded for your information as the person subject of the report has been handed to the Italian Authorities for disposal.

So far as is known this is the first time this procedure has been adopted when dealing with Merchant Seaman offenders.

The reason for adopting this procedure is the anomalous position of the Military Police (including the Special Investigation Branch) in relation to the arrest and subsequent trial of Merchant Seamen in this part of the Mediterranean theatre (Unoccupied Italy).

As you well know, British Merchant Seamen are not amenable to Military Law and have civilian status. The present position then, is that Merchant Seamen who become offenders in this territory are legally amenable to Italian jurisdiction and should restraint be necessary, must be held in custody under Italian supervision. This course would appear to be very undesirable for obvious reasons and may well cause serious dissatisfaction should the fact become knowledge in certain quarters.

Previously, in an effort to overcome this state of affairs, Military Police have arrested and held in custody, Merchant seamen who have committed serious crime. In doing this, (I have had good legal advice on the matter) they have acted quite illegally, not through overzealousness, but rather I should say because of the previous uncertainty of the situation backed by a natural aversion to handing British nationals over to the mercy of people whom we so recently regarded as enemy.

When dealing with Merchant seamen in this manner the question of bringing them before a competent authority for trial is solved by convening a Naval Court. This Court does not 'try' the accused but enquires into the charges made against the accused. If they find the charges are substantiated, then the accused is transferred to the nearest British Court (Malta) where he is tried. This procedure sounds simple enough but from the Military point of view it is not so satisfactory. The Court is convened to enquire into the charges made against the Merchant Seaman. This means that before he can be brought before a Naval Court someone has to prefer charges against him and as there is no-one else to accept responsibility, this devolves on the Military Policeman who has illegally arrested and detained the Merchant Seaman. In the matter of preferring charges the Policeman is immediately deprived of his legal advisers (J.A.G's Branch) because it is not a matter involving Military personnel. No prosecuting Officer is provided at the Court to present the case against the accused, no legal representative is provided for the accused,

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Should the Naval Court decide that the charges have not been substantiated by the Military Policeman they have the power to dismiss the case and can even frame the dismissal in such a way that the luckless Policeman who has acted in good faith, but illegally, can be sued by the former accused for damages, wrongful arrest, illegal detention etc. This may sound like 'crying before you are kicked' and although it has not happened yet it remains a disquieting possibility, and as such is an unfair position for the Policeman.

Continued.....

/the Policemen.

If the case does go forward to Malta it means that the available witnesses and evidence should also be transported to Malta with all its consequent wastage of time, trouble and money. It is also a fact that where Italian witnesses are involved, and in the majority of cases they do provide the main evidence, it is open to question whether they are compellable or not. If they are not available at the trial, then it is hard to see how the trial can be conducted according to British Standards of justice, namely fairness to all.

To sum up the position, it would appear that the only legal course open for dealing with British Merchant Seamen is an undesirable one. The alternative course is more or less illegal and to say the least is very unsatisfactory.

Merchant Seamen have been a source of trouble in the past and it is only logical that they will continue to cause trouble. Everybody, including the Masters of Merchant Ships look to the Military Police for help in dealing with offenders, but should this help be given the Policeman does so on his own responsibility without any official power to do so.

There will be adverse criticism of the action taken in handing over the man named in the attached report, to Italian jurisdiction and for this reason I respectfully place these facts before you for your consideration as to the advisability of bringing the position to the notice of higher authority.

In the Field.
26th December, 1943.

W. H. Pope Capt.
O.C. 62nd Special Investigation Section.

THE UNIVERSITY OF CHICAGO

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CONFIDENTIAL

62 Special Investigation Section,
Corps of Military Police,
Central Mediterranean Forces.

Reference: SIS/62/43/A/415

Subject: Alleged offence by British Merchant Seaman;
George BIRD, S.S. "EMPIRE SUNBEAM."
67, ROSMAED Street,
H U L L, England.

To: Officer Commanding,
62 S.I. Section.

Sir,

I have to report that at BARI on 17.12.43, information was received in this office to the effect that the above named Merchant Seaman had been arrested on board the S.S. "EMPIRE SUNBEAM," at the request of the ship's master, Mr. J.R. COPPING, and conveyed to the 181 Ports Provost Coy. guardroom, where he was detained. It was alleged that he had discharged a gun on board the above named vessel, which resulted in the wounding of four Italian, and one English soldier.

From enquiries made, and attached statements, the facts appear to be as follows:

On 16.12.43, at about 22.30 hours, L/Cpl. HITCHEN and L/Cpl. CLARKE of 181 Ports Provost Company, C.M. Police, were on duty at No. 6 berth, BARI docks, when they heard the sound of an explosion coming from the direction of the S.S. "EMPIRE SUNBEAM," which was tied up alongside the quay, and discharging a cargo of ammunition. Flashes were noticed coming from the vessel, and also on the quay-side, and it was thought that a shell or some such missile had exploded. It was then noticed that four Italian soldiers, DELBIANCO ANTONIO, CARADELLI Alberto, SALONA Donato, and FANARITO Angelo, all of 226th. Infantry Regiment, Italian Army, and No. 13070780 Pte. A. THOMPSON, 233 Company, Pioneer Corps, were apparently wounded. They were immediately conveyed to hospital; the Italians, to the Italian Military hospital, BARI, and the English soldier, to the 98th. General hospital, where they were all detained with the exception of Soldier SALONA, who was only suffering from a slight abrasion on the left hand, and was discharged. The other three Italian

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From enquiries made, and attached statements, the facts appear to be as follows:

On 16.12.43, at about 18.30 hours, L/Cpl. HITCHEN and L/Cpl. CLARKE of 181 Ports Provost Company, C.M. Police, were on duty at No. 6 berth, BARI docks, when they heard the sound of an explosion coming from the direction of the S.S. "EMPIRE SUNBEAM," which was tied up alongside the quay, and discharging a cargo of ammunition. Flashes were noticed coming from the vessel, and also on the quay-side, and it was thought that a shell or some such missile had exploded. It was then noticed that four Italian soldiers, DELBIANCO Antonio, CARADELLI Alberto, SALONA Donato, and TANARITO Angelo, all of 226th. Infantry Regiment, Italian Army, and No. 13070780 Pte. A. THOMPSON, 233 Company, Pioneer Corps, were apparently wounded. They were immediately conveyed to hospital; the Italians, to the Italian Military hospital, BARI, and the English soldier, to the 98th. General hospital, where they were all detained with the exception of Soldier SALONA, who was only suffering from a slight abrasion on the left hand, and was discharged. The other three Italian soldiers were found to be suffering from wounds, apparently caused by shrapnel, and the English soldier was suffering from shock and slight abrasions on the legs. None of the soldiers are seriously wounded.

Immediately following the explosion, the above mentioned Military Police went on board the "EMPIRE SUNBEAM", where they saw the aforementioned Master, Mr. J.M. COPPING, who informed them that one of his seamen, George BIRD, had fired the "after" starboard Oerlicon gun in disobedience to orders, and that he was at present in his bunk, drunk. The Master requested the N.C.Os. to arrest this man, and convey him to

Continued over.

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convey him to/

the Military Police guardroom, which they did. On entering the guardroom, BIRD is alleged to have said; "I admit firing the gun; I fired one burst." He made no other statement, and was detained.

On 17.12.43, at about 11.00 hours, I saw Seaman George BIRD. I told him who I was and the nature of my enquiries, and cautioned him. He then made a statement to me (attached) which I took down in writing, and which he afterwards signed as being true and correct.

It would appear from this statement that BIRD, in company with two of his shipmates, J. SPAFFORD, Ship's carpenter, and Bernard SHEPHERD, deckhand, and three companions from an adjoining ship, the U.S. "EMPIRE-BUILDER", had gone ashore, and had a lot of drinks in a café in BARI. BIRD, apparently got very drunk, and his last memory of the evening is of hearing an "Air-raid" alert. He remembers nothing more until awakening next morning in the Docks Military Police cells.

I questioned all BIRD's companions but, none of them could throw any light on his movements. SPAFFORD made a statement (attached), and it would appear from this that sometime during the evening BIRD left their company in the café without any of them being aware of the fact. SPAFFORD and SHEPHERD returned to the ship at about 22.30 hours, and as they were approaching the ship they heard an explosion but, thinking that it had occurred on the quayside they gave it no further attention. When they reached their quarters, BIRD was already there, but he did not say anything to them.

Later on this date, I saw two members of the ship's gun crew, No. DJX/555478 A.B. SMITH, R.E., D.E.M.S. gunner, R.N., and No. 3606083 Gnr. BAIRD, T., 2nd. MARINE REGT., R.A., who both made statements, (attached). It would appear, from these statements, that on 16.12.43, at about 22.30 hours, the above named gunners were in their mess-deck, when they heard two shots. They immediately went up on deck, BAIRD leading. As he approached the ladder leading to the after starboard gun pit, Gnr. BAIRD saw Seaman BIRD about to step off the lower step of the ladder, apparently coming from the gun pit. BIRD stumbled and fell on the deck. At this moment A.B. SMITH approached, and together with Gnr. BAIRD, he helped BIRD to his feet.

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and cautioned him. He then made a statement to me (attached) which I took down in writing, and which he afterwards signed as being true and correct.

It would appear from this statement that BIRD, in company with two of his shipmates, J. SPAFFORD, Ship's carpenter, and Bernard SHEPHERD, deckhand, and three companions from an adjoining ship, the U.S. "EMPIRE MARINER", had gone ashore, and had a lot of drinks in a café in EARL. BIRD, apparently got very drunk, and his last memory of the evening is of hearing an "Air-raid" alert. He remembers nothing more until awakening next morning in the Docks Military Police cells.

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This ladder is the only means of entering or leaving the aforementioned gun pit, and at the time stated, neither BAIRD or SMITH saw any other person except BIRD in the vicinity of the gun.

The two gunners then went to the gun pit where they saw that the gun, an Oerlicon, was stripped for action, and was in the firing position. Gnr. BAIRD then examined the bag which is beneath the gun-breach, and found two empty shell cases, which were warm, and suggesting that this gun had been recently fired. He then returned the gun to its original "safety" position.

(contd. over)

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Continued.

original "safety" position./

No authority has been given to any person on board the ship to fire these guns, which are all left with safety catches on, and locking pins in position, and are covered. To fire a gun, it would be necessary to remove the cover, extract the pins, and release the Safety Catch, which apparently had been done in this case.

Seaman BIRD is a qualified gunner, and is allocated to this particular gun position.

On the same date, accompanied by Nahmen ALZVI, interpreter attached to this office, I visited the Italian Military hospital, PARI, where, through the medium of Mr. ALZVI, I questioned the wounded Italian soldiers. None of them could throw any light on the matter, and appeared to be of the opinion that a bomb had been dropped from an aeroplane.

A statement, (attached) was obtained from Soldier PARENTINO Angelo.

On 18.12.43, I interviewed Pte. THOMPSON at 98th. General hospital, and obtained the attached statement. THOMPSON was unaware of the actual facts, and appeared to think that a case of ammunition had exploded on the quayside.

I obtained medical reports (attached) from these soldiers' respective Medical Officers.

Statements of Sergt. BAILLY, L/Cpl. KITCHEN, and L/Cpl. CLARK are attached. Sergt. BAILLY, who is a member of 181 Ports Provost Company, was duty Sergeant on 16.12.43, when BIRD was brought to the guardroom. He heard BIRD make the statement; "I admit firing the gun on my action station; I fired one burst," as already mentioned.

Statements of the Ship's Master are also attached.

Respectfully submitted.

In the field,
18.12.43

J. T. K. KILMER Sergt.
J. T. KILMER

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J. T. K. HILSHER Sergt.
J. T. K. HILSHER.

