PSF Navy - Destroyers & Naval Bases - 1940

Departmental Correspondence
1940

Box 65

PSF: Navy (Destroyers - Bases) Navy - 50 destroyers

1505

WESTERN UNION PRESS MESSAGE

R. B. WHITE, PRESIDENT — NEWCOMB CARLTON, CHAIRMAN OF THE BOARD — J. C. WILLEVER, FIRST VICE-PRESIDENT

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THE WHITE HOUSE WASHINGTON DC LP

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FOLLOWING JUST REACHED THE WHITE HOUSE: QUOTE

TO THE PRESIDENT OF THE UNITEDSTATES

1. CONCERNING THE PROPOSED TRANSFER OF DESTROYERS TO GREAT BRITAIN IN EXCHANGE FOR NAVAL AND AIR BASES, THE ATTORNEY GENERAL OF THE UNITED STATES IS AN OPINION HELD AS FOLLOWS:

"IT IS MY OPINION THAT THE CHIEF OF NAVAL OPERATIONS MAY, AND SHOULD, CERTIFY UNDER SECTION 14 (A) THAT SUCH DESTROYERS ARE NOT ESSENTIAL TO THE DEFENSE OF THE UNITED STATES IF IN HIS JUDGMENT THE EXCHANGE OF SUCH DESTROYERS FOR STRATEGIC NAVAL AND AIR BASES WILL STRENGTHEN RATHER THAN IMPAIR THE TOTAL DEFENSE OF THE UNITED STATES."

2. IT IS MY OPINION THAT AN EXCHANGE OF FIFTY OVERAGE DESTROYERS FOR SUITABLE NAVAL AND AIR BASES ON NINETY -NINE YEAR LEASES IN NEWFOUNDLAND, BERMUDA, THE BAHAMAS, JAMAICA, STLUCIA, TRINIDAD, ANTIGUA, AND IN BRITISH GUIANA, WILL STRENGTHEN RATHER THAN IMPAIR THE TOTAL DEFENSE OF THE UNITED STATES. THEREFORE, I CERTIFY THAT ON THE BASIS OF SUCH AN EXCHANGE, AND IN ACCORDANCE WITH THE OPINION OF THE ATTORNEY GENERAL OF THE UNITED STATES, THE FIFTY (50) OVERAGE DESTROYERS OF THE SO-CALLED TWELVE HUNDRED TON TYPE ARE NOT ESSENTIAL TO THE DEFENSE OF THE UNITED STATES.

SIGNED R H STARK

ADMIRAL, US NAVY

CHIEF OF NAVAL OPERATIONS UNQUOTE

WESTERN UNION
PRESS MESSAGE

R. B. WHITE
PRESIDENT

NEWCOMB CARLTON
CHAIRMAN OF THE BOARD

J. C. WILLEVER
FIRST VICE-PRESIDENT

ADMIRAL WOODSON ADVISES SIGNED COPIES HAVE BEEN DELIVERED BY NAVY TO SECRETARY OF STATE AND ATTORNEY GENERAL.

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Navy
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ROUGH DRAFT

STEPS TO BE TAKEN IN CONNECTION WITH THE TRANSFER OF OVER-AGE DESTROYERS

1. Letter of the President to the Secretary of the Navy informing the latter of certain rights as to air and naval bases essential to our national defense which can be obtained if certain over-age destroyers can be released from the service of the Navy, and requesting the steps be taken, if possible, to effectuate such release.

2. Secretary of Navy submits to Board of Naval Officers the question whether these over-age destroyers may be declared unfit for further service in the Navy in view of the strengthening of our naval defenses which can be accomplished by their release. This declaration to be made under section 491 of Title 34 of the U. S. Code.

3. If Board reports destroyers unfit for further service, Secretary of Navy strikes them from the registry.

4. The Chief of Naval Operations should then be asked to certify in accordance with the act of June 28, 1940, that the destroyers are "not essential to the defense of the United States."

5. Thereupon the destroyers shall be sold in a manner to be directed by the President under section 492 of Title 34 of the U. S. Code.

6. Delivery of the destroyers to the Canadian Government may then be effectuated in one of the following ways:

(a) If the destroyers are in Canadian waters before stricken from the registry, they may be surrendered to the Canadian Government in such waters.

(b) If the destroyers are not in Canadian waters, they could be delivered either in American or neutral waters to the Canadian Government which could then take them under their own flag to a home port. If delivery takes place in American waters, the destroyers should leave American waters within 24 hours, with a skeleton crew, and with only such supplies as may be necessary to enable them to reach the nearest Canadian port. It would be preferable that they should not be commissioned into the Canadian Navy before they reach Canada. Section 3 of the Espionage Act of 1917 is inapplicable as it applies only to ships built, armed, or equipped to the order of or for delivery to a belligerent. Section 2 of that act does not oblige the President to detain any armed vessel but merely gives him the authority to make such detention for the purpose of avoiding any breach of neutrality contrary to the rules of international law and the policies of the American Government, and this duty would be fulfilled if the vessels left with only skeleton crews and such supplies as were necessary to enable them to reach the nearest belligerent port.

PSF: Destroyed for Bassafolder

NATIONAL POWER POLICY COMMITTEE
INTERIOR BUILDING
WASHINGTON

July 19, 1940.

Dear Missy:

Could I trouble you to give the President the enclosed letter with memorandum attached.

Yours,

Ben V. C.
Ben V. Cohen.

Miss Marguerite Le Hand,

The White House.

NATIONAL POWER POLICY COMMITTEE
INTERIOR BUILDING
WASHINGTON

July 19, 1940.

Dear Mr. President:

I am sending you a memorandum which I have prepared which I think shows that there really is no legal barrier, by reason of our own statutes or the law of nations, which would stand in the way of the release of our old destroyers from our naval service and their sale to the British - if their release for such purpose would, as at least some naval authorities believe, strengthen rather than weaken the defense position of the United States.

The recent opinion of the Attorney General disapproving the transfer to the British of torpedo boats in the course of construction may be distinguished on sound technical grounds, as is explained in the attached memorandum.

I appreciate that even if Congressional approval is not required, Congressional opinion would have to be taken into account.

Possibly any unfavorable Congressional reaction could be avoided or at least minimized, and the advantages from the point of view of national defense made clearer, if the British agreed as a condition to such release that the destroyers, and possibly certain other British ships, should be assigned and placed under the control of the Canadian government. Such arrangements might tend to assure that such ships if not destroyed would be available for the defense of the Western Hemisphere if Britain lost the war.

Yours,

Ben V. C.
Ben V. Cohen.

The President,

The White House.

MEMORANDUM

Re: Sending Effective Material Aid to Great Britain with Particular References to the Sending of Destroyers.

I

The policy of the United States to nations resisting aggression is not based on sentiment alone. It is rooted in very real and material interests of this country. In the present state of the world, the maintenance of British sea-power is of inestimable advantage to us, in terms of our own national defense. If Great Britain is able to resist German aggression and maintain her sea-power, the danger of German aggression being directed against us in the immediate future is enormously reduced. Even if Great Britain should be forced to yield ultimately, the longer she holds out the more time we will have to strengthen our defenses and the more time it will take Germany to repair and rehabilitate her armaments before she will be able to launch an attack on the Western Hemisphere.

Under these circumstances it is lacking in national foresight to consider action taken to facilitate aid to Great Britain as unrelated to our own national defense. It cannot lightly be assumed that statutes designed to safeguard our national defenses were intended to block action dictated by a realistic appreciation of the interests of our national self-defense.

II

One of the most immediate problems which arise in connection with aid to Great Britain is the problem of releasing some of our older destroyers built during the last war which have recently been recommissioned. These destroyers could unquestionably be of enormous help to Great Britain in protecting herself from siege and invasion.

The first question which arises is whether there is statutory authority to release these ships from our naval service.

The Act of August 29, 1916 (c. 417, 39 Stat. 605, U.S.C., Title 34, Sec. 493) provides:

"The Secretary of the Navy is authorized to sell any or all of the auxiliary ships of the Navy classified as colliers, transports, tenders,

supply ships, special types, and hospital ships, which are eighteen years and over in age, which he deems unsuited to present needs of the Navy and which can be disposed of at an advantageous price, which shall not be less than 50 per centum of their original cost, the money obtained from such sale to be covered into the Treasury as miscellaneous receipts."

By the Act of March 3, 1901, (c. 852, 31 Stat. 1133, U.S.C. Title 34, Sec. 451):

"The President of the United States is authorized to establish and from time to time modify, as the needs of the service may require, a classification of vessels of the Navy, * * *."

If there should be any question whether the old destroyers are not already classified as coming within the categories of vessels enumerated in the Act of August 29, 1916, it would seem clearly within the power of the President to so classify them.*

Section 14(a) of the Act of June 28, 1940, H.R. 9822 provides:

"Notwithstanding the provision of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies, or equipment, to which the United States has title, in whole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold or otherwise disposed of in any manner whatsoever unless the Chief of Naval Operations in the case of naval material, and the Chief of Staff of the Army in the case of military material, shall first certify that such material is not essential to the defense of the United States."

It should therefore be possible to release these old destroyers from the naval service, if the Secretary of the Navy should certify under the Act of August 29, 1916 that they are "unsuited to present needs of the Navy", and if the Chief of Naval Operations should certify under the Act of June 28, 1940 that they are "not essential to the defense of the United States." It would not be necessary to have them stricken from the register as actually unfit for further service.

The destroyers in question are more than eighteen years in age and are not the most modern type of vessel. It would seem the most specious sort of legal argument to contend that such destroyers cannot be released

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* It is also possible for the Secretary of the Navy under the Act of August 5, 1882 (c. 391, Sec. 2, 22 Stat. 296; U.S.C., Title 34, Sec. 491) to strike from the register any vessel found to be unfit for further service or any unfinished vessel which cannot be completed without great and disproportionate expense. And under the Act of March 3, 1883 (c. 141, sec. 5, 22 Stat. 599; U.S.C., Title 34, sec. 492) the Secretary of the Navy may sell any such vessel at public sale for not less than its appraised value or in such other manner as the President may direct in writing.

because they are suited to the present needs of the navy or are essential to the national defense, if the Secretary of Navy finds, as there is good reason for him to find, that the present needs of the Navy and the present requirements of national defense would be best served by their release. To do so, would be to give such a narrow and literal interpretation to the words of the statute as to defeat its basic objective. The Supreme Court has thrice recently had to reverse lower court decisions for giving literal effect to the statutory words instead of construing the words to give reasonable effect to basic legislative intent. United States v. Dickerson, No. 705, October Term, 1939, decided May 27, 1940, Securities and Exchange Commission v. U.'S. Realty and Improvement Company, No. 796, October Term, 1939, decided May 27, 1940; United States v. American Trucking Ass'n., No. 713, October Term, 1939, decided May 27, 1940.*

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* In light of the fact that the Congress has provided for the free interchange of supplies and equipment between the Army and Navy, there is no reason to suppose that the Congress generally intended stricter rules to be applied to the release of naval supplies and equipment then to the release of military supplies and equipment.

The Act of July 11, 1919, (c. 9, 41 Stat. 132; U.S.C., Title 10, Sec. 1274) in the broadest terms provides:

"The interchange without compensation therefor, of military stores, supplies and equipment of every character, including real estate owned by the Government, is hereby authorized between the Army and the Navy upon the request of the head of one service and with the approval of the head of the other service."

Should there be any serious doubt as to the release of the destroyers under the Act of August 29, 1916 as being unsuited to present needs of the Navy, there would be no legal obstacle to the transfer of the destroyers to the Army on the request of the Secretary of War with the approval of the Secretary of Navy. And in that event, subject only to certification that they are not essential to national defense, the destroyers could clearly be released as obsolescent equipment on an exchange basis under section 1 of the Act of July 2, 1940, H.R. 9850, which authorizes the Secretary of War, with or without advertising:

"To enter into such contracts (including contracts for educational orders, and for the exchange of deteriorated, unserviceable, obsolescent, or surplus military equipment, munitions, and supplies for other military equipment, munitions, and supplies of which there is a shortage), and to amend or supplement such existing contracts, as he may deem necessary to carry out the purpose specified in this section."

III

Assuming, as seems clearly to be the case, that our destroyers may be released from the service of the Navy, the question is raised whether the private companies to whom they are released, can sell them to Great Britain.

It is clear under the rules of international law that citizens of neutral nations have a right to sell arms, ammunitions and other contraband materials to belligerents. While there is some difference of opinion respecting the precise limitations which the law of nations imposes on citizens of neutral nations in respect of the sale of armed vessels to belligerents, it is generally agreed that those limitations spring from the basic rule of international law that a neutral should not permit its territory to be used as a base of hostile operations against a country with which it is at peace. Although writers may differ as to what international law should be, international practice sanctions no more drastic limitations than those recognized by Dr. Lauterpacht in his Fifth Edition of Oppenheim's International Law, Vol. II, sec. 334. These rules are thus stated by Dr. Lauterpacht:

"Whereas a neutral is in no wise obliged by his duty of impartiality to prevent his subjects from selling armed vessels to the belligerents, such armed vessels being merely contraband of war, a neutral is bound to employ the means at his disposal to prevent his subjects from building, fitting out, or arming, to the order of either belligerent, vessels intended to be used as men-of-war, and to prevent the departure from his jurisdiction of any vessel which, by order of either belligerent, has been adapted to warlike use. The difference between selling armed vessels to belligerents and building them to order is usually defined in the following way:-

"An armed ship, being contraband of war, is in no wise different from other kinds of contraband, provided that she is not manned in a neutral port, so that she can commit hostilities at once after having reached the open sea. A subject of a neutral who builds an armed ship, or arms a merchantman, not to the order of a belligerent, but intending to sell her to a belligerent, does not differ from a manufacturer of arms who intends to sell them to a belligerent. There is nothing to prevent a neutral from allowing his subjects to sell armed vessels, and to deliver them to belligerents, either in a neutral port or in a belligerent port. In the cases of The La Santissima Trinidad (1822) and The Meteor (1866), American courts have recognized this; and so did the unratified Declaration of London, which in Article 22(10) enumerated as absolute contraband 'warships, including boats, and their distinctive component parts.'"

"On the other hand, if a subject of a neutral builds armed ships to the order of a belligerent, he prepares the means of naval operations,

since the ships, on sailing outside the neutral territorial waters, and taking in a crew and ammunition, can at once commit hostilities. Thus, through the carrying out of the order of the belligerent, the neutral territory has been made the base of naval operations; and as the duty of impartiality includes an obligation to prevent either belligerent from making neutral territory the base of military or naval operations, a neutral violates his neutrality by not preventing his subjects from carrying out an order of a belligerent for the building and fitting out of men-of-war. This distinction, although of course logically correct, is hair-splitting. But as, according to the present law, neutral States need not prevent their subjects from supplying arms and ammunition to belligerents, it will probably continue to be drawn."

The rules above set forth are based in large part on "The Three Rules of Washington and the Hague Convention."

After the Civil War the United States claimed damage from Great Britain for losses sustained through the operations of the Alabama which was built in England on the order of the Confederacy. The Alabama had left England unarmed but was met at the Azores by three other vessels, coming from England, which supplied her with guns and ammunitions, so that she could at once begin to prey upon the merchantmen of the United States. By the Treaty of Washington (1871) it was agreed that the American claims should be arbitrated on the basis of three rules which became known as "The Three Rules of Washington." The parties agreed to observe these rules as between themselves in the future and to invite other parties to accede to them. These rules were:

"A neutral Government is bound--

'First. To use due diligence to prevent the fitting out, arming, or equipping within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted in whole or in part, within such jurisdiction, to warlike use.

'Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

'Thirdly. To exercise due diligence in its own ports or waters and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.'"

In 1907, in the Eighth Article of the Thirteenth Convention adopted at the Second Hague Conference, these rules were restated as follows:

"A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming within its jurisdiction of any vessel

which it has reason to believe is intended to cruise, or engage in hostile operations, against a Power with which that government is at peace. It is also bound to display the same vigilance to prevent the departure from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war."*

There is nothing in the Rules of Washington or in the provisions of the Hague Convention which would forbid the sale to a belligerent of vessels of war which were not built, fitted out or armed to the order of the belligerent. There is nothing in them which would forbid the government of the United States to grant clearance to vessels of war not fitted out to the order of a belligerent if they carried only such crew as might be necessary to navigate them to the nearest home port of the belligerent, and if they did not carry with them supplies which would enable them to cruise or engage in hostile operations before they reached such port.

An examination of our statutes on the subject indicates that their purpose was to make effective the rules of international law which we have discussed, and not, in any measurable degree, to extend them.

One of our earliest statutes (R.S. sec. 5283; Mar. 4, 1909, c. 321 sec. 11, 35 Stat. 1090, U.S.C. Title 18, sec. 23) provides:

"Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming of any vessel with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than $10,000 and imprisoned not more than three years, * * *"

This statute with minor amendments may be traced back to the Act of June 5, 1794, 1 Stat. 383, 384, (See The Three Friends (1896) 166 U.S. 1,52) which was passed by an early Congress in an attempt to prevent our harbors from becoming bases from which French privateers fitted out in this country

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* "The Hague Convention as such is presently inoperative by its own terms. Article 28 of that convention provides that 'The provisions of the present Convention do not apply except to the Contracting Powers, and then only if all the belligerents are parties to the Convention.' One of the belligerents in the present war--Poland--is not a signatory of or adherent to the Hague Convention."

could operate against England. The statute was clearly drawn to prevent such incidents, but it was in no way aimed at the sale of ships to belligerents. It was to prevent hostile operations from our ports, not commercial transactions in contraband with foreign powers. And it was so construed by the Supreme Court in The Santissimo Trinidad, 7 Wheaton 283 (1822). Mr. Justice Story, writing the opinion in that case, stated (7 Wheat. at p. 340):

"The question as to the original illegal armament and outfit of the Independencia may be dismissed in a few words. It is apparent, that though equipped as a vessel of war, she was sent to Buenos Ayres, on a commercial adventure, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage she would have been justly condemnable as good prize, for being engaged in a traffic prohbitied by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit; and which only exposes the persons engaged in it to the penalty of confiscation. Supposing, therefore, the voyage to have been for commercial purposes, and the sale at Buenos Ayres to have been a bona fide sale (and there is nothing in the evidence before us to contradict it), there is no pretense to say, that the original outfit on the voyage was illegal, or that a capture made after the sale was, for that cause alone, invalid."

It is clear that Justice Story did not believe that there was any breach of neutrality under our laws or under international law in the sale by a private citizen of an armed vessel to a belligerent unless the vessel was armed and equipped in, or sent out from, this country with the intent that it should cruise or commence hostilities before it reached a home port of the purchaser.

The only other statutory provision which might have a direct bearing upon the sale of our old destroyers to Great Britain is section 503 of Title 5 of the Espionage Act of 1917 (June 15, 1917, c. 30, Title 5, sec. 3, 40 Stat. 222; U.S.C. Title 18, sec. 33), which reads:

"During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States."

The Congress enacted the Espionage Act of 1917 to provide "for the observance of obligations imperatively imposed by international law on

the United States" and "for the fulfilment of the duty owed by the United States to other nations with which it is at peace." H.R. Rep. No. 30, 65th Cong. 1st sess. p. 9. The language of the section in question is not as clear as it might be, but it is only reasonable to suppose that the intent of Congress was to fulfil its obligations under the First Rule of the Treaty of Washington "to use due diligence" and under Article 8 of the Hague Convention "to employ the means at its disposal" -- "to prevent the fitting out or arming within its jurisdiction of any vessel which it has reason to believe is intended to cruise or engage in hostile operations against a power with which it is at peace." The section did this by making it unlawful to send out of the country any war vessel which had been built, armed, equipped or converted with the intent or with reasonable belief that the vessel was to be delivered to a belligerent. It made it unnecessary to prove that the builder had reasonable ground to believe that the vessel was intended to cruise or commit hostilities before reaching a home port of the belligerent. The section strikes at the sending out of vessels of war fitted out in this country to the order of or in accordance with specification supplied by a belligerent.

