

USE AND DISPOSITION OF RECAPTURED VESSELS

*Exchange of notes at Washington May 7 and June 15, 1945, with
annexed memorandum*

Entered into force June 15, 1945; operative from October 22, 1943

Expired at conclusion of World War II

60 Stat. 1908; Treaties and Other
International Acts Series 1556

The British Ambassador to the Acting Secretary of State

BRITISH EMBASSY,
WASHINGTON, D.C.,
May 7th, 1945

Ref: 826/8/45

DEAR MR. GREW,

With reference to recent conversations which have been held between this Embassy and the State Department I now enclose a memorandum entitled "Memorandum relating to the use and disposal of United Nations vessels captured or found in the course of operations for the liberation of Europe".

2. It is the understanding of His Majesty's Government in the United Kingdom that the United States Government are willing to apply the principles of the annexed memorandum to vessels of all the United Nations on a reciprocal basis and, with this end in view, will enter into similar agreements with all other United Nations willing to do so and will further take such steps as may be necessary to insure that claims in the nature of prize salvage will not be advanced in the United States courts against British vessels recovered in the course of the operations covered by the memorandum or against other vessels so recovered being vessels of other United Nations entering into similar arrangements. I take this opportunity of recalling to your attention the Prize Salvage Act, 1944, whereby His Majesty's Government took power to control and prevent prize salvage claims.

3. On these understandings and with these expressions of intent the present memorandum meets with the approval of His Majesty's Government in the United Kingdom. If it likewise meets with the approval of the United States Government, this note, together with your reply, indicating such approval

and the concurrence of the Government of the United States, will be regarded as constituting an agreement between the two Governments. I suggest that the agreement should be regarded as being in effect from the 22nd October, 1943.

4. Similar notes are being exchanged by His Majesty's Government with the representatives of the Norwegian, Netherlands, Belgian and Greek Governments in London, and also with the representative of the French Provisional Government.

I have the honour to be, with the highest consideration, Sir,
Your most obedient, humble servant,

(for the Ambassador)
JOHN BALFOUR.

The Honourable

JOSEPH C. GREW,
*Acting Secretary of State,
Department of State,
Washington, D.C.*

MEMORANDUM CONCERNING THE USE AND DISPOSAL OF UNITED NATIONS
VESSELS CAPTURED OR FOUND BY THEIR FORCES IN THE COURSE OF
OPERATIONS FOR THE LIBERATION OF EUROPE

This Memorandum sets out the principles which shall determine the use and disposal of United Nations vessels captured or found by their Forces in the course of operations for the liberation of Europe.

PART I

Immediate action to be taken as regards United Nations vessels captured or found in the area of operation.

1. The objectives to be attained are:

- (a) not to impede the Commander-in-Chief or operations in any way;
- (b) to put the vessels into useful service as soon as possible, and
- (c) to avoid all local disagreements between the various United Nations Forces which may be concerned in their recovery and also between persons or organisations who may be found to be in local control of the vessels.

2. The Commander-in-Chief shall, accordingly, in the first instance be solely responsible for all clearance and emergency measures in the ports within the area of his control, and for immediate operational purposes shall have absolute discretion over all United Nations vessels captured by the forces under his command, whatever their nationality, or found within the area for which he is responsible. This discretion shall cover such matters as power to

order the destruction of such vessels in accordance with military necessity, to order the loading or unloading of vessels, their movements and any other steps necessary to preserve them, to put them into use in his own name insofar as he may consider necessary for the immediate operations in progress.

3. The Commander-in-Chief for these purposes will use any powers of military requisition which may be necessary, and neither he nor his Government, nor the forces operating under his command will be held responsible in any way for any action or the results of any action taken by him or on his authority apart from any question of ultimate liability for payments for the use or for the loss of vessels taken up for his service.

4. Any vessel not immediately required by the Commander-in-Chief in the operational area shall be ordered away so that it can be dealt with in accordance with the provisions of Part II of this Memorandum.