23

Statement of A.D.H., BIRD George, Merchant Seaman, S.S. "EMPIRE
SUNBEAM"; Home address, 67, ROSMARD Street NULL, England.

Who states:

I have been cautioned that I am not obliged to say anything
unless I wish to do so, but that anything I do say will be taken
down in writing and may be given in evidence. To show that I
understand the nature of this caution I herewith sign my name.

(Signed) G. BIRD.

I am a Merchant Seaman, and have been in the service about
two years. I am nineteen (19) years of age.

On 16.12.43, at about 17.00 hours, I went ashore accompanied
by five comrades, two off my ship, and three off the "EMPIRE
METEOR." The names of those off my ship are, B. SHEPHERD, A.B.,
and J. SPARKER, Ship's carpenter; the others are BRADLEY and
WEAVER; I don't know the name of the third.

We went into BARI, and entered a café. I don't know the name of
the café, nor do I know the name of the street in which it is
situated.

We had quite a lot of drinks and I remember hearing an Air
Raid alert. We stopped in the café after this, but I don't
remember leaving it, nor do I know where I went. I have only
a very hazy recollection of being in the Military Police guard
-room, and somebody speaking to me; but, I can't remember any
-thing about it.

I don't remember being aboard my ship again since leaving it
at about 17.00 hours, yesterday. The next thing I can remember
in the cells of the Military Police this morning.

(Signed) G. BIRD.

I have made the above statement voluntarily without threat,
promise or intimidation.

(Signed) G. BIRD.

Statement taken and signature witnessed by 7611999 Sergt.
J.T.KELLERHER, 62 Section, SPECIAL INVESTIGATION BRANCH, G. M.
POLICE.

I have been cautioned that I am not obliged to say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be given in evidence. To show that I understand the nature of this caution I herewith sign my name.

(Signed) G. BIRD.

I am a Merchant Seaman, and have been in the service about two years. I am nineteen (19) years of age.

On 16.12.43, at about 17.00 hours, I went ashore accompanied by five comrades, two off my ship, and three off the "EMPIRE METEOR." The names of those off my ship are, E. SHEPHERD, A.B., and J. SPAPFORD, Ship's carpenter; the others are BRADLEY and WEAVER; I don't know the name of the third.

We went into BARI, and entered a café. I don't know the name of the café, nor do I know the name of the street in which it is situated.

We had quite a lot of drinks and I remember hearing an Air Raid alert. We stopped in the café after this, but I don't remember leaving it, nor do I know where I went. I have only a very hazy recollection of being in the Military Police guard-room, and somebody speaking to me; but, I can't remember any thing about it.

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Statement taken and signature witnessed by 7611999 Sergt.
J.T. KELLEHER, 62 Section, SPECIAL INVESTIGATION BRANCH, C. M.
POLICE.

0925
Statement of No. 3763479 L/Cpl. W. HITCHEN, 181 Ports Provost Coy., C.M.F. Ice.

Who states:

I was on duty at No. 6 Berth, HARI docks at about 22.30 hours on 16.12.43, accompanied by L/Cpl. CLARK of my unit, when I heard a shot from the direction of the S.S. "EMPIRE SUNBEAM," at the same time I saw a couple of flashes on board this ship; one flash seemed to come from the after part, and the other from amidships. This ship was beached on No. 6 quay, and was tied up on her starboard side. At the same time I heard a shout from several Italian soldiers who were working on the quay, and upon investigating I found that four Italian soldiers and one English soldier had apparently been shot. I saw them placed in an ambulance and taken to hospital. I then boarded the above named vessel, and saw the Master, J.R. COPPING, who said to me: "That shot has been fired by a member of the crew without authority; arrest him." I then accompanied the Chief Officer, D.S. WILLET, to the bunk of Merchant Seaman George BIRD. He was lying in bed and appeared to be under the influence of drink. I questioned him regarding the incident, and he said: "I will make a statement later on when I am sober."

I then arrested BIRD as instructed by the Master of the vessel, and escorted him to the C.M.F. Dock office guardroom where I charged him with being drunk. Before I had time to caution him, he said; in the presence of Sergt. BAILEY, and L/Cpl. CLARK; "I admit firing the gun on my action station; I fired one burst." I then cautioned him but, he did not make any further statement.

I have read over the above statement; it is true and correct.

(Signed) W. HITCHEN.

Statement taken and signature witnessed by 7611999 Sergt. J.F. KELLERER, 62 Section, B.I.D., C.M.F. Police, at BARI, 17.12.43.

23

0927
I was on duty
hours on 16.12.43, accompanied by L/Cpl. CLARK of my unit, when I heard a shot from the direction of the S.S. "EMPIRE SUNBEAM," at the same time I saw a couple of flashes on board this ship; one flash seemed to come from the after part, and the other from amidships. This ship was beached on No. 6 quay, and was tied up on her starboard side. At the same time I heard a shout from several Italian soldiers who were working on the quay, and upon investigating I found that four Italian soldiers and one English soldier had apparently been shot. I saw them placed in an ambulance and taken to hospital. I then boarded the above named vessel, and saw the master, J.R. COPPING, who said to me; "That shot has been fired by a member of the crew without authority; arrest him." I then accompanied the Chief Officer, D.S. WILLET, to the bunk of Merchant Seaman George BIRD. He was lying in bed and appeared to be under the influence of drink. I questioned him regarding the incident, and he said; "I will make a statement later on when I am sober."

I then arrested BIRD as instructed by the Master of the vessel, and escorted him to the C.M.P. Dock office guardroom where I charged him with being drunk. Before I had time to caution him, he said; "In the presence of Sergt. BAILLY, and L/Cpl. CLARK; "I admit firing the gun on my action station; I fired one burst." I then cautioned him but, he did not make any further statement.

I have read over the above statement; it is true and correct.

(Signed) W. HITCHEN.

Statement taken and signature witnessed by 7611939 Sergt.
J.F. KELLEHER, 62 Section, S.I.B., C.M.P. Police, at BARI,
17.12.43.

7.12.43

0928

Statement of No. 3965278 L/Cpl. CLARK G., 181 Ports Provost Coy., C.M. Police.

Who states:

On 16.12.43, at about 22.30 hours, I was on duty accompanied by L/Cpl. HITCHEN of my unit, at No. 6 Berth, BARI docks, when I heard the sound of an explosion coming from the direction of the S.S. "EMPIRE SUNBEAM," which was tied up alongside this berth.

At the same moment I heard an outcry from a group of Italian soldiers who had been standing along the berth, and about fifteen (15) or twenty (20) yards off the ship. I then saw that four Italian soldiers, and one English soldier had apparently been wounded. L/Cpl. HITCHEN remained with these soldiers, while I boarded the above named vessel.

I did not notice anything unusual on board, and the only people I saw were some members of the Docks Operating Coy., who were unloading the ship. I made some enquiries amongst them but, they were unable to give me any information. Just then L/Cpl. HITCHEN came on board, and the master of the vessel came up to us and said, "One of my men has fired the Cerlicon gun," or words to that effect. L/Cpl. HITCHEN and I then accompanied the Chief Officer to the crew's quarters where I saw Merchant Seaman George BIRD, who was lying on his bunk, and appeared to be under the influence of drink. The master of the vessel then entered the crew's quarters, and said to us, "Take him to your guardroom;3 We then took him to the guardroom where L/Cpl. HITCHEN told the Sergeant i/c of duties, what had happened. While he was telling this, BIRD said; "I fired the gun on my action station; I fired one burst." He was immediately cautioned but did not make any further statement.

I have read the above statement; it is true and correct.

(Signed) G. CLARK.

Statement taken and signature witnessed by 7611999 Sergt. J.T. KILLMER, 62 Section, S.I.B., C.M. Police, at BARI, 18.12.43.

42

On 18.12.43, at about 22.30 hours, I was on duty accompanied by L/Cpl. HITCHEN of my unit, at No. 6 Berth, BARI docks, when I heard the sound of an explosion coming from the direction of the S.S. "EMPIRE SUNBEAM," which was tied up alongside this berth.

At the same moment I heard an outcry from a group of Italian soldiers who had been standing along the berth, and about fifteen (15) or twenty (20) yards off the ship. I then saw that four Italian soldiers, and one English soldier had apparently been wounded. L/Cpl. HITCHEN remained with these soldiers, while I boarded the above named vessel.

I did not notice anything unusual on board, and the only people I saw were some members of the Docks Operating Coy., who were unloading the ship. I made some enquiries amongst them but, they were unable to give me any information. Just then L/Cpl. HITCHEN came on board, and the master of the vessel came up to us and said, "One of my men has fired the Cerlicon gun," or words to that effect. L/Cpl. HITCHEN and I then accompanied the Chief Officer to the crew's quarters where I saw Merchant Seaman George BIRD, who was lying on his bunk, and appeared to be under the influence of drink. The master of the vessel then entered the crew's quarters, and said to us, "Take him to your guardroom;" We then took him to the guardroom where L/Cpl. HITCHEN told the Sergeant i/c of duties, what had happened. While he was telling this, BIRD said; "I fired the gun on my action station; I fired one burst." He was immediately cautioned but did not make any further statement.

I have read the above statement; it is true and correct.

(Signed) G. CLARK.

Statement taken and signature witnessed by 7611949 Sergt.
J.W. KELLEHER, 52 Section, S.I.B., C.M. Police, at BARI,
18.12.43.

Statement of No. 7070571 Sergt. BAILEY S., 181 Ports
Provost Company, C.M.P.

Who states:

At BARI on 16.12.43, at about 22.50 hours, I was
duty sergeant at the Docks office when L/Cpl. HITCHEN
of my unit entered, having in charge a Merchant sea-
-man, George BIRD. BIRD appeared to have some drink
taken at the time, but I did not consider him drunk.
As he entered the office I heard him say; "Yes, I
admit firing the gun on my action station; I fired one
burst."

Just then L/Cpl. HITCHEN cautioned him but he did
not make any further statement.

I have read over the above statement; it is true
and correct.

(Signed) S. BAILEY, Sergeant,
181 Provo. Coy., C.M. Police.

Statement taken and signature witnessed by 7611999
Sergt. J.T. KELLEHER, 62 Sec., S.I.B., C.M. Police.
at BARI, 17.12.43.

Statement of No. 3606083 Gnr. BAIRD T., 2nd. MARITIME Regt.,
R.A.

Who states:

I am a gunner on board S.S. "EMPIRE SUNBEAM."

At about 22.30 hours on 16.12.43, I was in the gunner's mess deck when I heard two shots being fired.

I immediately went on deck, and I saw one of the seamen named BIRD just getting off the lower step of the ladder leading from the after gun pit on the starboard side. He slipped and fell on the deck, and lay there as if stunned. I picked him up but he came to, and appeared to be alright. He then walked away.

I went up to the gun pit and saw that the gun, an "Oerlikon," was in the firing position, and pointing upwards. I opened the bag which is under the gun breach, and found two shell cases which were warm. I put the gun at safe and came back on deck.

I have read over the above statement; it is true and correct.

(Signed) T. BAIRD.

Further states:

When I went up to the gun there was no other person there I did not see anyone else come down the ladder. There is no other way of reaching or leaving the gun pit except by means of this ladder.

(Signed) T. BAIRD.

Statement taken and signature witnessed by 7611999 Sergt.
J.T. KELLERHER, 62 Section, S.I.B., C.M. Police, at BARI, on
17.12.43.

10932
Statement of DJX/555478 A.B., SMITH, E.E., D.E.M.S., gunner,
Royal Navy

Who states:

I am a gunner on board S.S. "EMPIRE SUNBEAM."