This section--section 503 of the Espionage Act of 1917--does not, by its words, forbid the sending out of any armed vessel with intent or with reasonable cause to believe that it should enter the service of a belligerent. It is true that the House version of the section had done just that, had related "the intent" or "reasonable cause to believe," not to the building, arming, equipping or converting of a war vessel but to the sending out of the jurisdiction of a vessel built, armed, equipped as or converted into a war vessel (H.R. Rep. No. 30, 65th Cong. 1st Sess., p. 4; 55th Cong. Rec. 1841), but the House version was changed in the Senate (55th Cong. Rec. 2014, 2271), to correspond more nearly with the language suggested by the Attorney General (1916 Annual Report of the Attorney General, p. 15). And the Senate language was accepted in conference by the House (55th Cong. Rec. 3124).

Section 503 of the Espionage Act of 1917, fairly construed in the light of international practice, need not, and should not, be deemed to prohibit the sending out of the country of an armed vessel, which has not been fitted out in this country, to the order of, or in accordance with specifications furnished by, a belligerent.*

Another section of the Espionage Act of 1917 - section 502 - did undertake to fulfil our international objections - under the Rules of Washington and the Hague Convention - to use due diligence to prevent the departure from the jurisdiction of any armed vessel, wheresoever built and for whomsoever built, intended to cruise or conduct hostile operations out of our ports. But the difference in wording between section 502 and section 503 is significant. Section 502 of the Espionage Act of 1917 (c. 30, Title V, sec. 2, 40 Stat. 221; U.S.C., Title 18, sec. 32) provides:

"During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed by the said owners, or master, or person having charge thereof, to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas."

But the above section does no more than authorize the President to fulfil our government's obligations under the law of nations to see that no armed vessel uses any port of the United States as a base from which to cruise or conduct hostilities against a belligerent power with which the United States is at peace. The section simply enables the President to detain any armed

* The views herein expressed are not inconsistent with the recent opinion of the Attorney General in regard to the transfer of certain torpedo boats to the British. Those boats were being built for the American government, and the question was whether they could be released to the builder to enable him to complete and fit them out to the order of the British government. The question did not relate to boats which had been completed and equipped before any sale to a belligerent was contemplated.

vessel until satisfactory assurances are given that such vessel is not going to cruise out of our port to engage in hostilities and that such assurance shall not be rendered nugatory by the sale of the vessel, after clearance has been granted, before it leaves the jurisdiction or while it is on the high seas. Assurance need not be given, however, that the armed vessel will not be sold after it reaches a neutral or belligerent port.

Neither section 502 nor section 503 contains any general prohibition of the sale of armed vessels owned by American citizens to belligerents either in the United States or in a neutral or belligerent country.

There is nothing in section 502 which would make it improper for the President to grant clearance to an armed vessel owned by an American citizen or company to depart for a belligerent port (to which entry is not forbidden by the Neutrality Act of 1939) or for a neutral port if the President is satisfied it will not cruise or engage in hostile operations before it reaches its destination, even though it be the intention of the owner to sell it to a belligerent when it reaches its destination. There would seem also to be no legal bar to the President granting clearance to an armed vessel sold to a belligerent within the United States if the President is satisfied that the vessel is to depart immediately after the transfer of ownership, that it will not engage in hostile operations before it reaches a home port, and that it will carry only the minimum supplies and crew necessary to enable it to navigate to the nearest home port.*

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* The above discussion has been based on the assumption that the destroyers would be released on an exchange arrangement with private American citizens or companies. This has been the practice followed in the case of the sale of aeroplanes, and it avoids any question of the government committing an unneutral act by furnishing directly supplies or equipment to a belligerent power.

It is proper to point out, however, that Germany signed the Kellogg Peace Pact, to which the other belligerents as well as the United States are parties, and that by this pact the signatories renounced war as an instrument of international policy in their relations with one another. Not only has Germany violated this pact, but she has deliberately invaded neutral countries in order to secure strategic territory from which to conduct hostile operations against Great Britain. Certainly in these circumstances neutral countries are warranted in taking some measures of reprisals (Cf. Lauterpacht's 5th Edition Oppenheim, International Law, Vol. II, sections 52n,2921.) Inter-

IV

The transfer of our old destroyers to Great Britain may help very materially to keep the dangers of war from our own shores.

These destroyers are now built, armed and equipped. It cannot by the farthest stretch of the imagination be said that they were built, armed or equipped to the order of any belligerent, or with the intent that they should enter the service of any belligerent. If they are now released to private builders who are patriotic enough to sell them as a simple commercial transaction to the British, there is no reason why they should not be allowed to clear our ports if adequate assurances are given that they will proceed to near-by neutral or British ports without attempting to cruise against or engage in hostilities and with only such crew and supplies as may be necessary to navigate to such near-by ports.

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national law rests upon mutuality.. International law which is not mutually observed becomes the instrument and ally of aggression.

The Act of June 5, 1920 (c. 240, 41 Stat. 949; U.S.C., Tit. 10, sec. 1262) provides:

"The Secretary of War is hereby authorized, in his discretion, to sell to any State or foreign government with which the United States is at peace, upon such terms as he may deem expedient, any material, supplies, or equipment pertaining to the Military Establishment, except food-stuffs, as or may be found to be surplus, which are not needed for military purposes and for which there is no adequate domestic market."

It would not, of course, normally be considered proper in light of international practice for the Secretary of War, to whose jurisdiction our old destroyers might be transferred with the approval of the Secretary of the Navy, to exercise his statutory authority to sell the destroyers to a belligerent power when we are a neutral. But such action would seem to be fully justified in view of Germany's repeated disregard of the rights of neutral nations. There is no particular merit or morality in neutral countries observing rules of law in their relations with a belligerent which refuses to observe these rules in its relations with them.

Our own statutes do not stand in the way of direct government action by way of reprisal. The statutory provisions which we have discussed making it unlawful to fit out or arm a vessel to cruise against a belligerent power with which we are at peace (U.S.C., Title 10, sec. 23) or to send out of the United States a vessel built, armed or equipped to the order of such a belligerent power (U.S.C. Title 10, sec. 33) would not seem to be applicable to action by the government, even in instances of actual outfitting for hostile action or building to specifications supplied by a belligerent. It is a general rule of statutory construction that a statute does not ordinarily apply to the

There is no reason for us to put a strained or unnecessary interpretation on our own statutes contrary to our own national interests. There is no reason to extend the rules of international laws beyond the limits generally accepted by other nations to the detriment of our own country.

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government unless it is made expressly applicable to the government. Dollar Savings Bank v. U. S., 86 U. S. 227, 239; U. S. v. Herron, 87 U. S. 251; California Iron Yards Company v. Commissioner of Internal Revenue, 1931, 47 F(2) 514. As we have seen, Section 23 of Title 10 of the United States Code was originally enacted in 1794. In reviewing the history of this enactment, the Supreme Court stated in The Three Friends (1896) 166 U. S. 1, 52 that it was intended "to provide a comprehensive code in prevention of acts by individuals within our jurisdiction inconsistent with our authority, as well as hostile to friendly powers." Section 33 was originally enacted as section 503 of the Espionage Act of 1917; and there is nothing to indicate an intention to make the section applicable to government action.

Published in

Foreign Relations of the United States

1940 Vol. III British Commonwealth,
The Soviet Union, Near East, Africa

pages 58-59.

RS 1/29/59

PSF: Navy (Destroyers-Bases)

THE WHITE HOUSE
WASHINGTON

Navy 1-40 [destroyers-naval bases folder]

Friday, August 2, 1940 9:37 P.M.

PRIVATE AND [redacted]

MEMORANDUM:

At Cabinet meeting, in afternoon, long discussion in regard to devising ways and means to sell directly or indirectly fifty or sixty World War old destroyers to Great Britain. It was the general opinion, without any dissenting voice, that the survival of the British Isles under German attack might very possibly depend on their getting these destroyers.

It was agreed that legislation to accomplish this is necessary.

It was agreed that such legislation if asked for by me without any preliminaries would meet with defeat or interminable delay in reaching a vote.

It was agreed that the British be approached through Lord Lothian to find out if they would agree to give positive assurance that the British Navy, in the event of German success in Great Britain, would not under any conceivable circumstances fall into the hands of the Germans and that if such assurances could be received and made public, the opposition in the Congress would be greatly lessened. I suggested that we try to get further assurance from the British that the ships of their Navy would not be sunk, but would sail for North America or British Empire ports where they would remain afloat and available.

It was agreed that I would call up William Allen White, who has recently talked with Willkie on this subject; ask White to come to Washington at once to see Hull, Knox and Stimson and after that to see me; then returning to see Willkie and seek to get, with Willkie's approval, the support of Joe Martin and Charlie McNary for such a plan. It was agreed that if this procedure went through successfully that I would, at once, send a definite request to the Congress for the necessary legislation.

I stressed the point that in all probability the legislation would fail if it had substantially unanimous Republican opposition -- and that the crux of the matter lay in the vote of the Republican minority in each house. I stressed the importance of having the issue acted on without regard to party politics in any way.

PRIVATE AND [redacted]

August 2, 1940

At 8:30 P.M., I talked with William Allen White, who was in Estes Park, Colorado; explained the above to him and asked him to come East.

He told me that he was sure that Willkie's attitude in the matter was the same as mine. I explained to him that that was wholly insufficient, and that Willkie's attitude was not what counted but that the Republican policy in Congress was the one essential.

White told me he would get in touch with Willkie and let me know at the earliest possible moment.

F.D.R.

FDR

(Dictated to dj)

Published in

Foreign Relations of the United States

1940 Vol. III British Commonwealth,
The Soviet Union, Near East, Africa

page 61.

RI 1/28/59

BF

DEPARTMENT OF STATE

THE SECRETARY

August 4, 1940

MEMORANDUM FOR THE PRESIDENT

I enclose a memorandum by Mr. Hackworth, approved by Judge Townsend of the Department of Justice, relating to the sale of vessels of war and auxiliary vessels. You will find on page 3 of this memorandum a proposed draft of a bill to be offered in Congress.

I had a long talk with William Allen White over the telephone yesterday afternoon, in which I got before him to a fairly satisfactory extent the important points relating to danger to this country and to this hemisphere. He said repeatedly that he appreciated the benefit of this; second, that Mr. Willkie agrees in principle on these and other methods of aiding Great Britain; third, that he would desire to see the proposed draft for Congress before approving it; and, fourth, Mr. White said that he had not conferred with Mr. Willkie about the attitude of McNary and Joe Martin towards the bill, but that he would take this up with him.

William Allen White telegraphs me today that he will be glad to get a copy of the bill right away. We in the office will wait tomorrow until you receive this

proposed

proposed draft and telephone us your approval before sending it to White.

I enclose a copy of a statement I am giving to the press today for publication in Tuesday afternoon papers. I hope you will see that it does not seep out in any way to the public.

C.H.

S:CH:AR

Published in

Foreign Relations of the United States

1940 Vol. III British Commonwealth,
The Soviet Union, Near East, Africa

pages 59-61.

RS 1/28/59

DEPARTMENT OF STATE

THE LEGAL ADVISER

August 2, 1940.

THE SALE OF VESSELS OF WAR
AND AUXILIARY VESSELS

Section 23, Title 18, of the United States Code makes it unlawful to fit out and arm, or attempt to fit out and arm, or to procure to be fitted out and armed, or knowingly to be concerned in "furnishing, fitting out, or arming of any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state" etc., to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince, or state, etc., with which the United States is at peace.

Section 33 of the same Title of the Code provides that during a war in which the United States is neutral it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed, or equipped as a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any

such

such belligerent nation after its departure from the jurisdiction of the United States.

Section 14 (a) of the act entitled "An Act to expedite national defense, and for other purposes" (Public-No. 671-76th Congress), approved June 28, 1940, provides that "notwithstanding the provisions of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies, or equipment, to which the United States has title, inwhole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold, or otherwise disposed of in any manner whatever unless the Chief of Naval Operations in the case of naval material, and the Chief of Staff of the Army in the case of military material, shall first certify that such material is not essential to the defense of the United States."

Section 33, supra, is perhaps the most difficult provision of statutory law to surmount in connection with any sale of vessels built and intended for belligerent operations. It would be possible to amend this section in broad general terms so as to cover the other provisions referred to without specifically mentioning them, thus making it possible to release such vessels as it might be deemed desirable to release. The amendment might read somewhat as follows:

Nothing

Draft

Nothing contained in Section 33, Title 18, of the United States Code or in any other provision of law shall be so applied as to prevent the departure from the United States of any vessel which belonged to the Government of the United States and which the President, after consultation with the Secretary of War and the Secretary of the Navy, shall decide may be sold without detriment to the national defense of the United States: Provided, that prior to the departure of the vessel title thereto shall have passed to the foreign purchaser and compensation, which in the judgment of the President, the Secretary of War and the Secretary of the Navy shall be deemed adequate, shall have been paid to the United States.

An amendment of this kind would be applicable to the sale of any kind of vessel but it undoubtedly would be necessary to explain to the committees just what is in contemplation. If an amendment should be passed on the basis of the explanation, it might be found difficult later to extend the authority to other larger craft.

None of the foregoing would relieve us of the charge that the sale of war craft by this Government to a belligerent government would be unneutral.

Green H. Hackworth

This has the approval of Judge Townsend Dept of Justice 8/3/40.

Le GHH:MKS

The strong belief of the representatives of the twenty-one American nations at the recent Habana Meeting was that the military and other sinister activities on the part of some nations in other large areas of the world present real possibilities of danger to the American Republics. It was universally recognized that a threat to any important part of the Americas means a threat to each and all of the American nations. It was, therefore, agreed that full and adequate preparations for continental defense could not be taken too soon if the threatened danger from abroad was to be checked and terminated. It was also the unanimous view at Habana that the prompt strengthening of unity and solidarity for the purpose of continental defense and for its implementation by concrete programs supported by the twenty-one nations was indispensable to the safety, security, peace and welfare of this hemisphere.

There was general agreement that if the peaceful nations of Europe had thus promptly organized themselves for self-defense on the most effective cooperative basis, the chances are that their situation and that of Europe would be vastly different today. Instead, many of those countries complacently relied upon utterances of peaceful purpose and upon their own neutrality to safeguard them

against

against the mighty forces of invasion, conquest, and destruction. Some of them have been overrun and destroyed by the ruthless invader. Their fate should be a tragic lesson to us.

The vast forces of lawlessness, conquest and destruction are still moving across the earth like a savage and dangerous animal at large. By their very nature, those forces will not stop unless and until they recognize that there exists unbreakable resistance.

At Habana we forged new instrumentalities of continental defense. These will be of vast importance to our nation and to every American nation. But there are other and immense tasks still before us.

I would greatly prefer to say that we are safe in this country and in this Hemisphere from outside danger. But I am firmly convinced that what is taking place today in many areas of the earth is a relentless attempt to transform the civilized world as we have known it into a world in which lawlessness, violence and force will reign supreme, as they did a thousand years ago. The people of this country cannot recognize too soon this fact and its overwhelming significance for our national safety and for the maintenance of our national institutions.

The

The one and only sure way for our nation to avoid being drawn into serious trouble or actual war by the wild and destructive forces now abroad elsewhere in the world, and to command respect for its rights and interests abroad, is for our people to become thoroughly conscious of the possibilities of danger, to make up their minds that we must continue to arm and to arm to such an extent that the forces of conquest and ruin will not dare make an attack on us or on any part of this hemisphere. To this end, each citizen must be ready and willing for real sacrifice of time and of substance, and for hard personal service. In the face of terrific problems and conditions, and until the present serious threats and dangers have disappeared, we cannot pursue complacently the course of our customary normal life.

I feel constrained thus to offer my views in the light of what is already a dangerously widespread movement for world conquest and for the destruction of most of the worthwhile things which civilization has given the human race.

NEW YORK
Herald Tribune
Aug. 5, 1940

PSF
Destroyers
for Bases

Destroyers for Britain

As the Nazi air attack widens over Britain, as the planes and troops are massed, as the sea war deepens in intensity, there still seem to be people in the United States incapable of understanding how much there is which hangs upon the defense of this last bulwark of the free and democratic world.

After all that has happened in the last half-dozen years, after the piecemeal destruction of so many countries, after the revolutionary reorganization of such vast areas in the lives of men and of nations, there are still Americans incapable of grasping the nature of the Hitler revolution, the uncontrollable nihilism which drives it and the illimitable ambition with which it is grasping for the mastery, not of a continent or a hemisphere, but of the world.

After the collapse of France, suddenly altering the whole international structure, revising ideas that have been pillars of the modern world and shaking to its foundations the whole system of political and economic relations in which the United States grew to its present greatness, there still seem to be Americans who imagine that whether Britain falls or not will make little difference to America.

There still seem to be Americans who, blinding themselves to every evidence from the history of the last few years, refuse to realize that the whole crisis of the great revolution which has been so brutally released upon the world now hangs upon the white coasts of Great Britain. With the example of France before them, they refuse to see that whatever elements of the old society remain, whatever security for the old ways we still enjoy, whatever time to prepare ourselves for the future, we still may dispose of, exist only because Great Britain has not fallen. They refuse to see that so long as Britain stands, the Hitler revolution has failed of its purpose, the Hitler triumphs are still only temporary, there is still hope of putting together a tolerable world; but that once Britain falls, nearly everything in the world we have known must fall with her and fall for good.

And there are still Americans who blindly refuse to picture to themselves, in any terms of the harsh reality, what the earth is bound to be once Great Britain has gone down and this nation must face alone a world controlled by the diseased imagination of Adolf Hitler and his satellites. There are still Americans who can deceive themselves about the appalling facts before them; but it seems to us imperative that the United States as a whole should no longer do so.

From every aspect of the actual situation, the one greatest requisite to the defense of the United States—the one thing which could make that defense most certain, the one thing which would do more than all the guns and ships and men we can ever amass for ourselves, the one thing, indeed, which might make many of the present defense plans unnecessary—would be the successful defense of Great Britain. And the successful defense of Great Britain is of such overwhelming practical importance to the security and welfare of the United States that it seems to us that no aid to that end which this country can offer should be withheld.

The British are in urgent need of airplanes, of which they are getting some from the United States. They are also in urgent need of destroyers—not for maneuvers, for "showing the flag," for distant "patrols," for filling up theoretical tables or naval organization—but for actual, hard, day-by-day fighting, now, in the dangerous and disputed seas on which Britain's life depends. The United States possesses a great fleet of World War destroyers—ships which are by no means valueless but which actually are today doing very little—a great many of which could be at once released to be manned and fought by British seamen in the place and at the moment where every ton would tell in the preservation of the peace and security of the United States.

This paper believes, with Gen. Pershing, that Congress should act to release these vessels. Only Congress can do it; and unless we have a Congress which can rise to the decision and realism needed for action of this kind we shall be facing a dubious future, indeed. Some risks are, of course, involved. Should Britain fall in spite of our aid, we would miss these destroyers; but whether the loss would seem great in face of the appalling other losses we would confront is another matter, and at all events some risks have to be taken in a world like this one. How many can be released we do not know; informed naval opinion must there speak, but we do know that it is folly to husband for remote, uncertain or theoretic contingencies men-of-war which if put in the hands of the British now could do more for the actual defense of the country than they are ever likely to do under later and more desperate circumstances.

We have this great destroyer fleet. We believe that it should be employed now, within the limits of a reasonable calculation of naval probabilities where it will do most for the purpose it was built for; and we believe Congress should take the lead in showing that this country can act with decision in a crisis with which its whole future is so intimately bound up.

NEW YORK TIMES Aug. 5 or 6, 1940

Full Aid to Britain Urged

Withholding of Matériel Regarded as Against Our Interests

To the Editor of The New York Times:

In The Times of July 31 Arthur Krock illuminatingly reports the attitude of many "official, political and military minds in the United States" toward the program of aiding the British in the interest of our own national defense. It is admitted, in the circles to which Mr. Krock refers, that we should do "everything possible" to aid the British; but it is argued that "everything possible" is synonymous with "practically nothing" because, if we are to meet a Nazi menace in the future, we shall need everything we have in the way of military supplies for our own use and must therefore keep them all at home.

