

No. 1251

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
FRANCE**

Exchange of notes (with memorandum) constituting an agreement relating to the use and disposal of United Nations vessels captured or found by their forces in the course of operations for the liberation of Europe. London, 26 January 1946

Official texts: English and French.

Registered by the United Kingdom of Great Britain and Northern Ireland on 18 June 1951.

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
FRANCE**

Échange de notes (avec mémorandum) constituant un accord relatif à l'usage et à la disposition des navires des Nations Unies capturés ou retrouvés au cours des opérations de libération de l'Europe. Londres, 26 janvier 1946

Textes officiels anglais et français.

Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 18 juin 1951.

No. 1251. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND FRANCE RELATING TO THE USE AND DISPOSAL OF UNITED NATIONS VESSELS CAPTURED OR FOUND BY THEIR FORCES IN THE COURSE OF OPERATIONS FOR THE LIBERATION OF EUROPE. LONDON, 26 JANUARY 1946

Nº 1251. ÉCHANGE DE NOTES CONSTITUANT UN ACCORD¹ ENTRE LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD ET LA FRANCE RELATIF A L'USAGE ET A LA DISPOSITION DES NAVIRES DES NATIONS UNIES CAPTURÉS OU RETROUVÉS AU COURS DES OPÉRATIONS DE LIBÉRATION DE L'EUROPE. LONDRES, 26 JANVIER 1946

I

FOREIGN OFFICE, S.W.1

26th January, 1946

No. W 676/39/58

Your Excellency,

With reference to conversations which have been held between representatives of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and representatives of the Provisional Government of France with a view to the conclusion of an agreement relating to the use and disposal of United Nations vessels captured or found by their Forces in the course of operations for the liberation of Europe, I have the honour to transmit to Your Excellency herewith, 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 Provisional Government of France are willing to apply the principles of the annexed memorandum not only to British vessels but to vessels

¹ Came into force on 26 January 1946, by the exchange of the said notes, and, according to their terms, became effective on 22 October 1943.

¹ Entré en vigueur le 26 janvier 1946, avec effet rétroactif au 22 octobre 1943, par l'échange des dites notes et conformément à leurs dispositions.

of all 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 ensure that claims in the nature of prize salvage will not be advanced in the French 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 drawing your attention to the Prize Salvage Act, 1944, whereby His Majesty's Government took power to control and prevent prize salvage claims.

3. I am happy to inform Your Excellency 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. If it likewise meets with the approval of the Provisional Government of France this Note, together with Your Excellency's reply indicating such approval and the concurrence of the Provisional Government of France, will be regarded as constituting an agreement between the two Governments. I have the honour to suggest that the agreement should be regarded as being in effect as from the 22nd October, 1943.

I have the honour to be, with the highest consideration,
Your Excellency's obedient Servant,

(For the Secretary of State)

(Signed) R. A. GALLOP

His Excellency Monsieur René Massigli, K.B.E.
etc., etc., etc.

3, Carlton Gardens, S.W.1

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 OPERATIONS

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 in so far 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 Netherlands 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 Nations 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 Nations 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 that 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 I 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 I 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 cases 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 purposes 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.

TRADUCTION — TRANSLATION

I

OREIGN OFFICE, S.W.1

Le 26 janvier 1946

N° W 676/39/58

Monsieur l'Ambassadeur,

Me référant aux conversations qui ont eu lieu entre les représentants du Gouvernement de Sa Majesté dans le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et les représentants du Gouvernement provisoire de la République française, en vue de la conclusion d'un accord relatif à l'usage et à la disposition des navires des Nations Unies capturés ou retrouvés par

3. En outre, le terme « navires » englobe les navires de commerce qui, bien qu'ils fussent utilisés comme navires de guerre auxiliaires au moment où ils ont été capturés ou retrouvés, n'étaient pas utilisés de cette façon au moment où l'ennemi s'en était emparé. Les propositions formulées dans le présent mémorandum ne valent pas pour les navires qui étaient utilisés comme navires de guerre auxiliaires au moment où l'ennemi s'en est emparé.