On 16.12.43, at about 22.30 hours, I was on the Mess deck when I heard two shots. Gunner BAIRD went on deck immediately, and I followed him.

When I got to the bottom of the ladder which leads to the after starboard gun pit, I saw George BIRD, one of the ship's deckhands, lying on the deck. He appeared to be stunned. BAIRD and I helped to lift him up. He recovered and walked away.

BAIRD and I then went up the ladder where we found the gun, an "Oerlicon," in the firing position, and pointing upwards. I saw BAIRD take two empty shell-cases from the bag which is beneath the gun breach.

This gun had been left with the safety catch on, and was locked with pins. It had a weather cover over it. The gun is ready for firing when these pins are removed and the safety catch pushed off.

As far as I am aware no one had any authority to fire this gun. I did not see any other person near the gun pit. The ladder, at the bottom of which I saw Seaman BIRD lying, is the only way of gaining access to or leaving the gun pit.

I have read this statement; it is true and correct.

(Signed) E.E. SMITH.

Statement taken and signature witnessed by 7611999
Sergt. J.T. KELLEHER, 62 Section, S.I.B., C.M.F., at
BARI, 16.12.43.

I am a gunner on board S.S. "EMPIRE SUNBEAM."

On 16.12.43, at about 22.30 hours, I was on the Mess deck when I heard two shots. Gunner BAIRD went on deck immediately, and I followed him.

When I got to the bottom of the ladder which leads to the after starboard gun pit, I saw George BIRD, one of the ship's deckhands, lying on the deck. He appeared to be stunned. BAIRD and I helped to lift him up. He recovered and walked away.

BAIRD and I then went up the ladder where we found the gun, an "Oerlicon," in the firing position, and pointing upwards. I saw BAIRD take two empty shell-cases from the bag which is beneath the gun breach.

This gun had been left with the safety catch on, and was locked with pins. It had a weather cover over it. The gun is ready for firing when these pins are removed and the safety catch pushed off.

As far as I am aware no one had any authority to fire this gun. I did not see any other person near the gun pit. The ladder, at the bottom of which I saw Seaman BIRD lying, is the only way of gaining access to or leaving the gun pit.

I have read this statement; it is true and correct.

(Signed) E.E. SMITH.

Statement taken and signature witnessed by 7611999
Sergt. J.T. KALLZHER, 62 Section, S.I.B., C.M.F., at
BARI, 16.12.43.

0934

Statement of JOHN SPAFFORD, Ship's Carpenter, S.S. "EMPIRE
SUNBEAM. Home address: 26, SALTBURN Street, HESSLE Road,
HULL, England.

Who states:

On 16.12.43 at about 17.00 hours, I went ashore with five
of my comrades; two off my ship, and three off the "EMPIRE
METEOR." The names of those off my ship were, George BIRD
and Bernard SHEPPHERD. Those off the "METEOR" were, named
WEAVER and BRADLEY; I don't know the name of the third.

We went to a café off the Via ROSSI, where we had quite
a few drinks. During the time we were in the café BIRD
must have left, because when we were leaving, I didn't see
him. BRADLEY, SHEPPHERD, and WEAVER were with me when I
left. I didn't see the other man off the "METEOR" when I
left.

As I approached the gangway leading to my ship, I heard
a short burst of about four shots, and I saw a flash from
the quay as if a shell had dropped, but I didn't pay much
attention to it.

I didn't see anyone at any of the ship's guns, nor do I
know if anyone fired from them. SHEPPHERD was with me when
I came on board.

When I got to the forecastle I saw BIRD. He appeared to
be pretty drunk but, he didn't say anything to us.

It was about 21.30 hours when we got back on board our
ship.

I have read over the above statement; it is true and
correct.

(Signed) J. SPAFFORD.

Who states:

On 16.12.43 at about 17.00 hours, I went ashore with five of my comrades; two off my ship, and three off the "EMPIRE METEOR." The names of those off my ship were, George BIRD and Bernard SHEPHERD. Those off the "EMTEOR" were, named WEAVER and BRADLEY; I don't know the name of the third.

We went to a café off the Via ROSSETI, where we had quite a few drinks. During the time we were in the café BIRD must have left, because when we were leaving, I didn't see him. BRADLEY, SHEPHERD, and WEAVER were with me when I left. I didn't see the other man off the "EMTEOR" when I left.

As I approached the gangway leading to my ship, I heard a short burst of about four shots, and I saw a flash from the quay as if a shell had dropped, but I didn't pay much attention to it.

I didn't see anyone at any of the ship's guns, nor do I know if anyone fired from them. SHEPHERD was with me when I came on board.

When I got to the forecasette I saw BIRD. He appeared to be pretty drunk but, he didn't say anything to us.

It was about 21.30 hours when we got back on board our ship.

I have read over the above statement; it is true and correct.

(Signed) J. STAFFORD.

Statement taken and signature witnessed by 7611999
Sergt. J.T. KILLMER, 62 Section Special Investigation
Section, C.I. Police, at LARI, 17.12.43. 40

Statement of Mr. J.R. COPPING, Master of S.S. EMPIRE
SUNBEAM." Home address: 15, WOODVALE Road, DARLINGTON,
England.

Who states:

At about 22.30 hours on 16.12.43, I was on board
my ship when I heard the sound of a shot being fired.

I made enquiries and was informed that a member of
my crew had fired the shot. I had given no authority
to anyone to fire. All the guns on board were covered
and locked with pins.

Later, I saw George BIRD, a member of my ship's
crew. He appeared to be drunk. I ordered him into
arrest, and requested a Military Policeman to take
him ashore to be detained in the Police guardroom.

I have read over the above statement; it is true
and correct.

(Signed) J.R. COPPING.

Statement taken and signature witnessed by 7611999
Sergeant J.T. FLEMMING, 62 Section, S.I.B., G.W. Police,
at BARI, 18.12.43.

0937
Statement of No. 13070780 Pte; A. THOMPSON, 233 COY.,
PIONEER CORPS.

Who states:

On 16.12.43, at about 22.30 hours, I was in charge of a gang of Italian soldiers who were working on No. 6 berth. The gang was employed in stacking cases of ammunition which was coming off a ship which was tied up alongside berth 6. I don't know the name of the ship.

The ammunition was being stacked about 40 yards from the ship, and I was near this stack along with the Italian soldiers from my gang. I had just turned around and was facing up the quay when I saw a flash which seemed to come from the direction of the ammunition, and at the same time I heard an explosion. Something hit me on the legs and I dropped on the ground. I was not unconscious but, I was dazed. Someone picked me up, and helped me over to an ambulance which was standing nearby. When I got into the ambulance, I saw either three or four Italian soldiers whom I recognised as belonging to my gang.

I was then conveyed to 98th. General Hospital, where I was detained.

I have read over the above statement; it is true and correct.

(Signed) A. THOMPSON.

Statement taken and signature witnessed by 7611999
Sergt. J.T. KELLUMER, 62 Section, Special Investigation Branch,
C.M. Police, at 98th. General Hospital, 18.12.43.

0-3-38

The gang was employed in stacking cases of ammunition which was coming off a ship which was tied up alongside berth 6. I don't know the name of the ship.

The ammunition was being stacked about 40 yards from the ship, and I was near this stack along with the Italian soldiers from my gang. I had just turned around and was facing up the quay when I saw a flash which seemed to come from the direction of the ammunition, and at the same time I heard an explosion. Something hit me on the legs and I dropped on the ground. I was not unconscious but, I was dazed. Someone picked me up, and helped me over to an ambulance which was standing nearby. When I got into the ambulance, I saw either three or four Italian soldiers whom I recognised as belonging to my gang.

I was then conveyed to 98th. General Hospital, where I was detained.

I have read over the above statement; it is true and correct.

(Signed) A. THOMPSON.

Statement taken and signature witnessed by 7611999
Sergeant J.T. KELLERHER, 62 Section, Special Investigation Branch,
C.M. Police, at 98th. General Hospital, 18.12.43.

33

TRANSLATION

BARI, 19th. December, 1943.

Statement of:

PANARITO ANGELO, Soldier,
226th. Infantry Regiment,
Via NAPOLI, B A R I.

Yesterday evening, on 16th. December, at about 21.30 hours, I was working with my comrades, DELBIANCO Antonio, CARADELLI Alberto, SALONA Donato, all belonging to the same company, in the docks near the first W.C., unloading cases of tins from the ship, and putting it about 20 metres further on a heap. While I was coming back to take another case, I heard a sound coming from the left-hand side, for about 100 metres, and saw a flash on the ground. I ran towards the W.C. believing that this sound was coming from a bomb, dropped from a plane. Suddenly I felt that my right leg became warm and I saw blood. I cried for help, and some soldiers came up and carried me to the ambulance car by which I was conveyed to the hospital.

I did not see anyone who might have shot the bomb.

I don't know anything else about the fact and I am not in the position to supply any other particulars about the matter in question.

(Signed) PANARITO Angelo.

Statement taken and signature witnessed by Nahman ALEVI, Interpreter attached 62 Sec., S.I.B., C.M. Police, at Italian Military Hospital, BARI, on 17.12.43, in the presence of 7611999 Sergt. J.F. KELLERER, S.I.B., C.M. Police.

Certified that the above is a true translation from the Italian to the best of my ability.

Nahman ALEVI. Interpreter.

PANARINO ANGELO, Soldier,
226th. Infantry Regiment,
Via NAPOLI, B A R I.

Yesterday evening, on 16th. December, at about 21.30 hours, I was working with my comrades, DELBIANCO Antonio, CARADELI Alberto, SALONA Donato, all belonging to the same company, in the docks near the first W.C., unloading cases of tins from the ship, and putting it about 20 metres further on a heap. While I was coming back to take another case, I heard a sound coming from the left-hand side, for about 100 metres, and saw a flash on the ground. I ran towards the W.C. believing that this sound was coming from a bomb, dropped from a plane. Suddenly I felt that my right leg became warm and I saw blood. I cried for help, and some soldiers came up and carried me to the ambulance car by which I was conveyed to the hospital.

I did not see anyone who might have shot the bomb.

I don't know anything else about the fact and I am not in the position to supply any other particulars about the matter in question.

(Signed) PANARINO Angelo.

Statement taken and signature witnessed by Nahman ALZVI, Interpreter attached 62 Sec., S.I.B., C.M. Police, at Italian Military Hospital, Bari, on 17.12.43, in the presence of 7611999 Sergt. J.I. KELLEHER, S.I.B., C.M. Police.

Certified that the above is a true translation from the Italian to the best of my ability.

Nahman ALZVI. Interpreter.

No. 1307078 Sta. A. THOMPSON, 223 Coy PIONEER CORPS.

Medical Certificate (copy)

Admitted 98th. General Hospital 16.12.43.
Suffering from slight abrasions of skin of both
legs.

Able to walk but, suffering from effects of shock
of being blown down.

General condition good.

(Signed)

A.J. HOUSE Captain,
98th. Gen. Hospital.

TRANSLATION

RARI, on 16th. December, 1943.

This evening accompanied by one of their officers, and several English officers soldiers, following soldiers have been conveyed to this hospital.

1. Pte. DEL BIANCO ANTONIO di Giuseppe, class 1927 of 226th. Infantry Regt., wounded in the left hip.
2. Pte. CARATELLI ALBERTO di Giuseppe, class 1927, of 226th. Infantry Regt., wounded in the left hip.
3. Pte. PAVARITO ANGELO di Raffaele, class 1927, of 226 Infantry Regt., showing a wound on the belly without penetrating inside; a small wound on the right knee and another on the right leg abd. superior.
4. Pte. SALONNA DONATO di GIUSEPPE, class 1927, of 226th. Infantry Regt., showing a wound on the left back.