The William Allen White committee has urged the sale to the British of sixty out of 160 obsolescent American destroyers. Even this modest proposal is apparently being resisted by some naval officers, and one of them is quoted by Mr. Krock as saying, "We cannot afford to sell the British a rowboat."

It would be dangerous to accept these reported off-hand judgments of military and naval officers without examination or discussion. If professional military judgment had been unchecked and unsupplemented by civilian criticism, suggestion—and, indeed, finally control—the British would have probably lost the last war.

It will be the task of Army officers, under the rearmament program, to equip and train, as speedily as possible, an army and navy eventually adequate for national defense. Concerned with this specific task, they don't want to sacrifice a single piece of equipment which might by any chance be useful. But some of them appear to be so preoccupied with the means that they lose sight of the end.

Strategy Main Factor

That end is effective national defense against a known potential enemy—since no one else threatens us. This enemy is already engaged in war; and the course and outcome of that war will affect our defense problem vitally and at every point. The problem, in short, is that of the general strategy of our defense, not simply of building up an American Army; and to ignore the part played in the problem by the situation existing in Europe is to cease to think in terms of strategy altogether.

The basic principle of military strategy and tactics has not changed. Victories, in closely fought wars, are won only by creating a margin of superior force at the right place at the right time—that is, at the place where and the time when such a margin can decide the outcome—not by holding reserves inactive with a vague idea of using them in some future battle at some indeterminate time, after the main battle has been lost.

The force, so far as we are concerned, in this case consists in machines, not men; but with this difference—the situation confronting us, if we really want to defend America from the dangers which threaten it, is the old familiar one which arises in every war. We have nothing to gain, and everything to lose, by taking a chance on the defeat of Britain in a battle in which there would be a high probability of victory, if we should supply, as we can, the marginal force necessary to turn the tide.

Full Aid Advised

It would, in short, be the height of stupidity in strategy—and I am referring solely to the strategy of American defense—not to seize this, the crucial opportunity, and reinforce the already large British equipment with enough American destroyers and planes to give it an effective margin of superiority over the Germans.

For if the British can be enabled to carry on through the Summer, there will be a real chance of the eventual, and perhaps of the speedy, breakdown of the Axis, beginning probably with Italy, as a consequence of the British blockade, plus greatly intensified airraids on German and Italian ports, bases, munition works, oil tanks, etc.

But the realization of this possibility will depend upon the establishment of a decisive British superiority over the Germans in the air as well as at sea. This superiority could probably be created in the course of 1941, if the total product of British and Canadian and the greater part of the product of American plants could be made available to the British air forces.

British pilots are apparently superior to the German, and American models of planes are the best in the world. Give these pilots enough such planes and Hitler will probably be beaten—beaten on the other side of the Atlantic—and the Americas will have nothing more to fear from him.

Even in the less probable event that the British, even with our material aid, should be destined in the end to be defeated, the aid given would still be justified by sound strategic considerations. For, first, every German plane shot down, every German tank destroyed, every munitions plant, oil tank and ship blown up by American planes would alter in our favor the ratio of our matériel to that of the only enemy against whom we are preparing to defend the Americas; and superiority in matériel is not a question of absolute numbers but of ratios.

And, second, if the British should with our aid be enabled only to keep up a delaying action of some months, the delay alone would be of incalculable value to us. For if, at the worst, we must prepare eventually to defend ourselves alone, the thing we need most for that purpose is time.

Arthur O. Lovejoy.

Baltimore, Md., Aug. 2, 1940.

PSF: Navy
(Destroyers - Bases)

file confidential

THE UNDER SECRETARY OF STATE
WASHINGTON

August 8, 1940.

My dear Mr. President:

I am enclosing herewith copies of a letter and two memoranda which the British Ambassador has just left with me.

I said to the Ambassador, with reference to the second paragraph of his letter to me, that it seemed to me that Mr. Churchill's statement was merely a reiteration in other words of what he had previously stated on June 4, and that this statement implied no commitment whatever except so far as his own Government was concerned. Furthermore, I said that I could not understand the reference to publicity since I was sure that no suggestion had been made from here that any public statement be made at this time.

Believe me

Faithfully yours,

Welles

Enc.

The President,

The White House.

Printed in Foreign Relations of the United States,
1940, volume 3, pp. 64, 65.

August 8th, 1940

PERSONAL AND
[redacted]

Dear Mr. Welles,

I have now heard from London regarding the proposed naval assurances.

The Prime Minister says that if Great Britain were over-run the present Government would certainly use the Fleet, or such of it as was intact, to defend the Empire overseas and would neither sink nor surrender it. At the same time he finds it difficult to make any further reference publicly to the subject at the present time because to do so would inevitably provoke discussion and would involve grave risk of creating both in the minds of the British people and of their enemies abroad the impression that the Government had in mind the collapse of Britain as a possible contingency.

In this connexion it is relevant to quote the following extract from the last

declaration/

The Honourable
Sumner Welles,
Acting Secretary of State of the United States,
Washington, D. C.

declaration by Mr. Churchill as to the future of the British Fleet made on June 4th:-

"We shall defend our island whatever the cost may be; we shall fight on beaches, landing grounds, in fields, in streets and on the hills. We shall never surrender and even if, which I do not for the moment believe, this island or a large part of it were subjugated and starving, then our empire beyond the seas, armed and guarded by the British Fleet, will carry on the struggle until in God's good time the New World, with all its power and might, sets forth to the liberation and rescue of the Old."

As regards the naval and air facilities of the East Coast I have been authorised to confirm that the facilities which His Majesty's Government in the United Kingdom are prepared to extend to the United States Government are those which I enumerated in my letter to the President of August ~~3rd~~ 5th, copy of which was sent to you on the same date. For convenience of reference a copy of the document enclosed in that letter is attached./

attached.

I have however been instructed to make it clear in this connexion that His Majesty's Government feel obliged to stipulate that any British air transport undertaking designated by His Majesty's Government, engaged in the operation of air transport services between the West Indies and North and South America will have the unconditional use of these facilities - i.e. aerodromes, wireless installations, etc. - established by American interests on British soil and that these facilities will be made available to such British undertakings at reasonable commercial charges.

Printed in Foreign Relations of the United States, 1940, volume 3, pp. 63, 64.

The facilities which His Majesty's Government in the United Kingdom are prepared to extend to the United States Government are as follows:-

(1) The continuation of the facilities already granted to the United States Government in June 1939 allowing United States aircraft and ships to use the waters of Trinidad, St. Lucia and Bermuda and the United States naval authorities to lease premises, land stores and in general make use of the ports in these three islands. Leases embodying these facilities were drawn up and signed by the United States authorities and the appropriate British Colonial authorities in the second half of 1939.

(2) American military aircraft to be allowed to land at Jamaica, British Guiana and Trinidad.

(3) Pan-American Airways acting as agents of the United States Government to be allowed to lease a small area approximately 1500 feet by 500 feet adjacent to the Trinidad aerodrome where they could store supplies, erect a small radio station etc.

(4) Pan-American Airways acting as agents for the United States Government to be allowed to lease an area of approximately one square mile near Georgetown, British Guiana on which an aerodrome could be constructed.

(5) Pan-American Airways acting as agents for the United States Government to be allowed to construct an aerodrome near Kingston, Jamaica on similar terms to the seaplane station which the Company already operates there.

(6) The United States Army aircraft to be authorised to make occasional training flights to Newfoundland and make use of the airport there.

COPY

file

The following releases and/or priorities are desired:

a) Destroyers

Released from existing stocks of 12 flotillas (consisting of 8 in each flotilla) i.e. 96 destroyers in all.

4 flotillas should if possible have good anti-aircraft equipment and 8 flotillas should be of the flush deck type. They are desired complete with torpedoes, spare torpedoes, reserve equipment and an adequate supply of ammunition, particularly for anti-aircraft guns.

b) Motor torpedo boats

Priority of 20 motor torpedo boats at present under construction for the U. S. Navy. 10 of the torpedo and 10 of the depth bomb type. Torpedoes and war-heads including spares are desired for the 10 torpedo boats and depth bombs for the anti-submarine boats including in both cases the requisite armaments and ammunition.

c) Aeroplanes

Released from existing stocks of the following:-

1) 50 consolidated PBY 5 flying boats

2) Some Vought Sikorski dive bombers.

d) Rifles

250,000 Lee Enfield Rifles released from existing stocks.

August 8th, 1940

PSF Destroyers for Bases Holder
Navy

NATIONAL POWER POLICY COMMITTEE
INTERIOR BUILDING
WASHINGTON

August 12, 1940

Dear Missy:

The President might be interested to glance at the inclosed letter of Messrs. Burlingham, Thacher, Rublee and Acheson, published in Sunday's New York Times, on the legal situation regarding the transfer of the destroyers.

Yours,

Ben V. C.
Ben V. Cohen

Miss Marguerite Le Hand,

The White House.

THIS OVERSIZE ITEM HAS BEEN
MICROFILMED IN SECTIONS.

No Legal Bar Seen to Transfer of Destroyers

Ample Authority for Sale of Over-Age Naval Vessels to Great Britain Exists in Present Laws, According to Opinion by Leading Lawyers

To the Editor of The New York Times:

The policy of the United States to aid nations resisting aggression is not based on sentiment alone. It is rooted in very real and material interests of this country. Both major political parties are pledged to the extension of such aid so far as is consistent with law and the interests of our own national self-defense.

We are told, and it is not seriously disputed, that Great Britain urgently needs more destroyers to help her resist invasion by Nazi Germany. That invasion 'is about to be launched from neutral ports and territories which the Nazis have seized, 'contrary to international law, to use as bases for their armed aggression against Britain..

In the present state of the world, the maintenance of British sea power is of inestimable advantage to us in terms of our own national defense. Since General Pershing's speech, on the evening of Aug 4, there can be no question that there is the highest military and naval authority in support of the view that the release of at least fifty of our over-age destroyers for sale to Great Britain is not only compatible with, but is vitally important to, the safeguarding of our own national defense. If Great Britain is able to resist German aggression and maintain her sea power, the danger of German aggression being directed against us in the immediate future is enormously reduced. Even if Great Britain should be forced to yield ultimately, the longer she holds the more time we shall have to strengthen our defense and the more time it will take Germany to repair and rehabilitate her armaments before she will be able to launch an attack on the Western Hemisphere.

No Time to Be Lost

It has been suggested that fresh legislative authority is required to permit the executive branch of the government to release these old destroyers for sale to Great Britain. We should like to place on record our own legal opinion that this is not the case.

Whatever might be our views on the law, we would not suggest executive action without Congressional approval if we believed that a majority of the Congress was opposed to such action. But believing as we do that the preponderating opinion both in and out of the Congress favors such action, we are loath to see time lost to secure authority which already exists when time may be vital to the preservation of our own liberties.

During the Battle of France a number of our naval planes were transferred from the Navy Department to the War Department under the provisions of the Act of July 11, 1919 (c. 9, 41 Stat. 132, U. S. C. Title 10, sec. 1274), which provides that: "The interchange without compensation therefor of military stores, supplies and equipment of every thereunder is deferred, where the original cost of such military or naval equipment, munitions or supplies exceeded or exceeds $2,000. The copies of each contract, order or agreement herein referred to shall be transmitted to the respective chairmen of the committees not later than twenty-four hours after such contract, order or agreement is made, and the chairman of each committee shall consider such contracts, orders or agreements confidential, unless a majority of the members of his committee shall direct the particular transaction to be made public."

Although some effort was made to place more drastic restrictions on executive authority, the Congress deliberately refrained from going further than requiring the certification of the Chief of Naval operations or the Chief of Staff of the Army. And again when efforts were made to place further restrictions on executive authority in the Naval Act of July 19, 1940 (H. R. 10100, Public No. 757), the Congress deliberately refrained from going further than providing that "no vessel, ship, or boat (except ship's boats) now in the United States Navy or being built or hereafter built therefor, shall be disposed of by sale or otherwise, or be chartered or scrapped, except as now provided by law."

Intent of Congress

In light of the fact that the Congress has provided for the free interchange of supplies and equipment between the Army and Navy, there is no reason to suppose that the Congress generally intended stricter rules to be applied to the release of naval supplies and equipment than to the release of military supplies and equipment. And this would seem to be particularly true in view of the fact that after naval planes had been transferred to the Army for the purpose of permitting their release to private manufacturers on an exchange basis, the Congress chose to enlarge rather than to restrict authority of the Secretary of War to enter into contracts for the exchange of obsolescent equipment for new equipment, and conditioned the exercise of such authority solely upon the certification of the appropriate staff officer that such obsolescent equipment was not essential to national defense.

If it should be the opinion of the appropriate staff officers of both armed services, as it is the opinion of General Pershing, that the requirements of our national defense would be served rather than hurt by the release of some of our over-age destroyers for sale to the British, there should be no legal bar to effectuating their release under existing statutory authority.

It is true that on June 24 a ruling of the Attorney General was announced to the effect that private builders who were constructing new torpedo boats for the account of the Navy could not, even with the consent of the Navy, complete such boats to the order of a belligerent from building, fitting out, or arming, to the order of either belligerent, vessels intended to be used as men-of-war, and to prevent the departure from his jurisdiction of any vessel which, by order of either belligerent, has been adapted to warlike use."

Section 2 of Title V of the Espionage Act of 1917 (c. 30, 40 Stat. 221, U. S. C. Title 18, sec. 32) recognizes the right of American and foreign citizens to take armed vessels out of the jurisdiction of the United States for sale to belligerents, provided that assurance is given when clearance is applied for that this sale or delivery will not take place within the jurisdiction of the United States or on the high seas. It provides as follows:

"During a war in which the United States is a neutral nation, the President, or any person thereunto authorized by him, may detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until the owner or master, or person having charge of such vessel, shall furnish proof satisfactory to the President, or to the person duly authorized by him, that the vessel will not be employed by the said owners, or master, or person having charge thereof, to cruise against or commit or attempt to commit hostilities upon the subjects, citizens, or property of any foreign prince, or state, or of any colony, district or people with which the United States is at peace, and that the said vessel will not be sold or delivered to any belligerent nation, or to an agent, officer, or citizen of such nation, by them or any of them, within the jurisdiction of the United States, or, having left that jurisdiction, upon the high seas."

Diligence Demanded

The next section (sec. 3) enforces the obligation of the neutral state to use diligence to prevent building or arming of vessels of war to the order of or for delivery to a belligerent. That section provides:

"During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel built, armed or equipped as a vessel of war, or converted from a private vessel into a vessel or war, with any intent or under any agreement or contract, written or oral, that such vessel shall be delivered to a belligerent nation, or to an agent, officer or citizen of such nation, or with reasonable cause to believe that the said vessel shall be or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States."

In other words, the correct construc-

vides that: "The interchange without compensation therefor of military stores, supplies and equipment of every character, including real estate owned by the Government, is hereby authorized between the Army and the Navy upon the request of the head of one service and with the approval of the head of the other service."

Service Planes Sold

Immediately after such transfer the Secretary of War released the planes to private manufacturers, under the provisions of the Act of July 9, 1918 (c. 143, 40 Stat. 849, U. S. C. Title 10, sec. 1272), which provides: "Subject to the approval of the Secretary of War, motor-propelled vehicles, airplanes, engines, parts thereof, balloons and appurtenances may be exchanged in part payment for new equipment of the same or similar character to be used for the same purposes as those proposed to be exchanged." The private manufacturers at once sold the planes to the Allies.

Shortly thereafter the Congress, by the Act of July 2, 1940 (H. R. 9850—Public No. 703), broadened the authority of the Secretary of War so that the power to make exchanges should not be limited to any particular kind of equipment. That act authorizes the Secretary of War "to enter into such contracts (including contracts for educational orders, and for the exchange of deteriorated, unserviceable, obsolescent or surplus military equipment, munitions and supplies, for other military equipment, munitions and supplies of which there is a shortage), and to amend or supplement such existing contracts as he may deem necessary to carry out the purpose specified in this section."

Veto Power Provided

In order, however, to assure that the technical heads of the Army and Navy might veto the release of ships, equipment or supplies deemed by them essential to our own safety, the following section was inserted in the Act of June 28, 1940 (H. R. 9822, Public No. 671):

"Sec. 14 (a). Notwithstanding the provision of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies or equipment, to which the United States has title, in whole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold or otherwise disposed of in any manner whatsoever unless the Chief of Naval Operations, in the case of naval material, and the Chief of Staff of the Army, in the case of military material, shall first certify that such material is not essential to the defense of the United States.

"(b). The Secretary of War and the Secretary of the Navy, as the case may be, are hereby requested and directed to furnish or cause to be furnished to the respective chairmen of the Committees on Military Affairs and the Committees on Naval Affairs of the Senate and House of Representatives a copy of each contract, order or agreement covering exchange of deteriorated, unserviceable, obsolescent or surplus military or naval equipment, munitions or supplies exchanged for other military or naval equipment, munitions or supplies, and a copy of each contract, order or agreement shall be furnished regarding any other disposition of military or naval equipment, munitions and supplies by which the title passes, either de jure or de facto, from the United States, or by which delivery of material the account of the Navy could not, even with the consent of the Navy, complete such boats to the order of a belligerent government. The Attorney General indicated that the sending out of the country by a private builder of a vessel of war built to enter the service of a belligerent would be a violation of section 3 of Title V of the Espionage Act of June 15, 1917 (c. 30, 40 Stat. 222, U. S. C., Title 18, sec. 33), and possibly also of section 23 of Title 18 of the United States Code.

It is clear, in our judgment, that neither these statutory provisions nor the views expressed by the Attorney General stand in the way of the sale to a belligerent of armed ships, like our old destroyers, which were not built or completed to the order of a belligerent.

Section Not Applicable

Section 23 of Title 18 of the United States Code is obviously not applicable to ships which were neither built nor equipped with a view to their entering the service of a belligerent power. The section reads as follows:

"Whoever, within the territory or jurisdiction of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out or arming of any vessel with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or any colony, district or people with whom the United States are at peace, or whoever issues or delivers a commission within the territory or jurisdiction of the United States for any vessel, to the intent that she may be so employed, shall be fined not more than $10,000 and imprisoned not more than three years. * * *"

In The Santissima Trinidad, 7 Wheat. 283, the United States Supreme Court held that the statute did not apply to the commercial sale of an armed vessel to a belligerent when there was no evidence that it was originally outfitted contrary to law. Justice Story stated that "There is nothing in our laws or in the laws of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale."

Section 3 of Title V of the Espionage Act of 1917 (U. S. C., Title 18, sec. 33) also is, in our opinion, inapplicable to armed vessels, like our old destroyers, which were not built, armed or equipped as, or converted into, vessels of war with the intent that they should enter the service of a belligerent. That section must be read in conjunction with the section which precedes it, and in the light of the rules of international law which both the then Attorney General, Mr. Gregory, and the Congress stated the statute was aimed to fulfill. (H. R. Rep. No. 30, 65th Congress, 1st Session, p. 9.) These rules are clearly stated by Dr. Lauterpacht in his Fifth Edition (September, 1935) of Oppenheim's International Law, Vol. 11, Sec. 334:

"Whereas a neutral is in no wise obliged by his duty of impartiality to prevent his subjects from selling armed vessels to the belligerents, such armed vessels being merely contraband of war, a neutral is bound to employ the means at his disposal to prevent his subjects ure from the jurisdiction of the United States."