4. Si, pour une opération quelconque ou une série d'opérations, il existe un Commandant en chef suprême, c'est lui qui sera considéré comme Commandant en chef aux fins du présent mémorandum. Toutefois, si le Commandant de l'armée de mer est distinct du Commandement de l'armée de terre, le Commandement en chef de l'armée de mer et le Commandant en chef de l'armée de terre seront considérés l'un et l'autre comme Commandants en chef aux fins du présent mémorandum, le premier pour ce qui est des navires hauturiers et des caboteurs, et le second pour ce qui est de tous les autres navires.

II

TRANSLATION — TRADUCTION

AMBASSADE DE FRANCE
A LONDRES

FRENCH EMBASSY
LONDON

Londres, le 26 janvier 1946

London, 26 January 1946

Monsieur le Secrétaire d'État,

Sir,

Par une lettre en date de ce jour, Votre Excellence a bien voulu me faire savoir ce qui suit :

By a letter of today's date, Your Excellency has informed me of the following :

[Voir note I]

[See note I]

J'ai l'honneur de confirmer à Votre Excellence l'accord du Gouvernement français sur le texte qui précède.

I have the honour to confirm the French Government's approval of the preceding text.

Veillez agréer, Monsieur le Secrétaire d'État, les assurances de la très haute considération avec laquelle j'ai l'honneur d'être, de Votre Excellence, le très humble et très obéissant serviteur.

I have the honour to be, with the highest consideration, Your Excellency's humble and obedient servant.

(Signé) MASSIGLI

(Signed) MASSIGLI

Le Très Honorable
Ernest Bevin, P.C., M.P.
Principal Secrétaire d'État
de Sa Majesté

The Right Hon.
Ernest Bevin, P.C., M.P.
His Majesty's
Principal Secretary of State
for Foreign Affairs

pour les affaires étrangères

III

FOREIGN OFFICE, S.W.1

26th January, 1946

No. W 676/39/58.

Your Excellency,

With reference to the exchange of notes of to-day's date regarding the Liberated Ships Memorandum, I have the honour to inform Your Excellency that His Majesty's Government are prepared to agree that the term "vessels belonging to that State" as used in Part II, paragraph 1, of the said Memorandum shall be extended to include vessels under construction in France or elsewhere for the French flag but requisitioned by the Germans before registration and completion and since completed. They do so, however, on the understanding that the treatment of these ships is regarded as a special case and shall not be used as a precedent for maintaining that other classes of property which may prove to be in the same or in a similar position, should be treated likewise.

2. In cases where the Germans have paid part of the contract price or compensated the owners for the requisition it would clearly be inequitable for a particular French owner to benefit by such payments and we assume that appropriate arrangements will be made to prevent this. Such vessels will, of course, be subject to all claims, and arrangements will have to be made to account for any enemy interest in them.

3. Should these proposals and expressions of intent meet with the approval of the Provisional Government of France, I have the honour to suggest that this note, together with Your Excellency's reply indicating the concurrence of your Government, should be regarded as constituting an agreement between the two Governments.

I have the honour to be, with the highest consideration,
Your Excellency's obedient Servant,

(For the Secretary of State)
(Signed) R. A. GALLOP

His Excellency Monsieur René Massigli, K.B.E.
etc., etc., etc.
3, Carlton Gardens, S.W.1

IV

TRANSLATION — TRADUCTION

AMBASSADE DE FRANCE
A LONDRES

FRENCH EMBASSY
LONDON

Londres, le 26 janvier 1946

London, 26 January 1946

Monsieur le Secrétaire d'État,

Sir :

Par lettre en date de ce jour, Votre Excellence a bien voulu me faire savoir ce qui suit :

By a letter of today's date, Your Excellency has informed me of the following :

[*Voir note III*]

[*See note III*]

J'ai l'honneur de confirmer à Votre Excellence l'accord du Gouvernement français sur le texte qui précède.

I have the honour to confirm the French Government's approval of the preceding text.

Veillez agréer, Monsieur le Secrétaire d'État, les assurances de la très haute considération avec laquelle j'ai l'honneur d'être, de Votre Excellence, le très humble et très obéissant serviteur.

I have the honour to be, with the highest consideration, Your Excellency's humble and obedient servant,

(*Signé*) MASSIGLI

(*Signed*) MASSIGLI

Le Très Honorable
Ernest Bevin, P.C., M.P.
Secrétaire principal
de Sa Majesté
pour les affaires étrangères

The Right Hon.
Ernest Bevin, P.C., M.P.
His Majesty's
Principal Secretary of State
for Foreign Affairs