All have been declared curable in 20 days save complication.

They have been admitted except the soldier SALONNA who has been rejected and dismissed.

The above mentioned militarymen have been wounded accidentally during their working in the docks, on account of a dropping and explosion of an ammunition case.

(Signed) Captain MASTRUGNOLI.

Certified that the above is a true translation from the Italian to the best of my ability.

HUBERT RIEVI. Interpreter.

S.S. Empire Starbeam,
Port of Bari.
17th December 1943.

A.P.M.,
C.M. Police (Ports).

At about 1030 p.m. on the 16th, instant I heard a loud report of a gun being fired.

Upon investigation, I was informed that G. Bird, B.D.N. who is a member of the crew of this vessel, was seen descending from the After Starboard Oerlikon gun by D. E. S. Hastings, T Baird and E.J. Smith.

As G. Bird appeared to me to be under the influence of intoxicants, I requested the Military Police to take him in custody.

(Signed) J.R. Gopping.
Master.

At about 1030 p.m. on the 16th instant I heard a loud report of a gun being fired.

Upon investigation, I was informed that G. Bird, B.D.I. who is a member of the crew of this vessel, was seen descending from the After Starboard Orlikan Gun by D. B. H. S. Watkins, T Baird and E.E. Smith.

As G. Bird appeared to me to be under the influence of intoxicants, I requested the Military Police to take him in custody.

(Signed)

J.R. Copping.

Master.

20

J03

AMG HQ.,
15 Army Group,
C.M.F.

Lt. Colonel Lord Middleton.

British Merchant Seamen.

In my opinion, the law relating to the trial of British Merchant Seamen in occupied enemy territory is as follows :-

- (a) The general rule of international law is that a person is subject to the laws of the country in which he is situate.
- (b) Members of the Forces occupying an enemy territory are, under International Law, exempt from this general rule of law.
- (c) British merchant seamen are not subject to the Naval Discipline Act, the Army Act or the Air Force Act, and they are not part of the occupying forces when on shore in occupied enemy territory. They are, therefore, not entitled to exemption from the above general rule of law.
- (d) The laws of occupied enemy territory to which British Merchant Seamen are subject are :-
 - (i) the lex loci; and
 - (ii) the laws of the Military Governor, (i.e. Proclamations, etc.,)
- (e) A British Merchant Seaman can thus legally be tried by the domestic criminal courts of occupied enemy territory for offences against the lex loci or by a Military Court for offences cognisable by such a Court.
- (f) In occupied Italy, the Proclamations of the Military Governor provide that any person charged with an offence against Italian law may be tried for that offence by an Allied Military Court on an order made by or under the authority of the Military Governor. In occupied Italy, therefore, a British Merchant Seaman can be tried for offences against either Italian Law or the laws of the Military Governor by an Allied Military Court.
- (g) It could be provided by Proclamation that British Merchant Seamen committing offences, which when committed in England are punishable by the law of England, should be liable, if the offence is committed in occupied enemy territory, to suffer any punishment assigned for such offence by the law of England. This was provided in Madagascar

Seamen in occupied enemy territory is as follows :-

- (a) The general rule of international law is that a person is subject to the laws of the country in which he is situate.
- (b) Members of the Forces occupying an enemy territory are, under International Law, exempt from this general rule of law.
- (c) British merchant seamen are not subject to the Naval Discipline Act, the Army Act or the Air Force Act, and they are not part of the occupying forces when on shore in occupied enemy territory. They are, therefore, not entitled to exemption from the above general rule of law.
- (d) The laws of occupied enemy territory to which British Merchant Seamen are subject are :-
 - (i) the *lex loci*; and
 - (ii) the laws of the Military Governor, (i.e. Proclamations, etc.,)
- (e) A British Merchant Seaman can thus legally be tried by the domestic criminal courts of occupied enemy territory for offences against the *lex loci* or by a Military Court for offences cognisable by such a Court.
- (f) In occupied Italy, the Proclamations of the Military Governor provide that any person charged with an offence against Italian law may be tried for that offence by an Allied Military Court on an order made by or under the authority of the Military Governor. In occupied Italy, therefore, a British Merchant Seaman can be tried for offences against either Italian law or the laws of the Military Governor by an Allied Military Court.
- (g) It could be provided by Proclamation that British Merchant Seamen committing offences, which when committed in England are punishable by the law of England, should be liable, if the offence is committed in occupied enemy territory, to suffer any punishment assigned for such offence by the law of England. This was provided in Madagascar (which was not "enemy territory") and in Tripolitania (which was enemy territory). Such a provision is based on Section 41 of the Army Act and would put British Merchant Seamen on the same status as "persons subject to Military law" under the Army Act, with the substitution of a Military Court for a Court-Martial.
- (h) In addition to the foregoing methods of trial, under the Merchant Shipping Act, 1894, section 483 (1) (g), a naval court may investigate offences committed by British Merchant Seamen ashore in foreign territory, and, under section 689 of the same Act, may place the offender under restraint and

.....send him for trial....

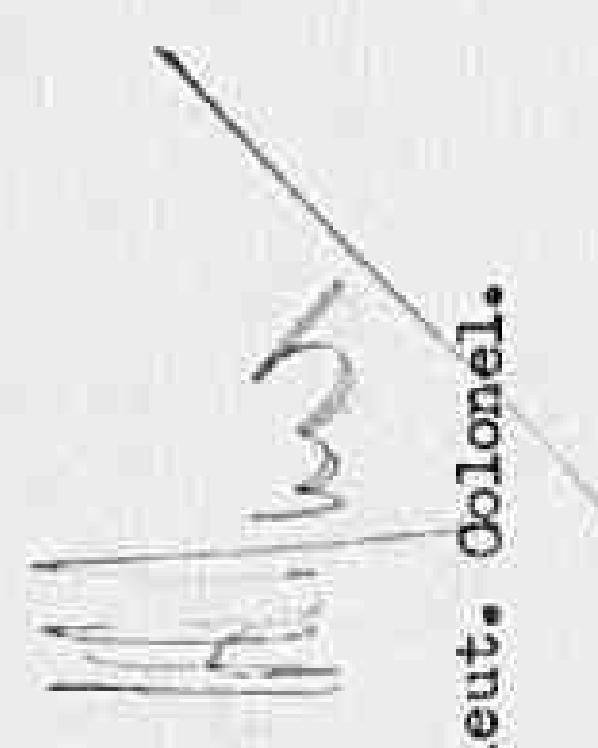
send him for trial to the United Kingdom or to any British possession in which there is a Court capable of taking cognisance of the offence. This is not always practicable as Naval Courts are sometimes not available. Further, the sending of witnesses to distant places in wartime causes service difficulties.

2. In occupied territory, which is not "enemy" territory, the position is the same as in para 1 above. Madagascar is an example.

3. In non-occupied foreign territory, the position depends on whether there are any treaty or other powers enjoyed therein. In Madagascar (after the coming into force of the Agreement with the French National Committee), rights were enjoyed in Military Zones to try British civilian offenders as outlined in para 1 (g) above. In occupied Italy, the matter depends on the Armistice terms. In the absence of any "contract" powers, trial can only be by the Courts of the country or under the Merchant Shipping Act, as above.

4. If a person is convicted by a Military Court and sentenced to a term of imprisonment, he can only serve it in accordance with the law under which he was convicted, e.g. in Italy in an Italian civil gaol. He cannot be sent to a Military or Naval establishment. Military law could be effected by Proclamation that persons so sentenced serve their imprisonment in a special establishment set up by the Military Governor, but, owing to accommodation and personnel problems, that is rarely practicable. It would, I think, need legislation to provide that persons sentenced to imprisonment in occupied territory could be sent, on a warrant of a Military Court therein, to serve their terms in prisons in British possessions. The means at my disposal are not adequate to be sure of this and it is possible it could be arranged by other means, e.g. an Order-in-Council.

5. The foregoing represents my personal opinion on the law regarding the trial and imprisonment of British Merchant Seamen in territory as above described.


Lieut. Colonel.

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 Equals British CONFIDENTIAL

WAR DEPARTMENT
 Washington

WD 250.01 (10-8-42)OB-S-SPEX-M

HJP/lap - 1705

October 9, 1942

SUBJECT: Authority of Commanders and Jurisdiction of the
 Military Tribunals of the United States with Respect
 to the Crews of Merchant Vessels.

TO : Chief of Staff, U. S. Army;
 Commanding Generals,
 Theaters of Operations;
 Defense Commands;
 Service Commands;
 Ports of Embarkation;
 Assistant Chief of Staff, Operations Division,
 War Department General Staff;
 Chief of Transportation Corps,
 Services of Supply.

1. Incidents may arise in the various theaters of operation whereby the success of the war effort may be endangered by the refusal of crews of merchant vessels to obey necessary orders issued by proper authority.

2. For your information and guidance, there is attached a statement which outlines the authority of military commanders and the jurisdiction of military tribunals with respect to crews of merchant vessels.

3. It is the duty of military commanders to exercise necessary authority, and take appropriate action in this connection whenever the exigencies of military operations so demand.

By order of the Secretary of War:

OFFICIAL:
 /s/ J. A. ULIO
 J. A. ULIO,
 Major General,
 The Adjutant General.

G. C. MARSHALL
 Chief of Staff.

33

1 Inclosure - as indicated above.

COPIES FURNISHED:
 Administrator, War Shipping Administration;
 Chief of Naval Operations, Navy Department.

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Equals British CONFIDENTIAL

(Ltr. fr. WD, Washington, 9 Oct 42. Subj: Authority of
Commanders and Jurisdiction of the Military Tribunals of the
United States with Respect to the Crews of Merchant Vessels.)

AG 250.01 MGA

1st Ind.

RP/ejd

HQ. ETOUSA, 31 October 1942. TO: CG, SOS, ETOUSA
CG, II Corps
CG, V Corps (Reinf)
CG, Eighth Air Force
CG, Twelfth Air Force
CG, AA Command
CG, Iceland Base Command
CG, 29th Division
Commander, Maritime Command
CO, London Base Command.

For your information and guidance.

By command of Lieutenant General EISENHOWER:

s/ Ralph Pulsifer

RALPH PULSIFER,
Colonel, A.G.D.
Assistant Adjutant General.

1 Incl, n/c

COPY FOR: AFHQ.

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**STATEMENT OF THE JURISDICTION OF THE MILITARY TRIBUNALS
 OF THE UNITED STATES WITH RESPECT TO THE CREWS OF
 MERCHANT VESSELS**

1. By the laws of the United States, all persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, in time of war are subject to the military jurisdiction of the United States. It has been judicially asserted that -

"***The words 'in the field' do not refer to land only, but to any place, whether on land or water, apart from permanent cantonments or fortifications, where military operations are being conducted.***"

This was in the case of the mate of an army transport who refused to stand watch as directed by the master. For this offence he was tried by a court-martial and sentenced to five years' imprisonment. In upholding the jurisdiction of the military tribunal to inflict this punishment the court said:

"***In this case he was on an army transport, and peril from submarines existed when he refused to stand watch. The captain in charge of the vessel had, in my opinion, the right to call upon all persons on board to protect the transport in any way that seemed best in view of the danger. The section of the Articles of War subjecting persons accompanying armies to military authority not only enables military officers to preserve order on the part of such persons, but also in the cases that it covers to call on them for assistance and direct their action while they are properly in the field of military operations. The court-martial, therefore, had exclusive jurisdiction by the terms of the Articles of War over this man,***." (Ex parte Gerlach, 247 Fed. 616.)