In other words, the correct construction of the section, in our opinion, is that vessels built, armed or equipped as vessels of war with the intent or under any agreement to deliver them to belligerents or with reasonable cause to believe that they will be so delivered, may not be sent out of the jurisdiction of the United States. It does not mean that no vessels of war may be sent with such intent or under such agreement. Two reasons lead to, if they do not compel, this conclusion:

First, any other conclusion nullifies that portion of the preceding section which limits the President's authority to detain armed vessels owned by American or foreign citizens applying for clearance until such time as he is assured that they will not be used by such owners for hostile purposes, and that they will not be sold or delivered to a belligerent within the jurisdiction of the United States or on the high seas. He has no authority under the statute (the provisions of the Neutrality Act of 1939 are discussed below) to detain them if assured that the sale and delivery to a belligerent is to take place in a belligerent or neutral port. This is clearly incompatible with a construction of Section 3 which would make the departure of any armed vessel for sale to a belligerent illegal.

Gregory's Draft

Second, the language here involved was drafted by the then Attorney General, Mr. Gregory, who pointed out (1916 Annual Report of the Attorney General, pp. 15-16) that the section was directed to the rule of international law which he quoted as follows: "The first rule of the Treaty of Washington requires a neutral country to 'use due diligence to prevent the fitting out, arming or equipping [within its jurisdiction] of any vessel which it has reasonable grounds to believe is intended to cruise [or carry on war against a power with which it is at peace].' "

Neither the Attorney General nor the Congress indicated in any way that the section was intended to go beyond fulfillment of the rule of international law as there stated. To construe Section 3 as forbidding any sale of war vessels to belligerents would impose restrictions upon the citizens of neutral states not required by international law, as well as introducing irreconcilable inconsistencies within the act itself. To construe it as we have done fulfills in every respect the obligations intended by the Attorney General and makes the Act a consistent whole.

Nor does the Neutrality Act of November 4, 1939 (c. 2, U. S. C., Title 22, sec. 245j-1), interpose any legal bar to the release of the destroyers to the British. Under that Act the vessels may lawfully be taken out of the United States to a belligerent port provided title is first transferred from the American owner. Such transfer of title could be made, under the Act, to a foreign neutral individual or corporation.

We believe that we are entirely justified in the view that the powers granted by law to dispose of these destroyers would only be exercised where, in the considered opinion of those responsible for our national safety, their exercise would increase our powers of defense. General Pershing is high authority for

Continued on Page 9, Column 6

Destroyers Held Available

Continued From Page 8

the view that the transfer itself may be a vital factor in keeping war from our shores. It is quite possible that in connection with the transfer, arrangements might be made which would increase our defensive power in this hemisphere.

These destroyers are now built, armed and equipped. It cannot by the farthest stretch of the imagination be said that they were built, armed or equipped to the order of any belligerent, or with the intent that they should enter the service of any belligerent. If they are now released to private contractors, there is no insuperable legal barrier which stands in the way of their sale to the British in a manner compatible with the provisions of the Neutrality Act.

There is no reason for us to put a strained or unnecessary interpretation on our own statutes contrary to our own national interests. There is no reason to extend the rules of international law, beyond the limits generally accepted by other nations, to the detriment of our own country.

When vital interests of the United States are at stake, when the sentiment of the country is clear, the government should not hesitate to exercise powers under existing law. To seek an unnecessary reaffirmation of these powers from the Congress now would be to run a serious danger of delay and by delay possibly to endanger the vital interests of the people of the country in keeping war from our own shores.

CHARLES C. BURLINGHAM
THOMAS D. THACHER
GEORGE RUBLEE
DEAN ACHESON.

New York, Aug. 10, 1940.

PSF
Navy
Destroyers - B

Adams Nelson & Williamson
39 South La Salle Street
Chicago

ROBERT McCORMICK ADAMS
MURRY NELSON
BURKE WILLIAMSON
RUSSELL J. TURNEY
E. DOUGLAS SCHWANTES
DALE ALLEN LETTS
JACK A. WILLIAMSON

ROBERT McCORMICK ADAMS
MASTER IN CHANCERY
SUPERIOR COURT OF COOK COUNTY

TELEPHONE FRANKLIN 2411
CABLE ADDRESS: ANSON-CHICAGO

12 August 1940

Dear Mr. President.

I know you get more free legal advice than you need, but the enclosed idea may have a germ of value and if so I hope you will avail of it in any way within without my name.

Yours truly
Murry Nelson.

The President
Washington.

EXECUTIVE POWER

The Constitution is the Supreme Law, under it the executive power is reposed in the President who by this Supreme Law is commander in-chief of the Army and Navy. If in his discretion it appears vitd to the United States to use military or naval equipment in cooperath with or as a donation to another government, there is no statutory bar which could limit his constitutional discretion. It would be in his power and discretion to use naval material to block a friendly barbor to prevent the exit of submarines which he believed were prepared and about to attack the United States. There could be no law of Congress effective to limit or impair the President's command of the Army and Navy. Conditions imposed by a pretended law designed to make the Speaker of the House of Representatives the Executive Power and military or naval commander-in-chief would not be law in any sense effective to amend the Constitution.

If as commander-in-chief the President orders naval vessels to proceed to England, Canada, Australia or Gibraltar and to fight, or be sunk, he can only be questioned by impeachment. In the Chicago fire General Sheridan ordered buildings blown up to delay spread of the fire. Today there is a great world war spreading rapidly. In certain contingencies the United States may be attacked within a few days. The President of the United States well knowing of what Germany lately has done to Holland, Norway and Denmark may deem it vital to the United States to loan or donate naval equipment to any nations for use against Germany, if in his discretion this might hinder or delay an attack on the United States. If a fire chief may in emergency give or loan a fire boat to help put out a fire in the shipyard of a neighboring state, should anyone question the President of the United States, as commander of the Navy, if he should order ships of the Navy to service which may prevent or even delay attack upon the Panama Canal, Alaska, Texas, California and Florida.

What does it mean to command the Navy? The President took oath that he would protect, preserve and defend the Supreme Law and that was why the Executive Power was given the highest military power. Military command was by the Constitution not reposed in a town council but in the individual executive.

PSF: Navy (Destroyers - Bases)

file
personal
navy - (see destroyers)

THE WHITE HOUSE

WASHINGTON

August 16, 1940.

[redacted] MEMORANDUM FOR THE PRESIDENT:

Lord Lothian telephoned this morning. He wants you to know that he is constantly advising London not to make any announcement re destroyers, or to give any information to the press on that subject, until after you have decided and have announced your decision.

Lord Lothian would like to be told this morning if you make any statement on this subject, at your press conference. He also would like to know, as quickly as possible, what announcement you may make! He only wants to be kept in mind and told of your announcement whenever it is given to the public. He does not ask any advance information.

S.T.E.

PSF: Destroyers - Born Soldier

NAT:LT

August 17, 1940.

Unofficial

The Honorable,

The Secretary of the Navy.

My dear Mr. Secretary:

You state that a question has arisen in connection with the administration by the Chief of Naval Operations of section 14 (a) of the act of June 28, 1940, Public No. 671, 76th Congress, 3d Session. That section reads as follows:

> "SEC. 14. (a) Notwithstanding the provision of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies, or equipment, to which the United States has title, in whole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold, or otherwise disposed of in any manner whatsoever unless the Chief of Naval Operations in the case of naval material, and the Chief of Staff of the Army in the case of military material, shall first certify that such material is not essential to the defense of the United States."

You request my interpretation of the provision that "such material is not essential to the defense of the United States", as applied to a proposed disposition of certain old destroyers.

In this connection it is important to note that this subsection as originally proposed in the Senate bill provided that the appropriate staff officer shall first certify that "such material is not essential to and cannot be used in the defense of the United

States." Senator Barkley and others objected to the subsection as so worded on the ground that it would prevent the release and exchange of surplus or used planes and other supplies for sale to the British and that it would consequently nullify the provisions of the bill (see section 1 of the act of July 2, 1940, H. R. 9850, Public No. 703) which the Senate had passed several days earlier for that very purpose. Although Senator Walsh stated that he did not think the proposed subsection had that effect, he agreed to strike out the words "and cannot be used." Senator Barkley observed that he thought the modified language provided "a much more elastic term." Senator Walsh further stated that he would bear in mind in conference the views of Senator Barkley and others, as he had "no desire or purpose to go beyond the present law, but to have some certificate filed as to whether the property is surplus or not." (Cong. Rec., June 21, 1940, pp. 13370-13371)

In view of this legislative history, it is clear that the Congress did not intend to impose any arbitrary limitation upon the judgment of the highest staff officers as to whether the release of any military or naval material would or would not impair our essential defenses. It is equally clear that the Congress did not intend to stop aid to the Allies by prohibiting the exchange of planes or any other naval or military material mentioned in section 14 (a). It follows, in my opinion, that subsection 14 (a) contemplates that in making their certifications the highest staff officers

will consider not only what the Government of the United States gives up in any sale, disposition, or exchange, but also what the Government receives.

The phrase "essential to the defense of the United States" must be regarded as relative and not absolute, and should be construed in relation to our total defense requirements. In the present state of our defense program any other construction would be a virtual prohibition of any sale, disposition, or exchange of materials and supplies capable of use in national defense. And such a prohibition obviously was not, and was not intended to be, written into the law.

It is my judgment therefore that the appropriate staff officers may, and should, certify under section 14 (a) that materials contemplated to be sold, disposed of, or exchanged are not essential to the defense of the United States if in their judgment the effect of the consummation of such sale, disposition, or exchange under the terms and circumstances contemplated would not weaken or impair the defense of the United States. Certainly if the consummation of any such arrangement would strengthen the total defense of the United States, there is nothing in section 14 (a) which should prevent such certification.

I understand that negotiations are now pending looking towards the transfer of certain old destroyers to the Canadian Government conditioned upon the granting by the British Government

of certain naval and air bases in the Western Hemisphere to the United States. It is my opinion that the Chief of Naval Operations may, and should, certify under section 14 (a) that such destroyers are not essential to the defense of the United States if in his judgment the exchange of such destroyers for strategic naval and air bases will strengthen rather than impair the total defense of the United States.

Respectfully,

Attorney General.

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON, D. C.

file confidential

PSF

Navy (Stations)

Destroyers - Bases

DEPARTMENT OF STATE
WASHINGTON

August 20, 1940

My dear Mr. President:

I am enclosing a copy of a memorandum which the Minister of Canada left with me this afternoon. I have submitted a copy of this memorandum to the Secretary of the Navy with the request that he indicate to me the nature of the reply which should be made.

Believe me

Faithfully yours,

Enclosure.
Memorandum.

The President,

The White House.

C O P Y

~~Most Confidential~~

M E M O R A N D U M

The following information regarding the over-age United States destroyers which have been the subject of discussion between Washington, London and Ottawa is urgently requested.

1. When will delivery at a Canadian port begin?
2. What number will come in each flight, and how many flights will there be?
3. Statement as to seaworthiness.
4. Statement regarding condition of engines.
5. Description of offensive armaments.
6. Report on gun ammunition available.
7. Are torpedoes available?
8. Statement regarding the condition of fuel tanks, magazines, and running gear.

Information is also desired on all other points which the United States Naval authorities consider would be useful or significant.

CANADIAN LEGATION
WASHINGTON, D. C.

August 20, 1940.

L.C.C.

PSF: Navy
Destroyers for Bases folder

For your private information, steps are under way to see Mr. Sulzberger in re Mr. Krock, and Mr. Roy Howard.

U.B.

File Personal Confidential

(Car

Note: See Merry-Go-Round, Saturday morning, August 3.

From: Herbert Agar, Ulric Bell, Robert S. Allen

came to file August 14-1940

Every present fact and reasonable expectation is that plain speaking on the destroyer question will bring strong commendation from the preponderant group of newspapers, magazines and commentators.

With respect to the commentators the following can be relied upon to support action on this question: Walter Lippmann, Mark Sullivan, Dorothy Thompson, Alsop and Kintner, Pearson and Allen. Frank Kent cannot oppose this action for he is on record in favor of a declaration of war along with Herbert Agar of the Louisville Courier-Journal. Ernest Lindley has been disposed to advocate sending ships to Britain within certain limitations. Lippmann, Pearson and Allen, Alsop and Kintner, Dorothy Thompson--all this adding up to a wide reader following--are militant, and with some of the others would go into action on twenty-four hours notice, before or after official initiative had been taken.

In the magazine field, Time and Life could most reasonably be counted upon if the present negotiations succeeded, and in any event, could not complain about a course Luce has been advocating.

On the whole issue of pro-ally foreign policy the record already shows a large number of important newspapers strongly favorable.

Up to the time of the conventions six great dailies appeared to be leading in this respect. They are:

The Atlanta Constitution
New York Herald Tribune
Philadelphia Record
Detroit News
The Louisville Courier-Journal
The Chicago Daily News

Not all of them however, have been as forthright since the conventions introduced campaign complications.

The newspapers besides those named which have indicated a strong feeling for more direct help include the

Lynchburg News
Houston Chronicle
Providence Journal
St. Louis Star Times
Cincinnati Inquirer
Nashville Tennessean
Durham (N. C.) Herald Sun
Norfolk Virginian Pilot
Columbia (S.C.) State
Boston Herald
Los Angeles Times
San Francisco Chronicle
Washington Star
Baltimore Sun
Chicago Times
New York Evening Post

A "fair" rating may be given to the

Des Moines Register (Cowles Bros.)
Richmond Times Dispatch
Charlotte News
Richmond New Leader
Birmingham Age Herald
Chattanooga Times

An incidental fact is that many of these and other newspapers have carried the three full page ads written for the William Allen White Committee by Bob Sherwood.

Under the impetus of official initiative and unofficial broadsiding by those journals having fervent convictions on the subject a large number of newspapers, magazines and commentators not listed above should be counted. With Mr. Willkie cooperating the number of these obviously would be augmented. An instance of this perhaps, may be given in the Boston situation where the best information available is that the Herald and Transcript would follow Willkie's lead.

That also applies to such papers as those owned by the Cowles Brothers.

It should be kept in mind that the individuals committed to Willkie are among the most conspicuous and convinced participants in the informal group urging immediate action. For example, Ernest M. Hopkins, President of Dartmouth College; Lew Douglas, Henry R. Luce, and Geoffrey Parsons of the Herald Tribune, have participated in the discussions from time to time, along with others favorable to the Administration. This is a way of saying that the attitude of the newspapers will be supported by strong and important voices on both sides. General Pershing's proposed broadcast would give them an immediate rallying point.

file
Confidential

8-27-40

PSF
Destroyers
for Bases

DRAFT

TO THE CONGRESS OF THE UNITED STATES:

I transmit herewith for the information of the Congress notes exchanged between the British Ambassador at Washington and the Secretary of State on September 2, 1940, under which this Government has acquired the right to lease naval and air bases in Newfoundland, and in the islands of Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad, and Antigua, and in British Guiana; also a copy of an opinion of the Attorney General dated August 27, 1940, regarding my authority to consummate this arrangement.

The right to bases in Newfoundland and Bermuda are gifts generously given and gladly received. The other bases mentioned have been acquired in exchange for fifty of our over-age destroyers.

This is not inconsistent in any sense with our status of peace. Still less is it a threat against any nation. It is an epochal and far-reaching act of preparation for continental defense in the face of grave danger.

~~[illegible]~~.

PSF
Navy
Sest-Bases

Preparation for defense is an inalienable prerogative of a sovereign state. Under present circumstances this exercise of sovereign right is essential to the maintenance of our peace and safety. No more important action in the ~~establishment~~ reinforcement of our national defense has been taken since the Louisiana Purchase. Then as now, considerations of safety from overseas attack were fundamental.

The value to the Western Hemisphere of these outposts of security is beyond calculation. Their need has long been recognized by our country, and especially by those primarily charged with the duty of charting and organizing our own naval and military defense. They are essential to the protection of the Panama Canal, Central America, the Northern portion of South America, the Antilles, and the Eastern and Gulf Seaboards. Their consequent importance in hemispheric defense is obvious. For these reasons I have taken advantage of the present opportunity to acquire them.

THE WHITE HOUSE.

TO THE CONGRESS OF THE UNITED STATES:

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The value to the Western Hemisphere of these outposts of security is beyond calculation. Their need has long been recognized by our country, and especially by those primarily charged with the duty of charting and organizing our own naval and military defense. They are essential to the protection of the Panama Canal, Central America, the Northern portion of South America, The Antilles, Canada, Mexico, and our own Eastern and Gulf Seaboards. Their consequent importance in hemispheric defense is obvious. For these reasons I have taken advantage of the present opportunity to acquire them.

THE WHITE HOUSE

file confidential

PSF
Navy
Destroyers
for Bases

DRAFT A

I am instructed by H. B. M. Government to transmit in its name to the Government of the United States the following declarations:

1. In accordance with the statements made by the Prime Minister to Parliament on June 4 last, in the event that, during the course of the present war in which the British Empire and the Dominions are engaged, the waters surrounding the British Isles become untenable for British ships of war, the British Government declares that the British fleet would in no event be surrendered or sunk, but would be sent to other ports of the Empire for continued defense of the Empire.

2. In view of its desire to enhance the national security of the United States and to strengthen its ability to cooperate effectively with the other nations of the Americas in the defense of the Western Hemisphere, the British Government will make available to the Government of the United States, for immediate establishment and use, naval and air bases and other facilities in Newfoundland, Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad,

and British Guiana, such bases and facilities to be leased by the United States for a period of 99 years.

The two Governments will immediately determine by common agreement the [initial] exact location of such bases and facilities within the colonies above mentioned as may be required in the judgment of the United States for purposes of defense as well as for peacetime training. ?

The British Government, in the terms of the leases to be agreed upon, will grant to the United States for the period of the leases all the rights, power, and authority within the bases leased, and within the limits of the territorial waters and air spaces adjacent to or in the vicinity of such bases, which the United States would possess and exercise if it were the sovereign of the territory and waters above mentioned. However, individuals other than citizens of the United States who may be charged within the area of the bases leased with crimes or misdemeanors amenable to the laws of the British colonies within which such bases are located shall be delivered by the appropriate United States authorities to the duly authorized authorities of the colonies in question.

PSF
Navy
Destroyers
for Bases

DRAFT B

I have received your communication of

of which the text is as follows:

(Quote)

In as much as in the opinion of the Government of the United States the commitments on the part of the British Government contained in the two numbered paragraphs of your communication are destined to enhance the national security of the United States and greatly to strengthen its ability to cooperate effectively with the other nations of the Americas in the defense of the Western Hemisphere, they are gladly received and accepted.

The Government of the United States will immediately designate commissioners to meet with commissioners designated by the British Government to determine upon the exact location of the naval and air bases mentioned in paragraph two of your communication under acknowledgment.

In full payment for the 99 year leases for such bases, the Government of the United States will immediately transfer to the British Government the naval and military materiel listed in your communication above quoted, and which is as follows:

PSF: Navy
(Destroyers-Bases)

Navy (Sodetroyers)

Office of the Attorney General
Washington, D.C.

August 27, 1940.

The President,

The White House.

My dear Mr. President:

In accordance with your request I have considered your constitutional and statutory authority to proceed by Executive Agreement with the British Government immediately to acquire for the United States certain off-shore naval and air bases in the Atlantic Ocean without awaiting the inevitable delays which would accompany the conclusion of a formal treaty.

The essential characteristics of the proposal are:

(a) The United States to acquire rights for immediate establishment and use of naval and air bases in Newfoundland, Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad and British Guiana; such rights to endure for a period of 99 years and to include adequate provisions for access to, and defense of, such bases and appropriate provisions for their control.

(b) In consideration it is proposed to transfer to Great Britain the title and possession of certain over-age ships and obsolescent military materials now the property of the United States, and certain other small patrol boats which though nearly completed are already obsolescent.

(c) Upon such transfer all obligation of the United States is discharged. The acquisition consists only of

> rights, which the United States may exercise or not at its option, and if exercised may abandon without consent. The privilege of maintaining such bases is subject only to limitations necessary to reconcile United States use with the sovereignty retained by Great Britain. Our government assumes no responsibility for civil administration of any territory. It makes no promise to erect structures, or maintain forces at any point. It undertakes no defense of the possessions of any country. In short it acquires optional bases which may be developed as Congress appropriates funds therefor, but the United States does not assume any continuing or future obligation, commitment or alliance.