5. The Commander-in-Chief will not enter into any general Agreement even of a temporary character dealing with the chartering of groups of United Nations vessels with any Authorities he may find in liberated or captured territories. Any such matters will be dealt with by the Shipping Authorities of the United Nations. The question as to the time at which it may be appropriate to transfer the primary responsibility for dealing with such vessels from the Commander-in-Chief to the Shipping Authorities of the United Nations will be dealt with according to the course of the operations.

PART II

Arrangements to be made for the disposal of United Nations vessels captured or found in the area of operations.

1. (a) The general principle is recognised that the Government of each United Nation shall subject to the provisions of Part I of this Memorandum ultimately be entitled to take over and dispose of, as it thinks fit, vessels belonging to that State. Vessels will be treated as belonging to a State.

(i) if they were at the time when they fell into the hands of the enemy registered in the territory of that State;

(ii) if at the time when they fell into the hands of the enemy they had the right to fly the flag of that State whether or not formally registered in its territory;

(iii) If they were built for or acquired by any national of that State and registered in its territory (if liable to registration) after the occupation of its territory by Germany or her Allies.

(b) This general principle will apply irrespective of the place of capture or of the constitution or nationality of the United Nations force effecting the actual capture and of the flag which the vessel may be flying at the time when captured or found. Thus, if in a Norwegian harbour there were captured a formerly British vessel, a formerly Norwegian vessel and a formerly Nether-

lands vessel, then, subject to the provisions of Part I of this Memorandum, the first would ultimately be handed over to the United Kingdom Government, the second to the Norwegian Government and the third to the Netherlands Government, even though the forces actually capturing them were not British, Norwegian or Netherlands, but belonging to some other United Nations nationality.

2. The following additional principles are recognised and accepted in respect of any United Nations vessels captured or found in the area of operations:

(a) The vessels concerned will be handed back to the Government of the United Nation concerned and not to individual nationals of the United Nations who were the original owners. It will be for the Government of the United Nation concerned to make the necessary arrangements with its own nationals as regards the ultimate ownership of any such vessels.

(b) The Governments of each United Nation will, in respect of any vessel handed over to it under the terms of this Memorandum:

(i) make the vessel available for the common purposes of the United Nations in accordance with the arrangements then existing;

(ii) accept responsibility for all liabilities in respect of the vessel and

(iii) indemnify the other United Nations Governments concerned against any claims made against them or any one or more of them arising out of the handing over of the vessel.

(c) Some United Nations vessels have been placed by the enemy in a Prize Court. If such vessels are captured or found, some form of prize proceedings will be required to divest the enemy of their title and to re-vest it in the Governments of the United Nations concerned. The necessary proceedings will be brought in the Prize Court of the State to which the ship is to be ultimately returned, or, failing that, in a Prize Court of the State of which the Commander-in-Chief is a national, but action in the latter Prize Court would be without prejudice to the operation of the general principle as to return stated in sub-paragraph 1 of Part II above. Except in these cases Prize Court proceedings will only be taken if in any particular instance immediate action is necessary to bring a vessel into service.

(d) There may be cases in which it is subsequently proved that the true owner of a particular vessel is a State or National of a State other than that in which the vessel is registered, or that parties who are not nationals of the State of registration hold equities in the vessel or the right to possession thereof. In such cases, it is understood that Allied Governments to whom a vessel has been transferred in accordance with Article 1 of Part II of this Memorandum have by such transfer acquired custody only and will release the vessel or make such other arrangements as may be necessary in the circumstances.

(e) In the case of vessels in respect of which total losses have been paid by underwriters, the return to a Government under the arrangements agreed in this Memorandum will be subject to the safeguarding of any rights which underwriters may have. Thus, when the owner of a vessel whether a United Nations Government or a National of a United Nations Government, has been indemnified by the underwriters, the turning over of a vessel to that Government without taking into account such indemnification, would be in the nature of a gift and in such circumstances appropriate equitable adjustments will be made between the Governments concerned.