2. The military tribunals of the United States have jurisdiction not only over army transports, but also over the crews of vessels, American and foreign, which are within a base or military area, or are carrying cargo (material or personnel) in connection with the military or naval operations of the United States in the war. When an offense alleged to have been committed on such a vessel within the territorial waters of the United States or elsewhere may conveniently be tried in a judicial court, military jurisdiction will not be asserted. But when the offense is committed abroad and is of a nature to interfere with the operations of the Army or Navy in the prosecution of the war, it may be tried by a military tribunal of the United States.

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3. Such a military tribunal has power to punish all ordinary crimes and misdemeanors, such as murder, larceny, assault and battery, etc.; maritime offenses such as revolt on shipboard, or refusal to obey the orders of the ship's officers; and any of the offenses denounced by the Articles of War, excepting only such as are susceptible of commission only by members of the Army. When the armies of the United States are serving overseas they carry with them the power to preserve their own security and to repress all interference with the accomplishment of their mission. The commanding officer of an overseas force may make and enforce regulations for this purpose.

4. The Supreme Court of the United States in a decision of April 6, 1942 (Southern S. S. Co. v. National Labor Relations Board), held that a persistent and deliberate refusal by seamen to perform their duties in making their ship ready for departure from port amounted to a "revolt or mutiny" within the meaning of the laws of the United States. Acts of violence are not a necessary part of the crime; any resistance to the captain or other officers in the free and lawful exercise of their authority and command would constitute a crime.

5. The provisions of paragraphs 1, 2, 3, and 4 thereof will be brought to the attention of all members of the crews of American merchant ships by officers exercising command at places where such merchant vessels may be found, or may hereafter come. Such commanding officers, or their designated representatives, will cooperate with masters of such vessels in the maintenance of discipline and will, when necessary or desirable, issue appropriate orders to members of the crews, either directly or through such masters.

6. The commanding officers of overseas commands will act discreetly in exercising the jurisdiction described above, and with as good legal advice as it is practicable to obtain. A crime committed on board a vessel is punishable by the state where the vessel is registered. If the crime offends the local sovereign it is also punishable in the courts of the country in whose port or territorial waters the ship may be. In a country occupied by United States troops where the local government has broken down, the military tribunals of the United States have jurisdiction to punish all offenses. In leased bases and in some other foreign places garrisoned by the United States the military tribunals of the United States have powers derived from international agreement. A single act may therefore be punishable in more than one jurisdiction. In such cases a jurisdiction which has already attached should, in general, be respected. But in situations

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where the security of his force and the accomplishment of his mission are threatened, the commanding officer will take such measures with relation to the trial and punishment of civilian offenders as may then and there be necessary to assure the success of his operations.

Inclosure No. 1 to letter, WD 250.01 (10- 8-42)OB-S-SPEX-M
October 9, 1942.

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WAR DEPARTMENT
 Washington

WD 250.01 (10-8-42)DB-S-37HX-M HJP/lap - 1705

October 9, 1942

SUBJECT: Authority of Commanders and Jurisdiction of the
 Military Tribunals of the United States with Respect
 to the Crews of Merchant Vessels.

TO : Chief of Staff, U. S. Army;
 Commanding Generals,
 Theaters of Operations;
 Defense Commands;
 Service Commands;
 Ports of Embarkation;
 Assistant Chief of Staff, Operations Division,
 War Department General Staff;
 Chief of Transportation Corps,
 Services of Supply.

1. Incidents may arise in the various theaters of operation whereby the success of the war effort may be endangered by the refusal of crews of merchant vessels to obey necessary orders issued by proper authority.

2. For your information and guidance, there is attached a statement which outlines the authority of military commanders and the jurisdiction of military tribunals with respect to crews of merchant vessels.

3. It is the duty of military commanders to exercise necessary authority, and take appropriate action in this connection whenever the exigencies of military operations so demand.

By order of the Secretary of War:

OFFICIAL:
 /s/ J. A. ULIO
 J. A. ULIO,
 Major General,
 The Adjutant General.

G. C. WARNEALL
 Chief of Staff.

1 Inclosure - as indicated above.

COPIES FURNISHED:
 Administrator, War Shipping Administration;
 Chief of Naval Operations, Navy Department.

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(Ltr. fr. WD, Washington, 9 Oct 42. Subj: Authority of
 Commanders and Jurisdiction of the Military Tribunals of the
 United States with Respect to the Crews of Merchant Vessels.)

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HQ. ETOUSA. 31 October 1942. TO: CG, SOS, ETOUSA
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 CG, Iceland Base Command
 CG, 29th Division
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 CO, London Base Command.

For your information and guidance.

By command of Lieutenant General EISENHOWER:

s/ Ralph Pulsifer

RALPH PULSIFER,
 Colonel, A.G.D.
 Assistant Adjutant General.

1 Incl, a/c

COPY FOR: ATHQ.

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"In this case he was on an army transport, and peril from submarines existed when he refused to stand watch. The captain in charge of the vessel had, in my opinion, the right to call upon all persons on board to protect the transport in any way that seemed best in view of the danger. The section of the Articles of War subjecting persons accompanying armies to military authority not only enables military officers to preserve order on the part of such persons, but also in the cases that it covers to call on them for assistance and direct their action while they are properly in the field of military operations. The court-martial, therefore, had exclusive jurisdiction by the terms of the Articles of War over this man,***." (Ex parte Gerlach, 247 Fed. 616.)

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4. The Supreme Court of the United States in a decision of April 6, 1942 (Southern S. S. Co. v. National Labor Relations Board), held that a persistent and deliberate refusal by seamen to perform their duties in making their ship ready for departure from port amounted to a "revolt or mutiny" within the meaning of the laws of the United States. Acts of violence are not a necessary part of the crime; any resistance to the captain or other officers in the free and lawful exercise of their authority and command would constitute a crime.

5. The provisions of paragraphs 1, 2, 3, and 4 thereof will be brought to the attention of all members of the crews of American merchant ships by officers exercising command at places where such merchant vessels may be found, or may hereafter come. Such commanding officers, or their designated representatives, will cooperate with masters of such vessels in the maintenance of discipline and will, when necessary or desirable, issue appropriate orders to members of the crews, either directly or through such masters.

6. The commanding officers of overseas commands will act discreetly in exercising the jurisdiction described above, and with as good legal advice as it is practicable to obtain. A crime committed on board a vessel is punishable by the state where the vessel is registered. If the crime offends the local sovereign it is also punishable in the courts of the country in whose port or territorial waters the ship may be. In a country occupied by United States troops where the local government has broken down, the military tribunals of the United States have jurisdiction to punish all offenses. In leased bases and in some other foreign places garrisoned by the United States the military tribunals of the United States have powers derived from international agreement. A single act may therefore be punishable in more than one jurisdiction. In such cases a jurisdiction which has already attached should, in general, be respected. But in situations

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where the security of his force and the accomplishment of his mission are threatened, the commanding officer will take such measures with relation to the trial and punishment of civilian offenders as may then and there be necessary to assure the success of his operations.

Inclosure No. 1 to letter, WD 250.01 (10- 8-42)OB-S-SPEX-M
October 9, 1942.

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Subject: Allied Military Courts - British Merchant Seamen.

102
 15 Army Group,
 G.M.H.

Ref. AHS/209/105
 16 December 43.

S.L.O. H., AHS., 5 Army.
 " " " 8 Army.
 S.C.L.O. " Region 3.
 " " " Region IV, (Main).

Instructions are being obtained by this Headquarters as to the manner in which British merchant seamen who commit offences ashore in occupied territory shall be dealt with.

2. It is possible for British merchant seamen to be dealt with by Naval Courts and a copy of the appropriate sections of the Merchant Shipping Acts is enclosed herewith.

3. In respect of any ordinary criminal offences committed ashore by British merchant seamen, the procedure will be to contact N.O.I.C. at the port concerned and ascertain whether he will take full charge of the case under the above act. If N.O.I.C. will not do this, reference will be made to this Headquarters with full details.

4. In respect of any immigration offence, an immediate report will be made to this Headquarters, with details of the charges and full particulars, before any trial is held.

5. A further directive will be issued as soon as the instructions mentioned in para 1 above have been received.

6. The definition of "British Merchant Seamen" will be noted in the enclosed Extract from the Merchant Shipping Act, 1894.

H. Jones
 Lt. Colonel,
 Chief Legal Officer,
 for Chief Civil Affairs Officer.

Copy to: Legal Sub-Coordinator, Allied Control Commission.

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THE CONSTITUTION OF THE UNITED STATES, 18

ARTICLE II.

Powers of
Naval Courts.

683 - (1) Every naval court may, after hearing and investigating the case, exercise the following powers; (that is to say,)

(a) the court may exercise the same powers with regard to persons charged before them with the commission of offences at sea or abroad as British consular officers can under the thirteenth part of this act;

(2) All orders duly made by a naval court under the powers hereby given to it shall in any subsequent legal proceedings be conclusive as to the rights of the parties.

(3) All orders made by any naval court shall, when- ever practicable, be entered in the official log book of the ship to which the parties to the proceedings before the court belong, and signed by the president of the court.

ARTICLE III.

689 - (1) Whenever any complaint is made to any British consular officer -

(a) that any offence against property or person has been committed at any place either ashore or afloat, out of Her Majesty's dominions by any person, master, seaman, or apprentice, who at the time when the offence was committed, or within three months before that time, was employed in any British ship, or

(b) that any offence on the high seas has been committed by any master, seaman, or apprentice belonging to any British ship;

that consular officer may inquire into the case upon oath, and may if the case so requires, take any steps in his power for the purpose of placing the offender under the necessary restraint, and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognisance of the offence in any ship belonging to Her Majesty or to any of Her subjects, to be there proceeded against according to law.

Conveyance of
offenders and
witnesses to
United Kingdom
or British
possessions.

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(2) All orders duly made by a naval court under the powers hereby given to it shall in any subsequent legal proceedings be conclusive as to the rights of the parties.

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of the ship to which the parties to the proceedings before
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ARTICLE 11.

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has been committed at any place either ashore
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when the offence was committed, or within three
months before that time, was employed in any
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that consular officer may inquire into the case upon
oath, and may in the case so required, take any steps
in his power for the purpose of placing the offender
under the necessary restraint, and of sending him as
soon as practicable in safe custody to the United
Kingdom, or to any British possession in which there
is a court capable of taking cognizance of the offence in
any ship belonging to Her Majesty or to any of Her
subjects, to be there proceeded against according to
law.

(2) The consular officer may order the master of any
ship belonging to any subject of Her Majesty bound to
the United Kingdom or to such British possession as
afforded to receive and afford a passage and subsistence
during the voyage to any such offender as aforesaid, and
to the witnesses, so that the master be not required
to receive more than one offender for every one hundred
tons of his ship's registered tonnage, or more than one
witness for every fifty tons of that tonnage; and the
consular officer shall enforce upon the agreement of the
ship such particulars with respect to any offenders or
witnesses sent in her as the Board of Trade require.

(3) Any master of a ship to whose charge an offender
has been so committed shall, on his ship's arrival
in the United Kingdom, or in such British possession
as aforesaid, give the offender into the custody of some

consequence of
offenders and
witnesses to
United Kingdom
or British
possessions.

police officer or constable, and that officer or constable shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter and the justice or magistrate shall deal with the matter as in cases of offenders committed upon the high seas.

(4) If any master of a ship, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford a passage and subsistence to him, or does not deliver any offender extradited to his charge into the custody of some police officer or constable as hereinafter directed, he shall for each offence be liable to a fine not exceeding fifty pounds.

(5) The expense of imprisoning any such offender and of conveying him and the witness to the United Kingdom or to such British possession as aforesaid, in any manner other than in the ship to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid out of moneys provided by Parliament.

.....