The questions of constitutional and statutory authority, with which alone I am concerned, seem to be these.

First. May such an acquisition be concluded by the President under an Executive Agreement or must it be negotiated as a Treaty subject to ratification by the Senate?

Second. Does authority exist in the President to alienate the title to such ships and obsolescent materials, and if so, on what conditions?

Third. Do the statutes of the United States limit the right to deliver the so-called "mosquito boats" now under construction or the over-age destroyers by reason of the belligerent status of Great Britain?

I.

There is, of course, no doubt concerning the authority of the President to negotiate with the British Government for the proposed exchange. The only questions that might be raised in connection therewith are (1) whether the arrangement must be put in the

form of a treaty and await ratification by the Senate or (2) whether there must be additional legislation by the Congress. Ordinarily (and assuming the absence of enabling legislation) the question whether such an agreement can be concluded under Presidential authority or whether it must await ratification by a two-thirds vote of the United States Senate involves consideration of two powers which the Constitution vests in the President.

One of these is the power of the Commander-in-Chief of the Army and Navy of the United States, which is conferred upon the President by the Constitution but is not defined or limited. Happily, there has been little occasion in our history for the interpretation of the powers of the President as Commander-in-Chief of the Army and Navy. I do not find it necessary to rest upon that power alone to sustain the present proposal. But it will hardly be open to controversy that the vesting of such a function in the President also places upon him a responsibility to use all constitutional authority which he may possess to provide adequate bases and stations for the utilization of the naval and air weapons of the United States at their highest efficiency in our defense. It seems equally beyond doubt that present world conditions forbid him to risk any delay that is constitutionally avoidable.

The second power to be considered is that control of foreign relations which the Constitution vests in the President as a part of the Executive function. The nature and extent of this power has re-

cently been explicitly and authoritatively defined by Mr. Justice Sutherland, writing for the Supreme Court. In 1936, in United States v. Curtiss-Wright Export Corp., et al, 299 U. S. 304, he said:

> "It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution. It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results."

The President's power over foreign relations while "delicate, plenary and exclusive" is not unlimited. Some negotiations involve commitments as to the future which would carry an obligation to exercise powers vested in the Congress. Such Presidential arrangements are customarily submitted for ratification by a two-thirds vote of the Senate before the future legislative power of the country is committed. However, the acquisitions which you are proposing to accept are without express or implied promises on the part of the United States to be per-

formed in the future. The consideration, which we later discuss, is completed upon transfer of the specified items. The Executive Agreement obtains an opportunity to establish naval and air bases for the protection of our coastline but it imposes no obligation upon the Congress to appropriate money to improve the opportunity. It is not necessary for the Senate to ratify an opportunity that entails no obligation.

There are precedents which might be cited, but not all strictly pertinent. The proposition falls far short in magnitude of the acquisition by President Jefferson of the Louisiana Territory from a belligerent during a European war, the Congress later appropriating the consideration and the Senate later ratifying a treaty embodying the agreement.

I am also reminded that in 1850, Secretary of State Daniel Webster acquired Horse Shoe Reef, at the entrance of Buffalo Harbor, upon condition that the United States would engage to erect a lighthouse and maintain a light but would erect no fortification thereon. This was done without awaiting legislative authority. Subsequently the Congress made appropriations for the lighthouse, which was erected in 1856. Malloy, Treaties and Conventions, Vol. 1, p. 663.

It is not believed, however, that it is necessary here to rely exclusively upon your constitutional power. As pointed out hereinafter (in discussing the second question), I think there is also ample statutory authority to support the acquisition of these bases,

and the precedents perhaps most nearly in point are the numerous acquisitions of rights in foreign countries for sites of diplomatic and consular establishments--perhaps also the trade agreements recently negotiated under statutory authority and the acquisition in 1903 of the coaling and naval stations and rights in Cuba under the act of March 2, 1901, c. 803, 31 Stat. 895, 898. In the last-mentioned case the agreement was subsequently embodied in a treaty but it was only one of a number of undertakings, some clearly of a nature to be dealt with ordinarily by treaty, and the statute had required "that by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

The transaction now proposed represents only an exchange with no statutory requirement for the embodiment thereof in any treaty and involving no promises or undertakings by the United States that might raise the question of the propriety of incorporation in a treaty. I therefore advise that acquisition by Executive Agreement of the rights proposed to be conveyed to the United States by Great Britain will not require ratification by the Senate.

II.

The right of the President to dispose of vessels of the Navy and unneeded naval material finds clear recognition in at least two enactments of the Congress and a decision of the Supreme Court--and any who assert that the authority does not exist must assume the burden of establishing that both the Congress and the Supreme Court meant

something less than the clear import of seemingly plain language.

By section 5 of the act of March 3, 1883, c. 141, 22 Stat. 582, 599-600 (U.S.C., title 34, sec. 492), the Congress placed restrictions upon the methods to be followed by the Secretary of the Navy in disposing of naval vessels, which have been found unfit for further use and stricken from the naval registry, but by the last clause of the section recognized and confirmed such a right in the President free from such limitations. It provides:

> "But no vessel of the Navy shall hereafter be sold in any other manner than herein provided, or for less than such appraised value, unless the President of the United States shall otherwise direct in writing." (Underscoring supplied)

In Levinson v. United States, 258 U. S. 198, 201, the Supreme Court said of this statute that "the power of the President to direct a departure from the statute is not confined to a sale for less than the appraised value but extends to the manner of the sale," and that "the word 'unless' qualifies both the requirements of the concluding clause."

So far as concerns this statute, in my opinion it leaves the President as Commander-in-Chief of the Navy free to make such disposition of naval vessels as he finds necessary in the public interest, and I find nothing that would indicate that the Congress has tried to limit the President's plenary powers to vessels already stricken from the naval registry. The President, of course, would exercise his powers only under the high sense of responsibility

which follows his rank as Commander-in-Chief of his nation's defense forces.

Furthermore, I find in no other statute or in the decisions any attempted limitations upon the plenary powers of the President as Commander-in-Chief of the Army and Navy and as the head of the State in its relations with foreign countries to enter into the proposed arrangements for the transfer to the British Government of certain over-age destroyers and obsolescent military material except the limitations recently imposed by section 14(a) of the act of June 28, 1940 (Public No. 671). This section, it will be noted, clearly recognizes the authority to make transfers and seeks only to impose certain restrictions thereon. The section reads as follows:

> "Sec. 14. (a) Notwithstanding the provision of any other law, no military or naval weapon, ship, boat, aircraft, munitions, supplies, or equipment, to which the United States has title, in whole or in part, or which have been contracted for, shall hereafter be transferred, exchanged, sold, or otherwise disposed of in any manner whatsoever unless the Chief of Naval Operations in the case of naval material, and the Chief of Staff of the Army in the case of military material, shall first certify that such material is not essential to the defense of the United States."

Thus to prohibit action by the constitutionally-created Commander-in-Chief except upon authorization of a statutory officer subordinate in rank is of questionable constitutionality. However, since the statute requires certification only of matters as to which you would wish, irrespective of the statute, to be satisfied, and as the legislative history of the section indicates that no arbitrary restriction is intended, it seems unnecessary to raise the question

of constitutionality which such a provision would otherwise invite.

I am informed that the destroyers involved here are the survivors of a fleet of over 100 built at about the same time and under the same design. During the year 1930, 58 of these were decommissioned with a view toward scrapping and a corresponding number were recommissioned as replacements. Usable material and equipment from the 58 vessels removed from the service were transferred to the recommissioned vessels to recondition and modernize them, and other usable material and equipment were removed and the vessels stripped. They were then stricken from the navy register, and 50 of them were sold as scrap for prices ranging from $5,260 to $6,800 per vessel, and the remaining 8 were used for such purposes as target vessels, experimental construction tests, and temporary barracks. The surviving destroyers now under consideration have been reconditioned and are in service, but all of them are over-age, most of them by several years.

In construing this statute in its application to such a situation it is important to note that this subsection as originally proposed in the Senate bill provided that the appropriate staff officer shall first certify that "such material is not essential to and cannot be used in the defense of the United States." Senator Barkley and others objected to the subsection as so worded on the ground that it would prevent the release and exchange of surplus or used planes and other supplies for sale to the British and that it would consequently nullify the provisions of the bill (see section 1 of the act of July 2, 1940, H. R. 9850, Public No. 703) which the

Senate had passed several days earlier for that very purpose. Although Senator Walsh stated that he did not think the proposed subsection had that effect, he agreed to strike out the words "and cannot be used." Senator Barkley observed that he thought the modified language provided "a much more elastic term." Senator Walsh further stated that he would bear in mind in conference the views of Senator Barkley and others, and that he had "no desire or purpose to go beyond the present law, but to have some certificate filed as to whether the property is surplus or not." (Cong. Rec., June 21, 1940, pp. 13370-13371)

In view of this legislative history it is clear that the Congress did not intend to prevent the certification for transfer, exchange, sale or disposition of property merely because it is still used or usable or of possible value for future use. The statute does not contemplate mere transactions in scrap, yet exchange or sale except as scrap would hardly be possible if confined to material whose usefulness is entirely gone. It need only be certified as not essential, and "essential," usually the equivalent of vital or indispensable, falls far short of "used" or "usable."

Moreover, as has been indicated, the congressional authorization is not merely of a sale, which might imply only a cash transaction. It also authorizes equipment to be "transferred," "exchanged" or "otherwise disposed of"; and in connection with material of this kind for which there is no open market value is never absolute but

only relative--and chiefly related to what may be had in exchange or replacement.

In view of the character of the transactions contemplated, as well as the legislative history, the conclusion is inescapable that the Congress has not sought by section 14(a) to impose an arbitrary limitation upon the judgment of the highest staff officers as to whether a transfer, exchange or other disposition of specific items would impair our essential defenses. Specific items must be weighed in relation to our total defense position before and after an exchange or disposition. Any other construction would be a virtual prohibition of any sale, exchange or disposition of material or supplies so long as they were capable of use, however ineffective, and such a prohibition obviously was not, and was not intended to be, written into the law.

It is my opinion that in proceeding under section 14(a) appropriate staff officers may and should consider remaining useful life, strategic importance, obsolescence, and all other factors affecting defense value, not only with respect to what the Government of the United States gives up in any exchange or transfer, but also with respect to what the Government receives. In this situation good business sense is good legal sense.

I therefore advise that the appropriate staff officers may, and should, certify under section 14(a) that ships and material involved in a sale or exchange are not essential to the defense of the United States if in their judgment the consummation of the transaction does not impair or weaken the total defense of the United States,

and certainly so where the consummation of the arrangement will strengthen the total defensive position of the nation.

With specific reference to the proposed agreement with the Government of Great Britain for the acquisition of naval and air bases, it is my opinion that the Chief of Naval Operations may, and should, certify under section 14(a) that the destroyers involved are not essential to the defense of the United States if in his judgment the exchange of such destroyers for such naval and air bases will strengthen rather than impair the total defense of the United States.

I have previously indicated that in my opinion there is statutory authority for the acquisition of the naval and air bases in exchange for the vessels and material. The question was not more fully discussed at that point because dependent upon the statutes above treated and which required consideration in this section of the opinion. It is to be borne in mind that these statutes clearly recognize and deal with the authority to make dispositions by sale, transfer, exchange or otherwise; that they do not impose any limitations concerning individuals, corporations or governments to which such dispositions may be made; and that they do not specify or limit in any manner the consideration which may enter into an exchange. There is no reason whatever for holding that sales may not be made to or exchanges made with a foreign government or that in such a case a treaty is contemplated. This is emphasized when we consider that the transactions in some cases may be quite unimportant, perhaps only dispositions of scrap, and that a domestic buyer (unless restrained by some authorized con-

tract or embargo) would be quite free to dispose of his purchase as he pleased. Furthermore, section 14(a) of the act of June 28, 1940, supra, was enacted by the Congress in full contemplation of transfers for ultimate delivery to foreign belligerent nations. Possibly it may be said that the authority for exchange of naval vessels and material presupposes the acquisition of something of value to the Navy or, at least, to the national defense. Certainly I can imply no narrower limitation when the law is wholly silent in this respect. Assuming that there is, however, at least the limitation which I have mentioned, it is fully met in the acquisition of rights to maintain needed bases. And if, as I hold, the statute law authorizes the exchange of vessels and material for other vessels and material or, equally, for the right to establish bases, it is an inescapable corollary that the statute law also authorizes the acquisition of the ships or material or bases which form the consideration for the exchange.

III.

Whether the statutes of the United States prevent the dispatch to Great Britain, a belligerent power, of the so-called "mosquito boats" now under construction or the over-age destroyers depends upon the interpretation to be placed on section 3 of title V of the act of June 15, 1917, c. 30, 40 Stat. 217, 222. This section reads:

> "During a war in which the United States is a neutral nation, it shall be unlawful to send out of the jurisdiction of the United States any vessel, built, armed, or equipped as a vessel of war, or converted from a private vessel into a vessel of war, with any intent or under any agreement or contract, written or oral, that such vessel

shall be delivered to a belligerent nation, or to an agent, officer, or citizen of such nation, or with reasonable cause to believe that the said vessel shall or will be employed in the service of any such belligerent nation after its departure from the jurisdiction of the United States.'"

This section must be read in the light of section 2 of the same act and the rules of international law which the Congress states that it was its intention to implement. (H. Rep. No. 30, 65th Cong., 1st Sess., p. 9) So read, it is clear that it is inapplicable to vessels, like the over-age destroyers, which were not built, armed, equipped as, or converted into, vessels of war with the intent that they should enter the service of a belligerent. If the section were not so construed, it would render meaningless section 2 of the act which authorizes the President to detain any armed vessel until he is satisfied that it will not engage in hostile operations before it reaches a neutral or belligerent port. The two sections are intelligible and reconcilable only if read in light of the traditional rules of international law. These are clearly stated by Oppenheim in his work on International Law, 5th ed., Vol 2, sec. 334, pp. 574-576:

"Whereas a neutral is in no wise obliged by his duty of impartiality to prevent his subjects from selling armed vessels to the belligerents, such armed vessels being merely contraband of war, a neutral is bound to employ the means at his disposal to prevent his subjects from building, fitting out, or arming, to the order of either belligerent, vessels intended to be used as men-of-war, and to prevent the departure from his jurisdiction of any vessel which, by order of either belligerent, has been adapted to warlike use. The difference between selling armed vessels to belligerents and building them to order is usually defined in the following way: --

"An armed ship, being contraband of war, is in no wise different from other kinds of contraband, provided that she is not manned in a neutral port, so that she can commit

hostilities at once after having reached the open sea. A subject of a neutral who builds an armed ship, or arms a merchantman, not to the order of a belligerent, but intending to sell her to a belligerent, does not differ from a manufacturer of arms who intends to sell them to a belligerent. There is nothing to prevent a neutral from allowing his subjects to sell armed vessels, and to deliver them to belligerents, either in a neutral port or in a belligerent port. ***

"On the other hand, if a subject of a neutral builds armed ships to the order of a belligerent, he prepares the means of naval operations, since the ships, on sailing outside the neutral territorial waters and taking in a crew and ammunition, can at once commit hostilities. Thus, through the carrying out of the order of the belligerent, the neutral territory has been made the base of naval operations; and as the duty of impartiality includes an obligation to prevent either belligerent from making neutral territory the base of military or naval operations, a neutral violates his neutrality by not preventing his subjects from carrying out an order of a belligerent for the building and fitting out of man-of-war. This distinction, although of course logically correct, is hair-splitting. But as, according to the present law, neutral States need not prevent their subjects from supplying arms and ammunition to belligerents, it will probably continue to be drawn."

Viewed in the light of the above, I am of the opinion that this statute does prohibit the release and transfer to the British Government of the so-called "mosquito boats" now under construction for the United States Navy. If these boats were released to the British Government, it would be legally impossible for that Government to take them out of this country after their completion, since to the extent of such completion at least they would have been built, armed, or equipped with the intent, or with reasonable cause to believe, that they would enter the service of a belligerent after being sent out of the jurisdiction of the United States.

This will not be true, however, with respect to the overage destroyers, since they were clearly not built, armed, or equipped

with any such intent or with reasonable cause to believe that they would ever enter the service of a belligerent.

In this connection it has been noted that during the war between Russia and Japan in 1904 and 1905, the German Government permitted the sale to Russia of torpedo boats and also of ocean liners belonging to its auxiliary navy. See Wheaton's International Law, 6th ed. (Keith), Vol. 2, p. 977.

IV.

Accordingly, you are respectfully advised:

(a) That the proposed arrangement may be concluded as an Executive Agreement, effective without awaiting ratification.

(b) That there is Presidential power to transfer title and possession of the proposed considerations upon certification by appropriate staff officers.

(c) That the dispatch of the so-called "mosquito boats" would constitute a violation of the statute law of the United States, but with that exception there is no legal obstacle to the consummation of the transaction, in accordance, of course, with the applicable provisions of the Neutrality Act as to delivery.

Respectfully submitted,

Robert H. Jackson

Attorney General.

PSF: Navy
(Destroyers - Bases)

Navy - (destroyers)

THE WHITE HOUSE

WASHINGTON

Hyde Park, N. Y.,
August 28, 1940.

MEMORANDUM FOR

THE SECRETARY OF STATE

If you approve, will you send the following message to Ambassador Kennedy:

"The destroyer and base matter was handled in part through you and in part through Lothian but the situation developed into a mapping proposition where the Army and Navy are in constant consultation with me here and the daily developments have had to be explained verbally to Lothian.

There is no thought of embarrassing you and only a practical necessity for personal conversations makes it easier to handle details here.

I should be glad to have you explain to former Naval person that I am totally precluded from giving away any Government vessels or equipment and that latest plan covers both angles, British and American.

THE WHITE HOUSE

WASHINGTON

It is essentially that two of seven bases be donated by free will and accord of Great Britain and that other five bases be transferred by Britain in consideration of simultaneous transfer by us of fifty destroyers.

Don't forget that you are not only not a dummy but are essential to all of us both in the Government and in the Nation.

FRANKLIN D. ROOSEVELT"

PSF: Navy
(Destroyers - Bases)

DEPARTMENT OF STATE

THE SECRETARY

August 31, 1940

MEMORANDUM FOR THE PRESIDENT

I attach:

(1) Copy of the note to be signed by Lord Lothian;

(2) Copy of my reply;

(3) A rough draft of a message to Congress (identical communications to be sent to both Houses); and

(4) Copy of the aide-mémoire which I handed to Lord Lothian on August 29 and of the Embassy's reply.

As we agreed yesterday, the exchange of notes regarding the bases will be signed on Monday.

Hull

Here is agreement, but delay until Monday about Fleet matter (Par. 4)

CH

Confidential

September 2, 1940.

My dear Mr. Secretary:-

I have carefully read the note from the British Ambassador and your reply thereto as Secretary of State of the United States.

I give my full and cordial approval to both of these notes.

Very sincerely yours,

The Honorable
The Secretary of State,
Washington, D. C.

C/12

AIDE-MEMOIRE

On June 4, 1940, the Prime Minister of Great Britain is reported to have stated to the Parliament in effect that in the event that during the course of the present war in which the Empire and Dominions are engaged the waters surrounding the British Isles should become untenable for British ships of war, the British fleet would in no event be surrendered or sunk but would be sent to other ports of the Empire for continued defense of the Empire.

The Government of the United States would respectfully inquire whether the foregoing statement represents the fixed and permanent policy of the British Government.

Department of State,

Washington, August 29, 1940.

C/1

August 31st, 1940

Dear Mr. Secretary,

Before the Ambassador left for the country last night he instructed me to inform you as soon as any reply was received from London regarding the proposed exchange of telegrams between the President and the British Prime Minister concerning the future of the British Fleet.