PART III

Definitions

1. Throughout this Memorandum the term "territory" is used to include Colonies, protectorates and overseas territories or territories under suzerainty or mandate.

2. Throughout this Memorandum the term "vessels" is used in the widest sense to include all categories of merchant vessels, e.g. ocean going, coastal and inland craft, but some latitude may be necessary in the application of all its principles to inland craft.

3. Further, the term "vessels" includes merchant vessels which, though operating as naval auxiliaries when captured or found, were not so operating at the time when they fell into the hands of the enemy. Vessels which at the time when they fell into enemy hands were operating as naval auxiliaries are not covered by the proposals set out in this Memorandum.

4. If for any operation or series of operations there is a Supreme Commander-in-Chief, then he is for the purpose of this Memorandum the Commander-in-Chief. If, however, the Naval Command is separate from the Land Command, then for the purpose of this Memorandum the Naval Commander-in-Chief is the Commander-in-Chief as regards ocean going and coastal vessels and the Land Commander-in-Chief as regards all other vessels.

The Acting Secretary of State to the British Ambassador

DEPARTMENT OF STATE

WASHINGTON

June 15, 1945

EXCELLENCY:

I have the honor to refer to your note of May 7, 1945 (reference 826/8/45) and to previous communications regarding the disposition to be made of vessels recaptured from the enemy in the European theater of operations and formerly belonging to one of the United Nations or to its nationals. With your note was enclosed a memorandum entitled "Memorandum relating to

the use and disposal of United Nations vessels captured or found in the course of operations for the liberation of Europe”.

In your note it is stated that His Majesty's Government in the United Kingdom understands that the Government of the United States of America is willing to apply the principles of that memorandum to vessels of all the United Nations on a reciprocal basis and, with this end in view, will enter into similar agreements with all other United Nations willing to do so, and will further take such steps as may be necessary to insure that claims in the nature of prize salvage will not be advanced in the United States courts against British vessels recaptured in the course of the operations covered by the memorandum or against other vessels so recovered being vessels of the other United Nations entering into similar arrangements. In this connection you call attention to the British Prize Salvage Act, 1944.

You further state that “on these understandings and with these expressions of intent the present memorandum meets with the approval of His Majesty's Government in the United Kingdom”. You add that if it likewise meets with the approval of the Government of the United States of America, your note, together with the reply indicating such approval and concurrence by the Government of the United States of America, will be regarded as constituting an agreement between the two countries. You further suggest that the agreement should be regarded as being in effect from October 22, 1943.

I have the honor to inform you that the Government of the United States of America approves the memorandum in question and concurs in the understandings expressed in your note, and will apply the principles embodied in the memorandum, on a reciprocal basis, to British vessels and to the vessels of other members of the United Nations which enter into similar agreements with the United States of America.

In accordance with the suggestion made in your note, that note and the present note in reply will be regarded as constituting an agreement between the Government of the United States of America and His Majesty's Government in the United Kingdom, which will be regarded as being in effect from October 22, 1943.

In view of the present agreement in the case of British vessels, the Government of the United States of America undertakes, on a reciprocal basis, to take such steps as may be necessary to insure that claims in the nature of prize salvage will not be advanced in the United States courts against British vessels recovered in the course of the operations covered by the memorandum. In case similar agreements are concluded by the United States of America with other members of the United Nations, the United States of America will also undertake on the basis of reciprocity to take such steps as may be necessary to insure that claims in the nature of prize salvage will not be advanced in the United States courts against vessels of such other members

of the United Nations recovered in the course of the operations covered by the memorandum.

Accept, Excellency, the renewed assurances of my highest consideration.

JOSEPH C. GREW
Acting Secretary of State

His Excellency
The Right Honorable
THE EARL OF HALIFAX, K.G.,
British Ambassador.