.....

to deal with the matter and the justice or equities shall deal with the matter as in cases of offences committed upon the high seas.

(4) If any master or skipper, when required by any British consular officer to receive and afford a passage and maintenance to any offender or witnesses, does not receive him and afford a passage and maintenance to him, or does not deliver any offender committed to his charge into the custody of some police officer or constable as herein-before directed, he shall for each offence be liable to a fine not exceeding fifty pounds.

(5) The expenses of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such British possession as aforesaid, in any manner other than in the ship to which they respectively belong, shall, where not paid as part of the costs of the prosecution, be paid out of moneys provided by Parliament.

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203

18 DEC 1943

43

Subject: - British Merchant Seamen.

HQ. A.M.G.,
15 Army Group,
C.M.P.

Ref. 337/203/85.
12 December 43.

To: - Military Government Section,
Allied Force Headquarters.

1. Considerable difficulty is being experienced over the question of the trial and imprisonment of British Merchant Seamen. This question arises in occupied territory in Italy and in non-occupied territory, but this Headquarters is only concerned with the former type of territory.

2. A British Merchant Seaman is not subject to the Army Act or the Naval Discipline Act when he is on shore, and he can therefore not be tried by Army or Naval Court Martial, or be imprisoned legally in a military or naval establishment.

3. It is my opinion that a British Merchant Seaman, like all other civilian persons in occupied territory, is subject to the jurisdiction of the Military Governor and, therefore, to his Proclamations and Orders. This was recognised in Madagascar and, since, in Tripolitania and possibly other British occupied territories.

4. Under the Proclamations in Italy at present in force, a British Merchant Seaman could be tried by an Allied Military Court in occupied territory for offences committed therein against the Proclamation and Orders of the Military Governor. It is also, in my opinion, acceptable to the ordinary courts of the territory as he is not a member of the Allied Forces and as such exempt under International Law.

5. It is recognised that it would be unwise and impracticable to try a British Merchant Seaman in an Italian Court, but an offence against Italian law could properly be tried in an Allied Military Court under a transfer of jurisdiction in accordance with the provisions of Proclamation No. 4. An Allied Military Court can also properly try a British Merchant Seaman for an offence created by Proclamation or Order of the Military Government.

6. Since the War Office, London, agreed in occupied territories in the Middle East and elsewhere that British Merchant Seamen are liable to the jurisdiction of British Military Courts, by which they are tried so far as is possible in accordance with English law, I propose, unless I receive instructions to the contrary, to try such offenders by Allied Military Courts, arranging wherever possible that the Court shall in such cases be composed of British officers.

7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonment which may be imposed. All persons convicted by Allied Military Courts serve their sentences

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6. Since the War Office, London, agreed in occupied territories in the Middle East and elsewhere that British Merchant Seamen are liable to the jurisdiction of British Military Courts, by which they are tried so far as is possible in accordance with English law, I propose, unless I receive instructions to the contrary, to try such offenders by Allied Military Courts, arranging wherever possible that the Court shall in such cases be composed of British Officers.
7. If it is decided that trial of offences committed in occupied territory by British Merchant Seamen shall take place in Allied Military Courts, the further question arises as to service of terms of imprisonment which may be imposed. All persons convicted by Allied Military Courts serve their sentences in Italian Gaols. It is considered that it would be unjust and add to the punishment if a British subject were made to serve a term of imprisonment in the gaol of an occupied country where the language was unknown to him, where gaol conditions were contrary to British conceptions of maintenance and where victimisation might result.
8. It is not possible under existing law for a person sentenced to imprisonment by an Allied Military Court to serve such imprisonment in a naval or military establishment. It is also not possible for him to be sent to a gaol in British territory unless the law is amended or directions can be given by the British Government which will allow this to be done. The maintenance of a special prison under the control of the Military Governor is legally possible, but not practicable as personnel would probably not be available and sentences might extend beyond the period of occupation. It is recommended that the law be altered or that directions be given which will enable a British

.....Merchant.....

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Merchant seamen to serve a sentence in a naval or military establishment or in a civil gaol in British territory (e.g. Malta).

9. The whole matter is very urgent as cases are constantly occurring, and, whilst serious charges like murder can be dealt with under the Merchant Shipping Acts by sending the accused for trial to Malta or some other convenient British territory, this is impracticable in the ordinary day to day cases.

(Sd) W. S. Lush

W. S. LUSH,
Brigadier,
I.C.C.A.O.

Copy to:-

Allied Control Commission.
Hq. AMG 5 Army.

ES.

Shipping lots by sea to
convenient British territory, this is impracticable in the ordinary day to
day cases.

ES.

(Sd) Mr S. Hunter

U.S. LUCH,
Brigadier,
D.C.C.A.C.

Copy to:- Allied Control Commission.
HQ. AMG 5 Army.

Copy

303

Subject: 222 Military Courts - British Merchant Seamen

AMG. HQ.

15 Army Group
CMF.

STO. HQ. AMG. 5 Army

" " 5 Army

RCLO : Region 3

" " IV (Main)

Ref AMG/204/108

16 December 43.

Instructions are being obtained by the Headquarters as to the manner in which British merchant seamen who commit offences ashore in occupied territory shall be dealt with.

2. It is possible for British merchant seamen to be dealt with by Naval Courts and a copy of the appropriate sections of the Merchant Shipping Acts is enclosed herewith.

3. In respect of any ordinary criminal offences committed ashore by British merchant seamen, the procedure will be to contact N.O.C. at the port concerned and ascertain whether he will take full charge of the case under the above act. If N.O.C. will not do this, reference will be made to the Headquarters with full details.

4. In respect of any Proclamation offence, an immediate report will be made to the Headquarters, with details of the charges and full particulars, before any trial is held.

5. A further directive will be issued as soon as the instructions mentioned in para 1 above have been received.

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6. The definition of "British merchant seamen" will be noted in the enclosed Extract from the Merchant Shipping Act 1894.

21

M.E. Rowe

Lt. Colonel

Chief Legal Officer

for Chief Civil Affairs Officer

Copy to :- Legal Sub-Commission,

Devel Control Commission.

(202)

The Merchant Shipping Act 1894
Part VIII

483-(1) Every naval court may, after hearing & reviewing the case, exercise the following powers: (that is to say)

(g) the court may exercise the same powers with regard to persons charged before them with the commission of offences at sea or abroad as British Consular officers can under the XIIIth Part of this Act.

(2) All orders duly made by a naval court under the powers hereof given shall in any subsequent legal proceedings be conclusive as to the rights of parties.

(3) All orders made by any naval court shall whenever practicable, be entered in the official log book of the ship to which the parties to the proceedings before the court belong, & signed by the President of the court.

Part XIII

689-(1) Whenever any Complainant is made to any British Consular office, —

to the Consular office to present a person

(g) The court may exercise the power herein
with regard to persons charged before them with
the commission of offences at sea or abroad
as British colonial officers can under the XIII of
Part of this Act.

(2) All orders duly made by a naval court-martial,
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Part XIII

689 - (1) Whenever any Complainant is made to
any British colonial officer, —

(a) that any offence against property or person
has been committed, whether at any place or on the
water or afloat, out of the British colonies in any
of any waters, sea, or anywhere, where
at the time when the offence was committed,
or within 3 months before that time, was
employed in any British ship, or

(1) That any offence in the ship has been committed by any master, seaman, or apprentice belonging to any British ship,

that Consular officer may inquire into the case upon oath, & may if the case so requires take any steps in his power in the purpose of placing the offender, under the necessary restraint, & of securing him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a Court capable of taking cognizance of the offence in any ship belonging to H. M. or to any of Her subjects, to be there proceeded against according to law.

(2) The Consular officer may order the master of any ship belonging to any subject of H. G. or any subject of the U. K. or to any British person as aforesaid to receive & afford a passage & maintenance during the voyage to any magistrates as aforesaid, & to the customs, so that the master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one hundred for every 100 tons of dead tonnage, and the Consular officer shall swear upon the agreement of the ship's magistrates with respect to any offenders or offenders sent in her as the Board of Trade require.

in the power of the court to make any order or award of costs or damages under the provisions of the Act, or of sending him or her to prison as practicable in case of default to the court. (2) Any person who is found guilty of taking cognizance of the offense in any ship belonging to the U.S. or to any of her subjects, to be there proceeded against according to law.

(2) The court may order the master of any ship belonging to any subject of the U.S. to pay to the U.S. or to the subject of the U.S. a fine or damages as aforesaid, or to pay a passage for any person or persons during the voyage to any port or place as aforesaid, or to the court, so that the master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one offender for every 10 tons of that tonnage; and the court may order, shall order, or upon the agreement of the ship's owners or charterers with respect to any offender or offenders, to pay for the same as the Board of Trade require.

(3) Any master of a ship to whom charge an offender has been committed shall on his ship's arrival in the U.S. or in any port possess an affidavit of the offender into the custody of some police officer or constable, or that officer or constable shall take the offender before a

Justice of the peace or other magistrate of law
empowered to deal with the matters and the
Justice of the peace or other magistrate of law
or magistrate shall deal with the matter
as in cases of offences committed upon
the high seas.

(4) If any magistrate or other person who
is a British Commonwealth officer or member of
a police force or a member of a police force
offend a person or offend a person or offend
or witness, does not receive him or offend
a person, or witness to him, or does
not clear any offender committed to his
charge into the custody of some police
officer or constable as herein-before directed,
he shall for each offence be liable to a
fine not exceeding 50 pounds.

(5) The expense of investigating any offence
committed by any person or persons in
the U.K. or to any person or persons
in any manner, in any manner, in any
manner, to which they are liable,
being, shall, where not paid as
part of the costs of the proceedings,
be paid out of moneys provided by
Parliament.

as in cases of appeal
the high seas.

(4) If any master of a ship, when required
by any British Consular Officer to receive &
afford a passport, refuses him & affords
no witness, does not receive him & affords
a passport, in witness to him, or does
not deliver an offender, Commences that it has
change into the custody of some police
officer is punishable as herein-before directed
he shall for each offence be liable to a
fine not exceeding 50 pounds.

(5) The expense of an inquiry or any
offences, and of conveyance, in witness
to the U.K. or to any British Consular
as aforesaid, in any manner, or by
in the ship to which they are paid as
belong, shall, where not paid as
part of the costs of the proceedings,
be paid out of moneys provided by
Parliament.

Maj. Thackrah
ALLIED CONTROL COMMISSION - INCOM 7 MESSAGE /msx

SVC/RELAY NO.

M/C NO : 36/4

CLASS: NOT GIVEN

REF NO: FA 367

PREC : NOT GIVEN

FILED : DEC 030930A

FROM : FILPOT FOR AMB FOR ROWE

REC'D : DEC 041711A

TO : SEARS FOR FARGO INFO FATIMA FOR THACKRAH

200/4/203

Reference signal 980 of 1 December from Fargo and British seamen.
Have contacted NOIC. Arrangement made that NOIC will take future
necessary action.

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - Maj. Thackrah INFO

(14)
e

U. S. SECRET
 Equals British SECRET

- INCOMI

/mt

R676/01

22/1

SECRET

S-3494

URGENT

DEC 011545A

SEANS FOR FARGO

DEC 018739A

PATIMA

British Seamen. (TO PATIMA FOR THACKRAY RETO FILPOT FROM SEANS FOR FARGO
 CITE FARGO 980) Reference 1209 dated 30 November. CLO(?) CSO(?) Allied Control
 Commission concurs.