I am therefore writing to let you know that we have this morning received a telegram from the Foreign Office stating that the Prime Minister is entirely agreeable to the President sending him a telegram on the lines suggested in the Aide Memoire which you handed to the Ambassador on August 29th. The Prime Minister has however indicated that he hopes

that/

The Honourable
Cordell Hull,
Secretary of State of the United States,
Washington, D. C.

that the President will be prepared to make one or two minor modifications in this message so that it should run as follows:-

"The Prime Minister of Great Britain is reported to have stated on June 4th, 1940, to Parliament in effect that if during the course of the present war in which Great Britain and the British Commonwealth are engaged the waters surrounding the British Isles should become untenable for British ships of war, the British Fleet would in no event be surrendered or sunk but would be sent overseas for the defence of other parts of the Empire.

"The Government of the United States would respectfully enquire whether the foregoing statement represents the settled policy of the British Government."

On receipt of such a message the Prime Minister would propose to send the following reply:-

"You ask, Mr. President, whether my statement in Parliament on June 4th, 1940, about Great

Britain/

Britain never surrendering or scuttling her fleet 'represents the settled policy of His Majesty's Government'. It certainly does. I must however observe that these hypothetical contingencies seem more likely to concern the German Fleet or what is left of it than our own."

I should be very grateful if the Embassy could be informed whether Mr. Churchill's proposed reply together with the suggested modifications in the President's telegram are agreeable to the President. It would also be useful if the Embassy could be informed approximately when the President proposes to send off his telegram so that we may warn London in advance.

The telegram from the Foreign Office does not unfortunately answer one point in the Ambassador's telegram in which he enquired whether the Prime Minister saw any objection to these messages being published. I have

telephoned/

telephoned to London on this point and have been promised a very early answer which I will communicate to you as soon as received.

Believe me,

Dear Mr. Secretary,

Very sincerely yours,

(SGD) F. E. ROYCE WILLAR

PSF: Navy
(Destroyers - Bases)
file
personal.

Navy
(Destroyers)

OFFICE OF THE SECRETARY

FILE

DEPARTMENT OF THE NAVY

WASHINGTON, D.C.

3 September 1940.

To the President of the United States

1. Concerning the proposed transfer of destroyers to Great Britain in exchange for naval and air bases, the Attorney General of the United States in an opinion held as follows:

> "It is my opinion that the Chief of Naval Operations may, and should, certify under section 14(a) that such destroyers are not essential to the defense of the United States if in his judgment the exchange of such destroyers for strategic naval and air bases will strengthen rather than impair the total defense of the United States."

2. It is my opinion that an exchange of fifty overage destroyers for suitable naval and air bases on ninety-nine year leases in Newfoundland, Bermuda, the Bahamas, Jamaica, St. Lucia, Trinidad, Antigua, and in British Guiana, will strengthen rather than impair the total defense of the United States. Therefore, I certify that on the basis of such an exchange, and in accordance with the opinion of the Attorney General of the United States, the fifty (50) overage destroyers of the so-called twelve hundred ton type are not essential to the defense of the United States.

H R Stark

H. R. Stark
Admiral, U.S. Navy
Chief of Naval Operations

ARD FORM No. 14A
APPROVED BY THE PRESIDENT
MARCH 10, 1926

207

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

Hon. Stephen Early,
Care President's Special Train,
Hinton, W. Va.

Following just reached the White Ho

UNQOUTE.

Admiral Woodson advises signed copi

by Navy to Secretary of State and Att

R. F.

Signed copies have
been delivered by
Navy to Secy of
State and Atty Gen.

OFFICE OF
THE ATTORNEY GENERAL

PSF
Destroyers
for Bases
9/4/40

R. F.

Here 'tis.

Cummings.

PSF: Navy
(Destroyers-Bases)

Navy

In reply refer to Initials and No.

NAVY DEPARTMENT
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
WASHINGTON

6 September 1940

MEMORANDUM FOR THE PRESIDENT

Lord Lothian just sent the suggestion to me that Admiral Greenslade (who as you know is now in Bermuda, suggest to Admiral Kennedy Purvis, who is also now in Bermuda and who is in Command in the Bermuda West Indies area) ask Admiral Purvis to designate an officer from his Command to accompany Admiral Greenslade on the ST LOUIS and that they proceed to the remaining bases to the Southward for the preliminary investigations. It was suggested I call Lord Lothian back and give him a reply.

Not wishing to make any commitments along this line, without your o.k., I called Watson in order to get a directive. Watson suggested I send you a memorandum in as much as Lord Lothian has an appointment with you this afternoon and you might care to discuss it with him. I will do nothing, therefore, pending further directive from you.

It had been my thought and we are now proceeding on the basis that Greenslade would come back and report to you immediately after the Bermuda visit. I considered this first visit a rather vital one from the point of procedure and reaction from the British and wanted to get this before Greenslade and his Board started to the other areas.

Of course Greenslade could return here from Bermuda, report and then pick up an officer designated by Admiral Purvis and proceed to the other points.

The only other point in connection with the entire picture is that I had naturally assumed, when the British experts were finally selected, they would come over here for the final talks. It had not occurred to me otherwise. Admiral Potts, the British Naval Attache, told Walter Anderson this morning that he understood the final conversations were to be held in England, our people going over there. While there is no hurry about the decision in regard to this you might want to mention it to Lord Lothian this afternoon. Personally, I think these final conversations should be held here and would so recommend.

Betty.

IMPORTANT

PSF
Destroyers
for Bases File
personal
& confidential
Navy

DEPARTMENT OF STATE

DIVISION OF PROTOCOL

September 9,1940.

MEMORANDUM FOR THE WHITE HOUSE

A telegram has been received from the American Consul General at Hamilton, Bermuda, stating that Admiral Greenslade and the nine officers of the special mission to Bermuda, will arrive on the U.S.S. St. Louis at Norfolk, arriving Tuesday morning, September 10.

Consul General Beck adds that the officers are proceeding directly to Washington and requests that the President be so informed.

G. T. Summerlin
George T. Summerlin

Enclosure:
From Bermuda,
September 8,1940.

811.34544/55

PR:WOODWARD:MEM

EG

GRAY

Bermuda

Dated September 8, 1940

Rec'd 12:15 p.m.

Secretary of State,

Washington.

RUSH

September 8, noon.

Admiral Greenslade and nine officers of the special mission arriving on the USS ST. LOUIS at Norfolk early hour Tuesday morning tenth, request customs facilities in order to enable them to debark Hampton Roads immediately upon arrival for Washington. Inform President and Secretary of the Navy.

BECK

PEG

25047

PSF
Navy
J for B

October 31, 1940.

File
Personal
~~Confidential~~

~~CONFIDENTIAL~~

From: The Secretary of War.
The Secretary of the Navy.

To: The President of the United States.

Subject: Report of Board of Experts appointed in connection with the Acquirement of Naval and Air Bases from the British Government in the Western Hemisphere.

Enclosure: (A) Original Report of Board for bases in Bahama Islands.
(B) Modified draft of lease.

1. Enclosure (A) is forwarded herewith recommending that the President approve the report of the Board subject to minor modifications made in Enclosure (B), which is a draft lease putting into form for final action the substance of the Board's report.

2. The substituted draft of lease, Enclosure (B), follows the same form in so far as applicable as in the cases of the proposed leases at Bermuda and Newfoundland the form and substance of which were approved by the Attorney General of the United States.

3. Early approval of this lease is requested in order that the State Department may initiate action to obtain execution of the lease by the British Government.

Franklin D. Roosevelt Library
DECLASSIFIED
E.O. DIR. 5200.9 (9/27/58)
Date 10-7-63
Signature Carl A. Spicer

Henry L. Stimson

Frank Knox

13-44
ment No. 25047

PSF
Navy

D for B

Navy
1-40

October 31, 1940.

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DOD DIR 5200.9 (9/27/50)
Date 10-7-63
Signature Carl L. Spicer

CONFIDENTIAL

From: The Secretary of War.
The Secretary of the Navy.

To: The President of the United States.

Subject: Report of Board of Experts appointed in connection with the Acquirement of Naval and Air Bases from the British Government in the Western Hemisphere.

Enclosure: (A) Original Report of Board for bases in Bahama Islands.
(B) Modified draft of lease.

1. Enclosure (A) is forwarded herewith recommending that the President approve the report of the Board subject to minor modifications made in Enclosure (B), which is a draft lease putting into form for final action the substance of the Board's report.

2. The substituted draft of lease, Enclosure (B), follows the same form in so far as applicable as in the cases of the proposed leases at Bermuda and Newfoundland the form and substance of which were approved by the Attorney General of the United States.

3. Early approval of this lease is requested in order that the State Department may initiate action to obtain execution of the lease by the British Government.

Henry L. Stimson

Frank Knox

~~CONFIDENTIAL~~

Lease to the United States of America by His Majesty's Government in the United Kingdom of certain areas of land and water in Mayaguana, The Bahama Islands, B.W.I.

His Majesty's Government in the United Kingdom, being desirous at this time to execute in part the declarations made on its behalf by his Excellency The Right Honorable The Marquess of Lothian, C.H., British Ambassador Extraordinary and Plenipotentiary, in his communication of September 2, 1940, to the Government of the United States of America, a copy of which is hereto appended and made a part hereof, do by these presents to that end, make and execute the following:

His Majesty's Government hereby lease to the United States of America for the period of ninety-nine years from the date on which possession thereof shall be formally transferred, the following areas of land and water situated in Mayaguana, The Bahama Islands, B.W.I.:

(1) The waters of Abraham Bay and the adjacent land on the northwest shore extending from Start Point one and one-half miles to the northeastward for a width of one-half mile inland from the shoreline, the entire tract containing approximately five hundred acres.

(2) An area of about one and one-half square miles. (Reference: H.O. Chart 2805).

(3) The exact metes and bounds of the above described areas shall be established by survey.

The grant of the foregoing areas of land and water shall include the following:

(a) The right, power, and authority to use, fill, and occupy the waters adjacent to said areas and to improve and deepen the entrances thereto and the anchorages thereof and generally to do any and all things necessary to fit the premises for use as naval and air bases.

(b) Exclusive rights, power, authority and control within the aforesaid areas and within the territorial waters and air spaces adjacent to or in the vicinity of such areas except as hereinafter otherwise provided.

(c) The right, power, and authority to assume military control and conduct military operations within any part of Mayaguana and surrounding waters and air space to the extent which may become necessary or convenient for the protection of the property, instrumentalities and activities of the United States of America or otherwise to safeguard its national interests.

(d) The right, power and authority to control the anchorage, moorings, movements, communications and operations of whatever character of all ships and water bourne craft within the limits of the areas leased and the territorial waters adjacent thereto or in the vicinity of such areas to the extent that may be determined as necessary or convenient in the use, control and defense of such areas.

(e) The right, power and authority to control the anchorage, moorings, take-offs, flights, landings, movements, and operation of all aircraft within the limits of the areas leased and within the territorial waters and air spaces adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control and defense of such areas.

(f) The right, power, and authority to regulate and control all external and internal communications of whatever nature from, to and within the areas leased.

(g) The right, power, and authority to employ and use all commercial or public utilities, service and facilities, all roads, highways, bridges, viaducts, canals, and similar channels of transportation to the same extent and under the same conditions as His Majesty's Government.

(h) The right, power, and authority to install, maintain, and operate at such sites as may be necessary or convenient, armament, underwater defenses, including mines, nets, booms, sound detection, and other similar devices; control stations ashore, beacons, dispensary and first aid stations, lights, warning or detecting devices, and military police, to such

extent as may be found necessary or convenient in the use, control, and protection of the areas leased.

(i) The right, power, and authority to acquire by supplementary lease from His Majesty's Government for the unexpired period of this lease, without consideration other than just compensation to private owners, if any, additional areas, sites, locations and rights-of-way for auxiliary aircraft landing fields, roads, causeways, bridges, power lines, water mains, sewers and similar facilities to such extent as may be found necessary or convenient for the establishment, maintenance, use and protection of naval and air bases in the aforesaid leased areas.

(j) The right, power, and authority, without consideration other than just compensation to private owners, if any, to enter upon any property in the vicinity of the leased areas for the purpose of inspecting, clearing, draining or taking any other measures considered necessary or desirable to protect the health of personnel quartered or stationed within those areas.

(k) The right, power and authority to install, maintain and operate buoys, lighthouses and such other aides to navigation as may be determined to be necessary or desirable within the areas leased and the approaches thereto.

(l) The right, power, and authority for military and naval aircraft of the United States of America to use land plane and seaplane facilities in The Bahama Islands when and as conditions permit subject to the condition that similar facilities of the United States of America located in the Bahama Islands be made available to His Majesty's Government on like terms and conditions.

(m) The privilege of importing free from all dues, imposts, excises, tolls, customs, levies, or assessments of any nature whatever, all ships, boats, aircraft, arms, machinery, supplies, materials, equipment, clothing, household furnishings, provisions, goods, wares, merchandise and

articles similar to the aforesaid, consigned to or destined for any activity of the United States of America, its military, naval, or civil personnel and their families, contractors and their families, subject to the condition that articles so imported shall not be further sold or transferred to other interests in The Bahama Islands.

(n) The right, power, and authority to remove all improvements placed upon the leased areas at any time before the expiration or termination of this lease or of any renewal thereof or within a reasonable time thereafter.

The United States of America agrees that it will permit the exercise of present rights and privileges enjoyed in Abraham Bay by the people of Mayaguana and by inter island shipping subject to such reasonable control as may be prescribed by appropriate United States military or naval authority.

The United States of America shall be under no obligation to improve the leased areas in whole or in part for use as naval or air bases, nor to exercise any right, power, or authority herein granted; and if it shall make such improvements or exercise any such right, power, or authority it shall, nevertheless, have the privilege of abandoning any part or all of the foregoing at any time without consent of His Majesty's Government and without incurring any obligation by reason of such abandonment.

The United States of America shall be under no obligation or responsibility for the civil administration or defense of Mayaguana or any part thereof, or for the maintenance of military or naval forces within or without the leased areas.

Crimes and misdemeanors committed within the leased areas during the occupation and use thereof by the United States of America shall be punishable either by the United States or the colonial authorities in accordance with their respective laws, dependent upon which shall first acquire jurisdiction of the person of the offender; except that either government

may on request deliver the offender to the other for trial; that in all cases the colonial government shall bring to trial all offenders turned over to it by the United States upon request of the colonial authorities or otherwise, and that all offenders in the service of the United States, civil or military, shall on demand be apprehended and delivered to the government of the United States for trial whether or not the offense with which charged was committed within or without the leased areas; provided, that the colonial authorities shall not arrest any person or serve any process, civil or criminal, within the leased areas except upon application previously made to the commanding officer and approved by him: Provided further, that colonial laws of a regulatory nature, or which may otherwise interfere with the use of the leased premises by the United States, shall not be regarded as applicable within such areas.

His Majesty's Government undertake to deliver possession of all lands and facilities, including such as may be privately owned within the leased areas hereinbefore provided for, on such date as may be determined upon by the United States of America: Provided, that the United States of America shall pay to His Majesty's Government such sum or sums as may be mutually agreed upon to compensate the owners of private property for loss by expropriation or damage arising out of the establishment of naval or air bases in the leased areas.

Bahamas (2)

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Bahama #2

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U. S. S. ST. LOUIS,
Hamilton, Bermuda,
October 24, 1940.

From: Board of Experts on Naval and Air Bases in British Possessions in the Western Hemisphere.

To : The Secretary of the Navy.

Subject: Report of Board of Experts appointed in connection with the acquirement of Naval and Air Bases from the British Government. - Bahama Islands.

Reference: (a) Secretary of the Navy Confidential letter, dated September 3, 1940. (Copy attached to Report on Bermuda, Department file (SC) EF-13-44-Doc. 24049).
(b) Opnav despatch to U.S.S. ST. LOUIS, 032145, September, 1940. (Copy attached to Report on Bermuda).

Enclosure: (A) Reports of Reconnaissance.
(B) Marked Chart, H.O. 2805.
(C) Form and substance of Recommended Lease.

Appendix: (A) Chronological Record of Events.

1. In compliance with the directions of reference (a) and (b), the Board arrived at the Bahama Islands on October 2, 1940. The President of the Board and General Devers conferred with His Excellency, the Governor of the Bahamas, and other officials at Nassau.

2. Having considered the directions of the precept, the recommendations of the Joint Planning Committee of the Joint Board, and the position of the Bahamas relative to our established and prospective naval and air bases in Florida, Guantanamo, San Juan, and Bermuda, this Board is of the opinion that the chief importance of the Bahamas will be to provide a base for aircraft patrol and protection of the approaches to the Windward Passage about two hundred miles to the northeastward of Guantanamo. From the strategic point of view, therefore, the order of importance of islands, as to their locations, is as follows:

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Mayaguana.
Crooked Island.
San Salvador.
Long Island.
Rum Cay.
Eleuthera.

3. The Board desired to recommend a base on the eastern side of the Bahamas, which, in addition to having a favorable position relative to other established or prospective bases, would provide for the following:

(a) The operation of patrol planes for the surveillance of the Bahamas and the land and sea areas in the approaches to the Windward Passage.

(b) An advanced landing field from which to project air operations in support of the defense of the

above areas, and which would serve as a landplane staging point between the United States and the Caribbean area.

4. The Board conducted a reconnaissance of the Bahamas from the air, landings being made at Nassau, Hatchet Bay on Eleuthera, and Rum Cay. Limited seaplane facilities were found to exist at the Pan American Airport at Nassau on New Providence Island. There is an excellent landing field at Nassau now ready for operation, and an unused landing runway is located at Settlement Point on Grand Bahama Island. The existence of the foregoing aircraft facilities in the northern Bahama Islands and the total absence of aircraft facilities in the southern Bahama Islands are additional reasons for the importance and necessity of establishing a base in the latter area.

5. The best site for seaplane operations in the whole Bahama group was determined to be Abraham Bay on Mayaguana Island. As a result of its reconnaissance, the Board determined that an airplane landing field on Mayaguana was possible and determined what it believed to be the most likely areas. It requested and obtained the services of a party of engineers from the Fleet Marine Force stationed at Guantanamo and a destroyer, to make a close reconnaissance of the areas and to investigate the depths of water in Abraham Bay and channels entering it.

6. Upon receipt of the reconnaissance report (enclosure (A)), the Board considered it carefully and decided as follows:

(a) That Abraham Bay can be made, without undue expense, into an adequate seaplane base for the operation of twelve patrol planes, tender based.

(b) That the strategic location of Mayaguana and its geographical location with respect to Guantanamo, Port au Prince, and Jamaica, makes it a most desirable site for a landing field for Army aircraft.

(c) That the areas selected by the Board for a detailed reconnaissance by the engineers of the Fleet Marine Force are possibly not the best obtainable on the Island, and that a careful survey of the whole island will be required to determine the exact area in which a landing field for landplanes can most economically be constructed. Furthermore, the absence of cultivated areas, sizable villages, and roads will operate to make acceptable to the local authorities practically any site that may be so selected.

(d) Recreation facilities in this area, other than sea

bathing, are nil, nor is it suited as a training area for troops.

7. The Board, having completed its investigation of the Bahamas, recommends as follows:

A. That areas on Mayaguana in the Bahamas be acquired as follows:

Reference: H.O.Chart 2805. (Enclosure (B)).

(1) For seaplane base, with tender support for intermittent use. The metes and bounds of this area are as follows:

The waters of Abraham Bay and the adjacent land on the northwest shore extending from Start Point one and one-half miles to the northeastward for a width of one-half mile inland from the shoreline, the entire tract containing approximately five hundred acres.

(2) For an airplane landing field: - an area of about one and one-half square miles. The exact location, with metes and bounds, of this area to be determined after a careful engineering reconnaissance.

B. That permanent facilities be constructed on Mayaguana as follows:

(1) Seaplane ramp and parking area, fuel storage, caretakers quarters, facilities for housing crews of six patrol planes, magazines, and storehouses for the operation of twelve patrol planes, tender based.

(2) An airplane landing field with limited service facilities, quarters and other necessary facilities for a weather, radio and servicing detachment, and guard.