DISTRIBUTION:

- 2 - AG
- 1 - Diary /
- 1 - H/C
- 1 - Maj. Thackray (action)

(13)c

U. S. SECRET
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U. S. CONFIDENTIAL

Equals British CONFIDENTIAL

ALLIED CONTROL COMMISSION - INCOMI

MESSAGE

/hft

SVC/RELAY NO. R 106/3

M/C NO : 15/3

CLASS: CONFIDENTIAL

REF NO: NOT GIVEN

PREC : ROUTINE

FILED : DEC 021317A

FROM : FREEDOM

REC'D : DEC 031026A

TO : FATIMA

Your FA 335 of 30 November not to Fotali NOIC Bari or Vam. Following is a repetition of my 271949 November begins. Addressed NOIC Bari. Repeated Fotali, Vam, Filpot for AMG. Seers for Fargo, Fatima for Joyce for Thackrah. Understand 2 British merchant seamen arrested Bari for stabbing Italian who is expected to die. Subject to concurrence of Allied Control Commission case should be investigated by Naval Court. Under sections 483 paragraph (1).(G) any 689 of Merchant Shipping Act and accused sent to Malta for trial accompanied by dispositions and necessary witnesses. (Arrange this message in numerical sequence and delete the numbers.) (FROM CINC MED TO FILPOT CMA SEVENTH ARMY AND FATIMA)

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - Gen. Taylor (info)
- 1 - Maj. Thackrah (action)

U. S. CONFIDENTIAL
Equals British CONFIDENTIAL

U. S. RESTRICTED

Equals British RESTRICTED

- OUTGOING

GRU/DA

6/2
1233

021236A

DEC

RESTRICTED

ROUTINE

RATINA

DEC

FILPOT FOR AND RPTD FREEDOM MGS BEARS FOR FARGO

ALLIED CONTROL COMMISSION CONCURS IN PROCEEDINGS SET OUT IN TELEGRAM FROM CINC
 REQD AS TO TRIAL OF TWO BRITISH MERCHANT SEAMEN ARRESTED IN BANI FOR STABBING
 ITALIAN UNDER PROVISIONS OF MERCHANT SHIPPING ACT TO FILPOT FOR AND RPTD
FREEDOM MGS BEARS FOR FARGO FROM RATINA SIGNED JUCE PD PLEASE ASK HEADQUARTERS
 NUMBER TWO DISTRICT TO DEAL WITH CASE IN ACCORDANCE WITH ABOVE MENTIONED
 TELEGRAM TO SUGGEST YOU CONTACT CAPTAIN COOPER CMA CMA BANI WHO HAS BEEN IN
 CHARGE OF THE CASE

AUTHENTICATED:

ROBERT E. DOE
 Major, A.C.D.
 Secretary of the Commission

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - Mr. Cascia (INFO)
- 1 - Commodore Palmer (INFO)
- 1 - Colonel Upjohn

U. S. RESTRICTED

Equals British RESTRICTED

ALLIED CONTROL COMMISSION

RELEASE

CABLE - OUNING

2 December 1943.

CLASS: UNCLASSIFIED

INFO: ROUTINE

FROM: PACIFIC

TO: DIRECTOR FOR AMERICAN MESS STAFF FOR EUROPE

END

Allied Control Commission concurs in procedure set out in telegram from C in C Med as to Trial of two British merchant seamen arrested in Bari for stabbing Italian under provisions of Merchant Shipping Act 1905. Please ask Hq No. 2 District to deal with case in accordance with above mentioned telegram. Suggest you contact Capt. Cooper CAP Bari who has been in charge of the case.

Copy to Mr. Georgia
Comptroller

File 2 Dec
8941

CLASS: RESTRICTED

INFO: ROUTINE

FROM: ITALIA

TO: TELETYPE FOR MSG RPTD THROUGH MCS STARS FOR PARCO

GRU

Allied Control Commission concurs in procedure set out in telegram from C in C Med as to Trial of two British merchant seamen arrested in Bari for stabbing Italian under provisions of Merchant Shipping Act 1905. Please ask HQ No. 2 District to deal with case in accordance with above mentioned telegram NO. Suggest you contact Capt. Cooper CIP Bari who has been in charge of the case.

Copy to Mr. Casella
Commo Zone

*By hand 2 Dec
6440*

U. S. SECRET

Equals British ALLIED CONTROL COMMISSION - INCOMIN

MESSAGE

/hft

SVC/RELAY NO. R676/01

M/C NO : 22/1

CLASS: SECRET

REF NO: S-3494

PREC : URGENT

FILED : DEC 011545A

FROM : SEARS FOR FARGO

REC'D : DEC 011739A

TO : FATIMA

British Seamen. (TO FATIMA FOR THACKRAY RPTD FILPOT FROM SEARS FOR FARGO
 CITE FARGO 980) Reference 1209 dated 30 November. CLO(?) CSO(?) Allied Control
 Commission concurs.

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - Maj. Thackray (action) —

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 Equals British SECRET

U. S. SECRET
 Equals British SECRET

OUTGOING

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8/30

1209

NOV 30/5/57A

NOV

SECRET

URGENT

FATIMA FROM THACKRAH

SEARS FOR FARGO FOR UPTOWN

RECEIVED FOLLOWING MESSAGE FROM C IN C MEDITERRANEAN QUOTE UNDERSTAND TWO BRITISH
 MERCHANT SEAMEN ARRESTED BARI FOR STABBING ITALIAN WHO IS EXPECTED TO DIE PD TO
SEARS FOR FARGO FOR UPTOWN FROM FATIMA FROM THACKRAH SIGNED JOYCE PD SUBJECT TO
 CONCURRENCE OF ALLIED CONTROL COMMISSION CASE SHOULD BE INVESTIGATED BY NAVAL
 COURT UNDER SECTION FOUR EIGHT THREE PARAGRAPH PAREN I PAREN G AND SIX EIGHT NINE
 OF MERCHANT SHIPPING ACT AND ACCUSED SENT MALTA FOR TRIAL CMA ACCOMPANIED BY
 DEPOSITIONS AND NECESSARY WITNESSES PD BARI PASS TO FILLOT ~~PD BARI PASS TO FARGO~~
~~PD BARI PASS TO FATIMA PD UNQUOTE PD CLO FILLOT CONCURS PD PLEASE SIGNAL YOUR~~
 AGREEMENT AND REPEAT FILLOT

AUTHENTICATED:

ROBERT E. DOE
 Major, A.C.D.
 Secretary of Commission

DISTRIBUTION:

- 2 - AG
- 1 - Diary ✓
- 1 - M/C
- 1 - Major Thackrah

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U. S. SECRET
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OUTGOING

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NOV 30 15 17

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SECRET

URGENT

FATIMA FROM THACKRAH

SEARS FOR FARGO FOR UNION

RECEIVED FOLLOWING MESSAGE FROM C IN C MEDITERRANEAN QUOTE UNDERSTAND TWO BRITISH
 MERCHANT SEAMEN ARRESTED RAPI FOR BEARING ITALIAN WHO IS EXPECTED TO DIE IN 20
 SEARS FOR FARGO FOR UNION FROM FATIMA FROM THACKRAH SIGNED JOYCE PD SUBJECT TO
 CONCURRENCE OF ALLIED CONTROL COMMISSION CASE SHOULD BE INVESTIGATED BY NAVAL
 COURT UNDER SECTION FOUR EIGHT THREE PARAGRAPH FAREN I FAREN 3 AND SIX EIGHT NINE
 OF MERCHANT SHIPPING ACT AND ACCUSED SENT MALTA FOR TRIAL ORA ACCOMPANIED BY
 DEPOSITIONS AND MERCHANT WITNESSES ID HAVE FARE TO FILLOT CALLED FARE TO FARE
 JOURNAL FARE TO FATIMA IS URGENT ID OLD FILLOT CORRUPT PD PLEASE SIGNAL YOUR
 AGREEMENT AND REPEAT FILLOT

AUTHENTICATED:

ROBERT E. DON
 Major, A.C.D.
 Secretary of Commission

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - Major Thackrah

U. S. SECRET
 Equals British SECRET

12

DRAFT - CABLE

DATE: 30 Nov. 1943

CLASS: URGENT.

FROM: PATRIA FOR ITALY/ALBA.

TO: SEARS FOR FARGO FOR URGENT

A.R.T.

Received following message from O in G Mediterranean zone
 Understand two British merchant seamen arrested Bari for stabbing Italian
 who is expected to die. Subject to concurrence of Allied Control Com-
 mission case should be investigated by Naval Court under section 423 paragraph
 (1) G and 649 of Merchant Shipping Act and accused sent Malta for trial,
 accompanied by depositions and necessary witnesses. Bari pass to MILLOT
 Palermo pass to FARGO Brindisi pass to PATRIA, and Genoa.
 OIC Edilport concurs PD Please signal your agreement and report Edilport

CLASS: URGENT.

FROM: BRITISH CONSUL, MALTA.

TO: STAFF FOR BARGO FOR URGENT

A.R.V.

Received following message from C in O Mediterranean quote
Understand two British merchant seamen arrested Bari for stabbing Italian
who is expected to die. Subject to concurrence of Allied Control Com-
mission case should be investigated by Naval Court under section 483 paragraph
(1) G and 639 of Merchant Shipping Act and accused sent Malta for trial,
accompanied by depositions and necessary witnesses. Bari pass to PILPOT
Palermo pass to MARSO Brindisi pass to MALTA, end quote.
C/O Brindisi concurs M. Please signal your agreement and repeat Brindisi

13921 1 copy May. The bank

ALLIED CONTROL COMMISSION INCOMING MESSAGE /jh

SVC/RELAY NO.

M/C NO : N 33/29

CLASS: NOT GIVEN

REF NO: NOT GIVEN

PREC : NOT GIVEN

FILED : NOV 27 1949A

FROM : C IN C MED

REC'D : NOV 29 1949A

TO : NOIC BARI (R) FOR ALLI VAL FILIPOT FOR AMG
SEARS FOR FARGO FATIMA FOR JOYCE FOR THACKRAU

Understand two British merchant seamen arrested Bari for stabbing Italian who is expected to die. Subject to concurrence of Allied control commission case should be investigated by Naval Court under section 483 paragraph (1) G and 689 of Merchant Shipping Act and accused sent Malta for trial, accompanied by depositions and necessary witnesses. Bari pass to FILIPOT Palermo pass to FARGO Brinidisi pass to FATIMA.

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - General Taylor (INFO)
- 1 - Major Thackraw (INFO)

LEGIONE TERRITORIALE DEI CARABINIERI REALI DI BARI
 TRINCA DI BARI INTERNA

N. 4/36 di prot. div. III

Bari, 21 novembre 1943

OGGETTO: Segnalazione.

Comando Terr. IX° Corpo d'Armata
 Comando Legione cc. rr.
 Regia Prefettura di
 Regia Questura di
 Comando Gruppo cc. rr.
 Comando Compagnia Interna cc. rr.
 Comando Truppa Alleste-Political Liaison Office.
 Comando Polizia Inglese-Int. G. Cesare-Via Cavallotti

Bari
 Bari
 Bari
 Bari
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 Bari
 Bari

Ore 16,30 ventitre corrente LEONE Cataldo Fu Luigi, anni 44, munitore, nato Corato residente Bari via Dante 456, mentre trovavasi nella casa di tolleranza di via Dante Alighieri 234 per solutare una parente senza motivo venne colpito all'addome con coltello da militare alleato rimasto sconosciuto.

Leone ricoverato locale pronto soccorso R. Università con prognosi riservata.



IL RE RE COMANDANTE
 (Maggior Generale)

1st Ind.

SUBJECT: Stabbing of Italian subject by British merchant marines.
 TO: Lt. Col. Rowe (Legal, AMGOT)
 FROM: ACGLIO, Bari.