C. That the agreement with the British Government include a provision granting reciprocal rights to use existing landplane and seaplane facilities throughout the Bahamas.

D. That in the acquisition of the Bahama base, the rights, powers, and authority to be secured to the United States by the British Government be incorporated in a lease in substance and form transmitted as enclosure (C).

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Subject: Report of Board of Experts appointed in connection with the acquirement of Naval and Air Bases from the British Government. - Bahama Islands.

- -

E. That in the initial United States party visiting Mayaguana for establishing the bases there, be included a survey party to locate the landing field.

F. That, subject to the demands of military necessity, the present rights and privileges enjoyed in Abraham Bay, by the people of Mayaguana and by inter-island shipping, be not disturbed.

8. After receipt of the report of the investigations and survey conducted by the Fleet Marine Force Engineers and the U.S.S. HUGHES, the Governor of the Bahamas was informed by letter of proposed recommendations by the Board without reference to a later detailed survey. From the impressions received at the initial conference with the Governor, it is considered that the proposals of the Board will be acceptable to the local Bahaman Government.

9. His Excellency, the Governor, and other governmental officials were most helpful, frank, cordial and cooperative in aiding the investigations of the Board.

John W. Greenslade,
Rear Admiral, U. S. Navy, President.

Jacob L. Devers,
Major General, U. S. Army, Member.

Russell S. Crenshaw,
Captain, U. S. Navy, Member.

Duette W. Rose,
Captain, Supply Corps, U. S. Navy, Member.

Harry J. Malony,
Lieutenant Colonel, F.A., U. S. Army, Member.

Kendal B. Bragg,
Commander, Civil Engineer Corps, U. S. Navy, Member.

Calvin T. Durgin,
Commander, U. S. Navy, Member.

Omar T. Pfeiffer,
Lieutenant Colonel, U.S.Marine Corps, Member and Recorder.

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Signature- Carl S. Spicer

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Enclosure (A) to

Report on Bahama Islands

CDD4/(17)
H1

DESTROYER DIVISION FOUR
U.S.S. HUGHES (410), Flagship

~~RESTRICTED~~

San Juan, Puerto Rico,
October 17, 1940.

From: Commander Destroyer Division FOUR.
To : Admiral J. W. Greenslade, U.S.Navy.

Subject: Abraham Bay - Report of Reconnaissance Survey on.

Enclosure: (A) Verticle Mosaic Map.
(B) Sounding Chart.

1. The report of the reconnaissance survey of Abraham Bay is submitted herewith. This survey was conducted by the U.S.S. HUGHES and a party of Marine engineers commanded by Lt. Col. J. Lienhard, U.S.M.C. The mosaic map was prepared by VP-31, Lt.Comdr. C.A. Bond, commanding.

2. The survey was conducted on October 13 and 14, 1940. The mosaic map was not received until the afternoon of departure from the island, as bad weather had prevented the photography until October 12, 1940.

3. A more complete report covering land contours will be forwarded upon its receipt from Lt. Col. Lienhard.

4. Harbor.

(a) Depth of Water - The general depth of water throughout the harbor is sufficient for patrol plane operations aside from numerous coral heads. Depths run from two and one-half fathoms down to one fathom as the beach is approached.

(b) Coral Heads - As shown on the mosaic map, coral heads are numerous and are scattered throughout the harbor. The depth over these heads is about two feet. The surface is soft and a boat hook can be driven into them. It is believed that drilling into them and then blowing them up would be feasible. The natives disregard them in their schooners, as they say the heads crumble when hit by a schooner. They could easily be buoyed, but there are so many that it might be difficult to dodge them, particularly at night.

(c) Entrances - The northeast entrance is suitable for small boats. The southwest entrance is about three hundred yards wide and has a depth of about three and one-half fathoms.

(d) Anchorage - It is doubtful if there is sufficient water for a destroyer type tender to anchor safely. It would certainly be most difficult for her to turn around to head out should she be pointing wrong when she gets underway.

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(e) Beaches - All approaches to beaches are very shallow for three to four hundred yards out. A destroyer motor launch could not get closer than two hundred yards, and from there the men had to wade ashore. This would necessitate dredging a channel to the beach in the vicinity of the seaplane hangars, or else building a long pier out to the one fathom line with the ramp at the end of it.

5. Land Features.

(a) The photographic flight on October 12, after a period of heavy rains, showed a great deal of standing water in the area to the northward of the harbor. This was believed to be swamp land, but later investigation showed it to be water collected in large pockets in the rocky formation of the island. The depth of this water was as much as two feet.

(b) The Marine reconnaissance of the area on the westward side of the bay showed a rocky hill about forty feet in height extending parallel to and about three thousand feet back from the beach. The formation of the whole island seems to be rock, probably volcanic, and coral. There is no dirt at all. A landing field would have to either be blasted from the rock, or else rock would have to be blasted and crushed to make the necessary fills.

(c) Water - The amount available is insufficient to supply the demands a base of any size would make on it. They have wells and spring water, but this is probably rain water that has seeped down into the rocks. Some of the wells and springs run dry, but others do not.

(d) Food Supply - Local grown vegetables, mostly corn, and fish. No cattle on the island, and few pigs. Some chickens. Some beans, resembling chile beans, are exported to Nassau and are the only island export. Vegetables are grown from seeds planted in rock fissures in burned over areas.

(e) Timber - A limited supply of hard woods from trees eight to twelve inches in diameter and eight to ten inches tall. (Sic).

(f) Fuel - Wood, some charcoal, and kerosene for lights.

(g) Power - None.

6. Inhabitants.

(a) About two thousand negros. Clean and healthy. No malaria or other disease on the island other than catarrahal fever and colds in the winter. No venereal disease.

(b) Labor - About one hundred semi-skilled carpenters and boat builders. (These people build their own schooners). About four hundred unskilled laborers.

/s/ B. W. CHIPPENDALE

Enclosure A-2

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Marine Barracks,
Guantanamo Bay, Cuba.

October 15, 1940.

From: Lieutenant Colonel Jacob Lienhard, U.S.M.C.
To: The Commanding Officer, Advance Party, FMF.,
Guantanamo Bay, Cuba.

Subject: Reconnaissance of Mayaguana Island.

Reference: (a) Letter C.O.Adv.Party FMF to Admiral Greenslade.

1. The reconnaissance party, as directed by reference (a), arrived off the Island of Mayaguana about 0700 October 13, 1940 on board the USS Hughes (410) and departed via patrol plane at about 1430 October 14, 1940, for Guantanamo Bay, Cuba.

2. Upon returning aboard the USS Hughes, from the beach, on the 14th, the patrol planes had arrived and departed immediately, permitting insufficient time to assemble the field notes, sketches and to enter this data on the aerial mosaic. It was therefore impracticable to forward this report via the USS Hughes as directed. An aerial mosaic and some of the field notes were delivered to Commander Burton W. Chippendale, on board prior to our departure.

3. The following information of the Island, which was obtained from inspection and by questioning local officials, and other inhabitants, is submitted.

(1) LOCATION:
B.W.I. (See chart).

(2) HISTORY AND GOVERNMENT:
British Colonial Government.
There are no armed forces or defensive installations on the Island.

(3) STRATEGICAL AND TACTICAL VALUE:
Resources:
None. No machinery of any sort on the Island. Barely sufficient agricultural products for population.

Imports and exports:
None direct. Nassau is the port through which all commerce flows.

Agriculture:
The Islands only industry and is carried on by hand labor. There is no soil or grass on the Island. Areas are cleared of brush, burned on site, crops planted between rocks by means of a hole poked in the ground, with a "planting stick". The seeds are dropped in these holes. All fields are stone, with decayed vegetation, plus potash from wood ashes and some lime from burned coral stones, giving the so-called soil

sufficient richness to grow crops.
These fields show white on the photographs, due to the bleached rocks, most of which are coral, some appear to be volcanic and some plain rocks. Many of them are up to twenty feet in diameter. The entire area, except the sandy beach is covered with rocks. (See exhibits "A" and "B").

Industry:
Agriculture only.

(4) CLIMATE:

Seasons:
Summer, or dry season from April to September.
Winter, or rainy season from October to March.

Temperature:
Same as other West Indies Islands. No records kept.

Rainfall:
Normal for area. No records kept.

Storms:
Probably more storms than other nearby Islands. The last damaging hurricane was in 1936.

(5) WINDS:

Northeast winds prevail during summer months.
Northwest winds prevail during winter months.
Northeast winds prevail during morning hours.
Intensity and direction of winds about the same as Guantanamo Bay, Cuba.

Anchorages:
See survey by USS Hughes.

(6) POPULATION:

Abrahams Bay Settlement about 1000.
Pirates Well Settlement about 200.
Betsey's Bay Settlement about 500.
Other Settlements 300.
Total 2000.

Race:
Entire population, black English speaking negros.
No white man had set foot on Island since January.

Religion:
Baptist: (only one religion).

Labor:
Skilled; about 100 (skilled with saw and axe).

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Unskilled; about 400.
They build their own boats and schooners. Homes are now built of thick stone walls, without mortar and thatched roofs. A few board houses.

Schools:
All children are required to attend until reaching age of fourteen. There appears to be no illiteracy. Local teachers are employed.

(7) MISCELLANEOUS:

Local Government:
Administered by a Justice of the Peace, who has two assistants. Apparently the common law is used. There are no taxes collected.
Ishmael Forbes J.P. (Justice of the Peace) is the senior government official on the Island. Age 50, born on Turks Island, migrated to Inagua, thence to Mayaguana. A Colonial Commissioner residing in Matthew Town, Inagua, governs both Islands.

Courts, Police:
Justice of the Peace courts. One constable for entire Island.

Post Office:
Mails arrive and depart monthly via Government sailing schooner. Nassau is three days from Mayaguana, and Mayaguana is eight days from Nassau, due to northeast winds.

Radio:
Government maintains a very small and very old set. Batteries charged with a wind motor. During periods of calm by a very small gasoline driven generator.

Communications: (Interior).
By boat and foot only.

Roads:
None. Wide foot paths, built up at low points, with rocks. These paths between all settlements and some of the beaches.

Transportation:
The Island has three schooners (sail) about eight to fifteen tons, thirty to fifty feet in length, draft about six feet. There are a few small boats. There is no land transportation of any kind. All goods are carried on the heads of the inhabitants.

Motor vehicles, Wagons, Carts, etc.:
None: Not even a wheel barrow.

Horses:
None.

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Mules:
None.

Burros:
Two old pets.

Cattle:
None.

Sheep:
None.

Hogs:
About ten.

Fowl:
Limited number of chickens only.

Fish:
In sufficient quantities. Same specie as Cuba.

Vegetables:
All the common North American varities grow well during the winter months. Green vegetables for local use only. Red beans (small navy bean size) seem to be the pay, or export crop.

Fruits:
Very few bananas and plantins. No oranges or limes, a few grapefruit. Limited number of papaws (papaya). Only one coconut tree in Abrahams Bay Settlement. Very few elsewhere.

Corn:
Sufficient for own consumption. Eaten as grits.

Cane:
Very limited. Not ground. Eaten as a delicacy.

Sweet potatoes:
Sufficient for own consumption.

Beans:
Small red beans for export and home consumption. Green and pigeon peas in very limited quantities.

Timber; and other growth:
A scrub growth, from five to fifteen feet in height, covers the entire Island. This growth is about the same as is found at Guantanamo Bay. There is very little cactus. There is very little thorny growth of any kind.
Maderia, a native hardwood, grows in limited quantities along the north shore. Logs are claimed to be from twelve inches thick to ten feet in length. All trees along Abrahams Bay are much smaller.

Water, Lakes and Streams:
A few, open ground level wells, four feet deep

and three feet across, furnish the only drinking water. These seem to be catch basins for seepage water along the fissures in the rocks, rather than wells or springs, as called by the inhabitants. Most of these so-called wells dry up during the dry season. The few that have water at all seasons are known as springs. These wells produce barely sufficient water for the inhabitants. This water is NOT potable for our use. No other source of fresh water exists. There are no streams. The lakes shown on the mosaic are brakish, due to being at or near sea level. They fill during rainy season and dry up during the dry season.

Fuel:
Wood. Very little charcoal, which is used mainly for ironing and some cooking. Kerosene for lamps only.

Lights:
Kerosene lamps and lanterns.

Health:
Excellent. Common colds only. No doctors on the Island.

Mosquitoes:
Very numerous during the warm months of the rainy season. Apparently not malaria carriers. Thick during hours of daylight, especially in shade.

Flies:
Common housefly. Small specie. Not numerous. A few horse or deer flies.

Fleas:
Common sand flea, same as in Cuba.

Wood ticks:
A few on the few dogs on the Island.

Venereal diseases:
None: If contracted by a member of the schooner crew, or other person visiting Nassau, they are not permitted to return until cured.

Malaria and smallpox:
None.

Money, currency:
British and United States.

Stores:
None. Nothing is bought or sold on the Island. Some barter exists between individuals. All commercial transactions are made in Nassau

by the Captain and crew of the schooners, who go there once a month. They sell your produce and are your personal shoppers.

Saloons:
Seldom any liquor on the Island, although it is legal.

Recreation:
None.

(8) SEAPLANE BASE:

Water, depth, etc.:
There is sufficient depth for seaplanes to land and take-off in Abrahams Bay. The entire shoreline along the bay to a point from one thousand feet to fifteen hundred feet out into the bay is too shallow for seaplanes. Even at high tide seaplanes cannot come near the beach. (See exhibit "C"). Scattered soft coral areas make the water even more shallow. There are no local facilities, such as, piers, docks, wharves or deeper channels leading to a stream.

Wind:
Believed to be favorable at all seasons.

Slope and length of ramp:
See report of USS Hughes. Soundings of Bay.

Area for hangars and parking aprons:
Sufficient area for these installations anywhere along the bay.

Shelter from winds:
Harbor is on lee side of Island.

Type of soil along beach and ashore:
See landplane field report.

(9) LANDPLANE FIELD:

Site:
The two sites marked B C D E and F G H I on the hydrographic chart and on the mosaic of Abrahams Bay were inspected on 13 and 14 October, 1940. The following information regarding ground formations was obtained by visual inspection of the ground and by stereoscopic examination of vertical photographs of the area.

Area B C D E:

(1) Ground formations:
Sandy beach along entire front. From the shoreline the beach slopes upward for a distance of two hundred feet inland where it culminates in a sandy ridge about four feet above sea level. In rear of the sandy ridge the ground becomes a mixture of coral, lava, and ordinary rock formations. Seven hundred fifty feet inland there is a coral ridge running parallel to the shoreline and

having an elevation of about ten feet. In rear of the coral ridge the ground gradually slopes upward to the top of the coral, lava, and rock ridge about three thousand feet from the shore. This ridge is about three hundred feet wide at the top (See Exhibit B) and has an average elevation of about thirty-five feet. This ridge runs entirely through the area B C D E and is generally parallel to the shore. The north side of this ridge slopes off sharply and drops to an elevation of sixteen feet. The remaining area to the north in the six thousand foot square is fairly flat and has an elevation of roughly sixteen feet. To make a field on this site it would be necessary to blast the ridge, and do considerable filling and leveling. There is no earth available for filling. The ground is roughly ninety-five per cent rock formations which cannot be moved by a bulldozer.

(2) Growth:
The entire area is covered by scrub growth ten to fifteen feet high. The undergrowth is very thick and cannot be cleared by bulldozers.

Area F G H I:

(1) Ground formations:
Sandy beach along water front similar to area B C D E. The same lava-coral ridge runs along behind beach about three hundred feet inland. The remaining area in rear of coral ridge is fairly flat. There are, however, several large depressions from one hundred to one thousand feet in length which are filled with water during the rainy season. These areas show up plainly on the mosaic. They are not swamps as would appear from the photographs, but are lined with rocks. The depressions in this area would necessitate considerable filling. Again, there is no earth to use as a fill.

(2) Growth:
The same heavy growth prevails on this site as on area B C D E.

(10) CONCLUSIONS:
No area along the north shore of Abrahams Bay is considered suitable for a landplane field because of the following reasons:

(1) Ground formation is ninety-five per cent rock.

(2) No earth available for filling.

(3) Growth too heavy to be readily cleared.

(4) Ground is very uneven, which would necessitate much blasting and rock crushing.

(5) The type of sand on the beaches would not be suitable for use as a fill or in mixing concrete. It is a fine chalky substance with very little sharp sand.

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Lease to the United States of America by His Majesty's Government in the United Kingdom of certain areas of land and water in Mayaguana, The Bahama Islands, B.W.I.

His Majesty's Government in the United Kingdom, being desirous at this time to execute in part the declarations made on its behalf by his Excellency The Right Honorable The Marquess of Lothian, C.H., British Ambassador Extraordinary and Plenipotentiary, in his communication of September 2, 1940, to the Government of the United States of America, a copy of which is hereto appended and made a part hereof, do by these presents to that end, make and execute the following:

His Majesty's Government hereby lease to the United States of America for the period of ninety-nine years from the date on which possession thereof shall be formally transferred, the following areas of land and water situated in Mayaguana, The Bahama Islands, B.W.I.:

X ~~The metes and bounds of which are as follows:~~

(1) The waters of Abraham Bay and the adjacent land on the northwest shore extending from Start Point one and one-half miles to the northeastward for a width of one-half mile inland from the shoreline, the entire tract containing approximately five hundred acres.

(2) An area of about one and one-half square miles. [~~The exact location, with metes and bounds, of this area to be determined after a careful engineering reconnaissance.~~] (Reference: H.O. Chart 2805).

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(3) B.L.

The grant of the foregoing areas of land and water shall include the following:

Add (a) B.L. → **(a)** Exclusive rights, power, authority and control within the aforesaid areas and within the territorial waters

Enclosure (C)

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and air spaces adjacent to or in the vicinity of such areas except as hereinafter otherwise provided.

(b) The right, power and authority to assume military control and conduct military operations within any part of Mayaguana and surrounding waters and air space to the extent which may become necessary or convenient for the protection of the property, instrumentalities and activities of the United States of America or otherwise to safeguard its national interests.

(c) The right, power and authority to control the anchorage, moorings, movements, communications and operations of whatever character of all ships and water bourne craft within the limits of the areas leased and the territorial waters adjacent thereto or in the vicinity of such areas to the extent that may be determined as necessary or convenient in the use, control and defense of such areas.

(d) The right, power and authority to control the anchorage, moorings, take- offs, flights, landings, movements and operation of all aircraft within the limits of the areas leased and within the territorial waters and air spaces adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control and defense of such areas.

(e) The right, power and authority to regulate and control all external and internal communications of whatever ~~kind~~ nature from, to and within the areas leased.

(f) The right, power and authority to employ and use all commercial or public utilities, service and facilities, all roads, highways, bridges, viaducts canals and similar channels of transportation to the same extent and under the same conditions as His Majesty's Government.

(g) The right, power and authority to install, main-

tain and operate at such places and sites as may be necessary or convenient, either on land or in the water areas, breakwaters, underwater defenses, mines, nets, booms, sound detection and other similar devices, military police, armament, control stations, lights, warning and detecting devices and other similar facilities to the extent that may be found necessary or convenient in the use, control and protection of the areas leased.

(h) The right, power + authority to acquire by supplementary lease from His Majesty's Government for the unexpired period of this lease, without consideration other than just compensation to private owners, if any, additional areas, sites, locations and right-of-way for auxiliary aircraft landing fields, roads, causeways, bridges, power lines, water mains, sewers and similar facilities to such extent as may be found necessary or convenient for the establishment, maintenance, use and protection of naval and air bases in the aforesaid leased areas.

(i) The right, power, and authority, without consideration other than just compensation to private owners, if any, to enter upon any property in the vicinity of the leased areas for the purpose of inspecting, clearing, draining or taking any other measures considered necessary or desirable to protect the health of personnel quartered or stationed within those areas.

(j) The right, power and authority to install, maintain and operate buoys, lighthouses and such other aides to navigation as may be determined to be necessary or desirable within the areas leased, & the approaches thereto.