27 Nov., 1943

1. Capt. Cooper, Special Investigation Dept., advised this office

Ora 18,30 ventitre corrente LEONE Cataldo fu Luigi, anni 44, manovale, nato Cosato residente Bari via Dante 450, mentre trovavasi nella esse di tolleranza di via Dante Alighieri 234 per salutare una parente senza motivo veniva colpito all'addome con coltello da militare allegato rinvenuto sconosciuto.-

Leone ricoverato locale pronto soccorso R. Università con prognosi riservate.-



IL REALE COMANDANTE
(Maggiore Francesco)

1st Ind.

SUBJECT: Stebbing of Italian subject by British merchant marines.
TO: Lt. Col. Rowe (Legal, AMCOM)
FROM: ACCIO, Bari.

27 Nov., 1943

12

1. Capt. Cooper, (Special Investigation Dept.), advised this office on 26 Nov., 1943, that Cataldo LEONE, Italian subject, had been stabbed in an altercation with two British merchant marine men - James Dennon and Ronald Stephenson of the SS Fort Glen Lion - and that the two latter were being held by British military authorities.

2. Two other men, Joseph Angel and ---- Cooke, of the same ship had been held as material witnesses, but temporarily released.

3. The surgical clinic of the Royal University advised this office that at 2 p.m. Leone's condition was materially improved, and that his temperature was 37.4 (Centigrade).

Stephenson of Italian name
Dennon - name

Italian Navy blowing
Bardis, Bari

A 8 Italian Liaison
Bardis, Bari

Exp. 10 to 1000 - Bari

Armand Demasi

H. ARMAND DEMASI,
Capt., Spec. Res., AUS

LIAISON OFFICER

PALAZZO DEL GOVERNO
BARI

DRAFT

27 November 1943.

TO Philrot for AMC.

FROM PATINA from THUNDERBOLT.

Repeated Pardon for LES Gears for Perry. Please hold season in
custody of Military Police pending further instructions. Ed. Major
Thornhill investigating details.

Copy to Mr. Gaoia for information.

U. S. RESTRICTED

only British RESTRICTED

ALLIED CONTROL COMMISSION INCOMING MESSAGE /jh

SVC/RELAY NO.

M/C NO : 18/28

CLASS: RESTRICTED

REF NO: 3-3208

PREC : ROUTINE

FILED : NOV 270907A

FROM : FREEDOM *From*

REC'D : NOV 281430A

TO : FATMA *Lon*

2 British Merchant Seaman (FROM SEARS FOR FARGO TO FILPOT RPT'D FREEDOM RPT'D
FATMA CITE YOUR NR 338 CITE FARGO 880) should be tried in Allied General Military
 Court for appropriate offence under Italian law.

DISTRIBUTION:

- 2 - AG
- 1 - Diary
- 1 - M/C
- 1 - Major Thackrah - INFO

U. S. RESTRICTED

only British RESTRICTED

U. S. COM. PLAN P¹ CONTROL COMMISSION
Equals British CONFIDENTIAL

OUTGOING

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CONFIDENTIAL

ROUTINE

NOV

FATIMA

NOV

FILPOT REPEATED FREEDOM REPEATED TO SEARS FOR FARGO

PLEASE HOLD SEAMEN IN CUSTODY OF MILITARY POLICE PENDING FURTHER INSTRUCTIONS PD
TO FILPOT FOR AME REPEATED FREEDOM FOR MGS REPEATED TO SEARS FOR FARGO FROM FATIMA
FROM THACKRAH SIGNED JOYCE MAJOR THACKRAH INVESTIGATING DETAILS

AUTHENTICATED:

ROBERT E. DOE,
Major, AGD
Secretary of Commission

DISTRIBUTION:

- 2 - AG
- 1 - Diery
- 1 - Major Thackrah
- 1 - Mr. Caccia

U. S. COM. PLAN P¹ CONTROL COMMISSION
Equals British CONFIDENTIAL

COPY

ELECTING

NOT GIVEN

11/26

NOT GIVEN

MA 276

FILIPPO FOR AUG

NOV

NOV 26/91A

STATS WER FALCO FURNISHED EVIDENCE FOR LOS TACIA
FOR THACKERAY AND CACOLA

2 British Merchant Section arrested Bari charged with stabbing Italian.

Believed Italian will die. Request your immediate instructions. Military

Police are holding accused.

1. Enquire into circumstances of
 1. report by pilot saying as per instructions
 2. Repeat "freedom" supplied local
 3. Remate to have AMO a survey pending
 2. Enquiry re held in custody pending
 3. particulars be held in custody pending
- perman
dissemin

NOT GIVEN

11/26

NOT GIVEN

11/27

WILSON FOR AMG

11/27

11/28

STARS FOR VINO NUTRITION FACTORS FOR 105 NUTRITION
FOR THERMAL AND COLD

2 British Merchant Seamen arrested for charges with stabbing Italian.

Believed Italian will die. Request your immediate instructions. Military

Police are holding accused.

1. Enquire into circumstances
2. Repeat by report by Philip
3. Repeat to "Faccum" by report by Philip
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THEORY

98/11

276

25000

VIETNAM AND THE POLITICAL ECONOMY OF THE SOUTH

Beloved Italian will die. Request your immediate intervention. Military

Police are holding accounts.

Delinquent Merchant Seamen.

29 Nov. 43.

Major Trackish interviewed Capt Cooper, No 62
Special Investigation Department, C.M.P. Bari
on the finding of a practical solution to the
difficulties arising out of the supervision of
British merchant seamen undergoing arrest or
serving sentences for minor offences committed
in territory under Italian jurisdiction.

Suggested solution that Italian authorities
might agree to operate premises ^{under} set
apart for such delinquents, the surveillance
of Italian prison guards, but supervised by
British military police who would provide
rations, bedding, medical & sanitary services.

The presence of Italian civil prison personnel
would be essential on account of the fact that
under the Merchant Shipping Act, British
merchant seamen may not ~~be confined~~ ^{undergo punishment}
~~under military discipline~~ in a military
prison.

Captain Cooper pressed himself in agreement
with these suggestions and proposed to call
a conference of Port Military Police officers
to consider the position and forward to
report recommendations with copies to Major
Trackish.

Special Investigation Department, C.M.P. Bari
on the funding of a franchise solution to the
difficulties arising out of the supervision of
British merchant seamen undergoing arrest or
servicing sentences for minor offences committed
in territory under Italian jurisdiction.

Suggested solution that Italian authorities
might agree to operate premises ^{under} set
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merchant seamen may not ~~be~~ ^{undergo punishment}
~~under military discipline~~ in a military
prison.

Captain Cooper expresses himself in agreement
with these suggestions and proposed to call
a conference of Port Military Police officers
to consider the position and proceed to
report recommendations with copies to Major
Thackwell.

Q. Under that authority -
has anyone been taken
by merchant seamen
in Sicily or Occupied
Italy?

What would have
happened to a man
sentenced to a term
of imprisonment?

Under proclamation 2.

Report Signed by Maria
Lickers. APR 18, Post-Prison
G.

Rebels. to Antiochia, Cratone
Palania. Tarami. Reggio
Bari.

Between 4 ¹/₄₃ - 3 ¹/₄₃
men of merchandise have
Arrested - 105 for larceny
10 other Hens.

In Sicily AM 507 Courts
tried them, but not
in mountain.

Merchant Navy Delinquents.Unoccupied

Problem: Seamen of U.N. both B & U.S. are committing offences in territory under Italian Administration and are being sentenced and confined in Italian jails. (Taranto etc).
 It is desired to supervise the conditions of incarceration of these allied nationals through A.M.G. channels in a similar manner to the action taken by the U.S. & B. Consular officials under normal conditions.

Vide letter from
 Div. Sea Transport
 Off. Italy to Principal
 Sea Transport Off.
 Mediterranean.
 Date 7 Oct 43
 Ref. 175/1102.

Suggested Temp. solution: That the Chief Political Liaison Officer at
 A.C. H.Q. be approached with a view to his undertaking
 general supervisory functions and that some arrangement
 be made with A.P.U. for his staff to get set aside
 special cell or cells for hygienic reasons & that British & U.S.
 nationals be provided.

15 Nov. 43.

Situation in Occupied Territory:

15 Nov 43.

U.S. Seamen may be tried A.M. Courts & Courts Martials
 (military or naval) and imprisoned in Army & Navy jails.
 British Seamen may not be tried by C.M. and may be
 imprisoned only in Italian jails as result of trial by
 Allied Military Court (Offence of Italian law as civilians).

Suggested Solution by Chamber to AFM:

That Allied Courts be authorized to commit to most
 convenient British jail; or alternatively that in
 conformity with U.S. practice offenders be tried by C.M.
 (but military punishment is not suitable for merchant
 seamen.)

Reps. Vide Art 491 ICR and A.I

7 Oct 43

Divisional Sea Transport Officer Southern Italy states:

Procedure at present adopted based on principle that
 Italian ports are to be regarded as operational ports
 under Military Control. Arranged that M.M.
 delinquents arrested by Civil Power are handed over
 to A.P. for custody pending decision; but this is only
 a measure to prevent action by Italian Civilian Authorities
 and still leaves open the question of how an offender is
 to be dealt with for commission of serious crimes.

British to 2 Police - Vignabonelli

Kapls
 Amg.

Reps. Criminals - Bona Bona Bona
 Rep 2.

Very truly

COPY.

FROM : DIVISION, SEA TRANSPORT OFFICER, SOUTHERN ITALY.
 DATE : 7th October 1943. 175/116A.
 TO : PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.
 (Copy to: Allied Force Headquarters, Algiers.
 Commander-in-Chief, Mediterranean Station.
 H.Q. No. 1 District, Portbase.
 Flag Officer, Italy.
 H.Q., A.M.C.O.T.
 M.W.T. Representative, Algiers).

SUBJECT: MERCHANT NAVY DELINQUENTS.

Guidance is sought as to the proper procedure to adopt in dealing with Merchant Navy personnel who commit offences against the Civil Law while ashore in Italian ports.

2. The position before the capitulation of Italy was simple, as A.M.C.O.T., Courts were sitting and cases were dealt with by these courts, the Superintending Sea Transport Officer at the port sitting as an assessor to assist the Court and ensure that no action was taken which would delay the ship from sailing. Now that there are no courts set up by A.M.C.O.T., there only remain the Italian Civil Courts or Naval Courts convened by the Senior British Naval Officer. It is not known whether Naval Courts have power to try a delinquent for an offence committed ashore, or if these Courts have the power to compel the attendance of civilian witnesses. No copies of Instructions for Naval Courts vide Art. 491 K.R. and A.I. appear to be held by any R.N. Authority with whom I have been in touch, and a supply of this book is urgently required for use in Italian ports.

3. In an endeavour to avoid going wrong on this question the procedure at present being used is based on the principle that Italian ports are to be regarded as operational ports under Military Control. It has therefore been arranged that Merchant Navy delinquents if arrested by the Civil Power are handed over to Military police for custody pending decision as to how the case shall be dealt with. But this is only a measure to prevent any further action by the Italian Civil Authorities and still leaves open the question of how a merchant seaman is to be dealt with who commits a serious crime ashore such as murder.

4. It is requested that this matter may be regarded as urgent, as the behaviour of both merchant seamen ashore and certain elements of the civil populace leave much to be desired and serious incidents are liable to occur any day.

s/ ?
 CAPTAIN, R.N.
 DIVISIONAL SEA TRANSPORT OFFICER,
 S. ITALY.

TO : PRINCIPAL SEA TRANSPORT OFFICER, MEDITERRANEAN.
 (Copy to: Allied Force Headquarters, Algiers.
 Commander-in-Chief, Mediterranean Station.
 H.Q. No. 1 District, Fortbase.
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