(k) The right, power and authority for military and naval aircraft of the United States of America to use land plane and seaplane facilities in The Bahama Islands when and as conditions permit subject to the condition that similar facilities of the United States of America

Enclosure (C) -3-

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located in the Bahama Islands be made available to His Majesty's Government on like terms and conditions.

(1) The right, power, and authority to import free from all dues, imposts, excises, tolls, customs, levies, or assessments of any kind whatever, all ships, boats, aircraft, arms, machinery, supplies, materials, equipment, clothing, household furnishings, provisions, goods, wares, merchandise and articles similar to the aforesaid, consigned to or destined for any activity of the United States, its employees, its contractors and the dependents of the foregoing residing or stationed in the leased areas, whether civil, naval or military, subject to the condition that any property so admitted will not be further sold or transferred to other interests in The Bahama Islands.

Subject to the demands of military and naval ~~necessity~~ the present rights and privileges enjoyed by the citizens of Mayaguana in Abraham Bay shall be preserved.

The United States of America shall be under no obligation to improve the leased areas in whole or in part for use as naval or air bases, nor to exercise any right, power or authority herein granted; and if it shall make such improvements or exercise any such right, power, or authority it shall, nevertheless, have the privilege of abandoning any part or all of the foregoing at any time without consent of His Majesty's Government and without incurring any obligation by reason of such abandonment.

The United States of America shall be under no obligation or responsibility for the civil administration or defense of Mayaguana or any part thereof, or for the maintenance of military or naval forces within or without the leased areas.

Enclosure (C) -4-

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Crimes and misdemeanors committed within the leased areas during the occupation and use thereof by the United States of America shall be punishable either by the United States or the colonial authorities in accordance with their respective laws, dependent upon which shall first acquire jurisdiction of the person of the offender; except that either government may on request deliver the offender to the other for trial; that in all cases the colonial government shall bring to trial all offenders turned over to it by the United States upon request of the colonial authorities or otherwise, and that all offenders in the service of the United States, civil or military, shall on demand be apprehended and delivered to the government of the United States for trial whether or not the offense with which charged was committed within or without the leased areas; provided, that the colonial authorities shall not arrest any person or serve any process, civil or criminal, within the leased areas except upon application previously made to the commanding officer and approved by him: Provided further, that colonial laws of a regulatory nature, or which may otherwise interfere with the use of the leased premises by the United States, shall not be regarded as applicable within such areas.

His Majesty's Government undertake to deliver possession of all lands and facilities, including such as may be privately owned within the leased areas hereinbefore provided for, on such date as may be determined upon by the United States of America: Provided, that the United States of America shall pay to His Majesty's Government such sum or sums as may be mutually agreed upon to compensate the owners of private property for loss by expropriation or damage arising out of the establishment of naval or air bases in the leased areas.

Enclosure (C)

(SC)EF13-44
Document No. 25046

PSF
Navy/
D+N B

October 31, 1940

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From: The Secretary of War.
The Secretary of the Navy.

To: The President of the United States.

Subject: Report of Board of Experts appointed in connection with the Acquirement of Naval and Air Bases from the British Government in the Western Hemisphere.

Enclosure: (A) Original Report of Board for bases in Jamaica.
(B) Modified draft of lease.

1. Enclosure (A) is forwarded herewith recommending that the President approve the report of the Board subject to minor modifications made in Enclosure (B), which is a draft lease putting into form for final action the substance of the Board's report.

2. The substituted draft of lease, Enclosure (B), follows the same form in so far as applicable as in the cases of the proposed leases at Bermuda and Newfoundland the form and substance of which were approved by the Attorney General of the United States.

3. Early approval of this lease is requested in order that the State Department may initiate action to obtain execution of the lease by the British Government.

Henry L. Stimson

Frank Knox

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Signature-Carl L. Spicer

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Lease to the United States of America by His Majesty's Government in the United Kingdom of certain areas of land and water in Jamaica, B.W.I.

His Majesty's Government in the United Kingdom, being desirous at this time to execute in part the declarations made on its behalf by his Excellency The Right Honorable The Marquess of Lothian, C. H. British Ambassador Extraordinary and Plenipotentiary, in his communication of September 2, 1940, to the Government of the United States of America, a copy of which is hereto appended and made a part hereof, do by these presents to that end, make and execute the following:

His Majesty's Government hereby lease to the United States of America for the period of ninety-nine years from the date on which possession thereof shall be formally transferred, the following areas of land and water situated in Jamaica, British West Indies:

(1) The waters of, and approaches to, Portland Bight, including Galleon Harbor, and Goat (Great and Little) Island and the adjacent bays; the land area included therein being approximately two square miles.
References: Chart H.O. 1683.

(2) Beginning at a point (about longitude seventy-seven degrees, zero minutes, thirteen seconds, west; latitude seventeen degrees, fifty-seven minutes, forty-eight seconds, north) on the road between Hartland's Post Office about one-fourth mile south of the railroad crossing; thence along a southeast line a distance of three statute miles; thence due south to the shoreline on Manatee Bay; thence generally west and northwest along the shoreline to the small inlet about one-fourth mile northwest of Church Pen Gully outlet; thence north to an intersection with the road between Bushy Park Station and the village of Old Harbor; thence generally east to the crossing of the road between Bushy Park Station and Hartland's Station with Coleburn's Gully; thence generally northeast along this road (exclusive) to the point of beginning, the entire tract containing approximately thirty-four square miles.
References: Map of The Plains of St. Catherine, scale two inches equal one mile.

(3) Beginning at the point on the southern shoreline of Portland Ridge (peninsula) where it is intersected by longitude seventy-seven degrees, twelve minutes, thirty seconds, west (approximately, longitude seventy-seven degrees, thirteen minutes, west, on the Map of Jamaica, 1926, P.W.D.); thence north along this longitude to the northern shoreline of Portland Ridge; thence generally east, south, and west along the shoreline to point of beginning, the entire tract containing approximately eighteen square miles.
Reference: Chart H.O. 1683; and Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.698 miles.

(4) Pigeon Island (An area of about fifty acres).
Reference: Chart H.O. 1683.

(5) Beginning at the point on the improved road between Rest and May Pen where it crosses the canal running southeast from Rhymsberry to Manningsfield, along the road generally southwest for a distance of one statute mile; thence generally southeast for one statute mile; thence generally northeast to the canal; thence along the canal (exclusive) northwest to point of beginning, the entire tract containing approximately one square mile.
Reference: Chart H.O. 1683; Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.698 miles.

(6) Beginning at the point where the road between Dunkold (approximately mile post 47) and Mandeville crosses the Jamaica Government Railroad, generally northwest along the railway right-of-way (exclusive) approximately eight hundred yards to fence line of Martin's Hill; thence west of south about one thousand yards to fence line; thence generally east along meandering fence line to fence corner; thence generally north along fence line to its intersection with the railway right-of-way; thence generally northwest along said right-of-way to point of beginning, the entire tract containing approximately two hundred twenty-five acres; provided that the highway right-of-way through the tract shall be excluded.
References: Untitled land map of area north of Mandeville, scale four inches equal one mile: and Map of the Parish of Manchester, scale one inch equals one mile.

(7) The exact metes and bounds of the above described areas shall be established by survey.

The grant of the foregoing areas of land and water shall include the following:

(a) The right, power, and authority to use, fill, and occupy the waters adjacent to said areas and to improve and deepen the entrances thereto and the anchorages thereof and generally to do any and all things necessary to fit the premises for use as naval and air bases.

(b) Exclusive rights, power, authority, and control within the aforesaid areas and within the territorial waters and air spaces adjacent to or in the vicinity of such areas except as hereinafter otherwise provided.

(c) The right, power, and authority to assume military control and conduct military operations within any part of Jamaica and surrounding waters and air space to the extent which may become necessary or convenient for the protection of the property, instrumentalities, and activities of the United States of America or otherwise to safeguard its national interests.

(d) The right, power, and authority to control the anchorage, moorings, movements, communications, and operations of whatever character of all ships within the limits of the areas leased, and the territorial waters adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control, and defense of such areas.

(e) The right, power, and authority to control the anchorage, moorings, take-offs, flights, landings, movements, and operation of all aircraft within the limits of the areas leased, and within the territorial waters and air spaces adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control, and defense of such areas.

(f) The right, power, and authority to regulate and control all external and internal communications of whatever nature from, to, and within the areas leased.

(g) The right, power, and authority to employ and use all commercial or public utilities, services, and facilities, all roads, highways, bridges, viaducts, and similar channels of transportation to the same extent and under the same conditions as His Majesty's Government.

(h) The right, power, and authority to install, maintain, and operate at such sites as may be necessary or convenient, armament, underwater defenses, including mines, nets, booms, sound detection, and other similar devices;

control stations ashore, beacons, dispensary and first aid stations, lights, warning or detecting devices, and military police, to such extent as may be found necessary or convenient in the use, control, and protection of the areas leased.

(i) The right, power, and authority to acquire by supplementary lease from His Majesty's Government for the unexpired period of this lease, without consideration other than just compensation to private owners if any, additional areas, sites, locations, and rights-of-way for auxiliary aircraft landing fields, roads, causeways, bridges, power lines, water mains, sewers and similar facilities to such extent as may be found necessary or convenient for the establishment, maintenance, use and protection of naval and air bases in the aforesaid leased areas.

(j) The right, power, and authority to use all public lands, areas, sites, forts, docks, piers, quays, berths, shops, repair facilities, arsenals, magazines, and hospitals to the extent which may become necessary or convenient for the protection of the property, instrumentalities, and activities of the United States, or otherwise to safeguard its national interests without compensation other than reimbursement of any additional cost directly resulting from such use.

(k) The right, power, and authority to repair, restore or construct on the site of the old naval station at Port Royal, on the Palisadoes Peninsula, shops, storehouses, piers, wharves, graving docks and other similar facilities useful and convenient for the supply, maintenance and repair of naval vessels, auxiliaries and similar craft. The foregoing facilities may be used jointly and on equal terms, within the limit of their capacity, when and as conditions permit, by the two contracting governments. The United States of America undertakes to preserve, in the foregoing development, in so far as may be convenient and practicable, features of historic interest.

(l) The right, power, and authority, without consideration other than just compensation to private owners if any, to enter upon any property in

the vicinity of the leased areas for the purpose of inspecting, clearing, draining or taking any other measures considered necessary or desirable to protect the health of personnel quartered or stationed within those areas.

(m) The right, power, and authority to take over and operate lighthouses in the Portland Bight area and to install and operate such additional navigational aides and devices as may be considered necessary or desirable.

(n) The right, power, and authority to control the entrance into and egress from Portland Bight of all types of craft, surface, subsurface, and air. The United States of America in exercising the foregoing right, power, and authority, undertakes to preserve, in so far as may be consistent with naval and military convenience, the freedom of movement of public and private vessels of any government of the British Empire or the nationals of any government of the British Empire.

(o) The right, power, and authority for military and naval aircraft of the United States to use the public airfields in Jamaica when and as conditions permit within the capacity of these facilities, subject to the provisions that the air craft landing fields and facilities of the United States of America, in Jamaica, be made available to His Majesty's Government on similar terms and conditions.

(p) The privilege of importing free from all duns, imposts, excises, tolls, customs, levies, or assessments of any nature whatever, all ships, boats, aircraft, arms, machinery, supplies, materials, equipment, clothing, household furnishings, provisions, goods, wares, merchandise and articles similar to the aforesaid, consigned to or destined for any activity of the United States of America, its military, naval, or civil personnel and their families, contractors and their families, subject to the condition that articles so imported shall not be further sold or transferred to other interests in Jamaica.

(c) The right, power, and authority to remove all improvements placed upon the leased areas at any time before the expiration or termination of this lease or of any renewal thereof or within a reasonable time thereafter.

The United States of America shall be under no obligation to improve the leased areas in whole or in part for use as naval or air bases, nor to exercise any right, power, or authority herein granted; and if it shall make such improvements or exercise any such right, power, or authority it shall, nevertheless, have the privilege of abandoning any part or all of the foregoing at any time without consent of His Majesty's Government and without incurring any obligation by reason of such abandonment.

The United States of America shall be under no obligation or responsibility for the civil administration or defense of Jamaica or any part thereof, or for the maintenance of military or naval forces within or without the leased areas.

Crimes and misdemeanors committed within the leased areas during the occupation and use thereof by the United States of America shall be punishable either by the United States or the colonial authorities in accordance with their respective laws, dependent upon which shall first acquire jurisdiction of the person of the offender; except that either government may on request deliver the offender to the other for trial; that in all cases the colonial government shall bring to trial all offenders turned over to it by the United States upon request of the colonial authorities or otherwise, and that all offenders in the service of the United States, civil or military, shall on demand be apprehended and delivered to the government of the United States for trial whether or not the offense with which charged was committed within or without the leased areas; provided, that the colonial authorities shall not arrest any person or serve any process, civil or criminal, within the leased areas except upon application previously made to the commanding officer and approved by him: Pro-

vided further, that colonial laws of a regulatory nature, or which may otherwise interfere with the use of the leased premises by the United States, shall not be regarded as applicable within such areas.

His Majesty's Government undertake to deliver possession of all lands and facilities, including such as may be privately owned within the leased areas hereinbefore provided for, on such date as may be determined upon by the United States of America: Provided, that the United States of America shall pay to His Majesty's Government such sum or sums as may be mutually agreed upon to compensate the owners of private property for loss by expropriation or damage arising out of the establishment of naval or air bases in the leased areas.

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U. S. S. ST. LOUIS,
Passage Kingston, Jamaica,
to Port of Spain, Trinidad,
October 9, 1940.

From: Board of Experts on Naval and Air Bases in British Possessions in the Western Hemisphere.

To : The Secretary of the Navy.

Subject: Report of Board of Experts appointed in connection with the acquirement of Naval and Air Bases from the British Government. - Jamaica.

Reference: (a) Secretary of the Navy Confidential letter, dated September 3, 1940. (Copy attached to Report on Bermuda, Department file (SC) EF-13-44-Doc.24049).
(b) Opnav despatch to U.S.S. ST. LOUIS, 032145, September, 1940. (Copy attached to Report on Bermuda).

Enclosure: (A) Notes on Facilities for Base at Old Harbor.
(B) Marked Chart of Portland Bight, H.O. 1683.
(C) Marked Map of the Plains of St. Catherine.
(D) Substance and Form of Recommended Lease.
(E) Memorandum to His Excellency, the Governor of Jamaica, dated October 7, 1940.

Appendix: (A) Chronological Record of Events.

1. In compliance with the directions of reference (a) and (b), the Board arrived at Kingston, Jamaica, on October 4, 1940. The Board conferred with His Excellency, the Governor of Jamaica, the senior British naval and military officers present in Kingston, and the Director of the Public Works Department.

2. Guided by the directions in the precept, by the recommendations of the Joint Planning Committee of the Joint Board, and having in mind the position of Jamaica relative to established and prospective United States bases in the Caribbean area, it was decided to investigate areas for the following:

A. FLEET ANCHORAGE:

(1) Location: Southern Coast.

(2) Facilities for:

Secure anchorage for the U.S. Fleet.

Limited docking, repair, and refueling.

Local defense.

Recreation on shore (include in Army estimate).

B. NAVAL AIR BASE:

(1) Location: Southern Coast.

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(2) Facilities for operation, maintenance, and local defense, for two patrol plane squadrons (24 planes) with tender support.

(3) Landing field for two carrier groups (150 landplanes) (to use Army field, and consequently to be included in Army area estimate).

(4) Magazine area for storage of aircraft bombs and ammunition - about 100 acres.

C. ARMY FORCES AND FACILITIES:

(1) Shore defense of Fleet anchorage and Naval Air Base. NOTE: Permanent strength and material dependent upon reconnaissance.

(2) Airfields adequate for a permanent air force of one squadron heavy bombardment aviation, capable of being expanded to permit the dispersed employment of one composite wing. NOTE: Naval landing field requirements of carrier based planes would also be met by these fields.

(3) The Board further decided to investigate the possibilities of Jamaica for use as a supply base and as a hospitalization and replacement center.

3. On September 7, 1940, at a conference in Bermuda, the Board had outlined the foregoing requirements as to Jamaica to the Vice Admiral commanding the American and British West Indies Station. At the request of the Vice Admiral, the authorities in Jamaica made a study with a view to determining how those requirements of the United States might best be met. On the arrival of the Board in Jamaica, the local authorities furnished it with a copy of that study. The local study, enclosure (A), was of great value in facilitating and expediting the work of the Board.

4. The Board reconnoitered the Portland Bight, Kingston, and Port Royal areas from the air, from the water, and from the ground; viewed the entire coast line from the air; examined mountain resort and upland areas from the ground; and inspected the main roads and the railroad.

5. As the result of the above reconnaissance, the Board submits the following pertinent observations:

A. Portland Bight will furnish an excellent fleet anchorage, with entrances capable of being protected by shore batteries and a moderate system

of nets and obstructions. Galleon Harbor, in the northern part of Portland Bight, provides an excellent, well protected seaplane take-off and landing area, with the long axis in the direction of the prevailing wind. The land to the northeast of Galleon Harbor is swampy for a short distance inland, it then becomes a level plain with little cultivation and adaptable for landing fields and storage areas. The area eastward and southeastward from Galleon Harbor is swampy and hilly, and not at present in use. The shore of Portland Bight, from the northern end of Goat Island westward and southward to Portland Ridge Peninsula, is occupied by fishing and farming communities, cane fields, and salt ponds. Goat Island is uninhabited, partly swampy and partly hilly, but capable of development.

B. The airfield on the Palisadoes, between Kingston and Port Royal, has two completed runways of white limestone and marl, each 3,000 feet by 150 feet, with no other facilities. The runways are not over one foot above extreme high water. Further development of the field is planned by the British Government. At present this is the only landing field in Jamaica, and the Pan American Airways seaplanes, using a small base at the eastern end of Kingston Harbor, are the only airplanes operating in Jamaica.

C. The Port Royal Dockyard was badly wrecked by an earthquake in 1907 and no attempt was made to reestablish its facilities, Bermuda having been made the base of the British West Indian Squadron. The dockyard had been important in the days of sailing ships, and contains many relics of those days in old equipment and facilities. The site is excellent, on navigable water, and some of the buildings are capable of restoration, so as to furnish a repair yard of limited capacity. There is no graving dock nor marine railway. The only ship repair facilities in Jamaica are at the railroad machine shop and other minor shops in Kingston.

D. The highways and railroad (standard guage) were found to be adequate and in satisfactory condition. The railroad capacity can be made equal to the tasks contemplated in the base requirements, by the addition of standard rolling stock. The area around Portland Bight, in common with other lowland areas of southern Jamaica, is malarial; however, the Board notes that the incidence of malaria in this area is no greater than in Kingston. The upland and mountainous

areas of Jamaica have lower temperatures and more healthful conditions than are usually found in the tropics. A resort for the recuperation and rest of the personnel of United States forces in the Caribbean area might well be established in Jamaica.

6. The Board, having concluded its investigation, submits the following recommendations:

A. That areas in Jamaica (see enclosure (B)) be acquired as follows:

(1) For a fleet anchorage and facilities, and for seaplane operation:

Reference: Chart H.O. 1683.

The waters of, and approaches to, Portland Bight, including Galleon Harbor, and Goat (Great and Little) Island and the adjacent cays; the land area included therein being approximately two square miles.

NOTE: The Board noted certain discrepancies between Hydrographic Chart No.1683, and the British Admiralty Chart covering the same area.

(2) For shore facilities of a naval and air station; for airfields, storage, recreation and training, magazines, quarters, etc., for Army and Naval forces; and for shore defenses on the eastern side of Portland Bight. The metes and bounds of this area are approximately as follows:

Reference: Map of The Plains of St. Catherine, scale two inches equal one mile (see enclosure (C)).

Beginning at a point (about longitude seventy-seven degrees, zero minutes, thirteen seconds, west; latitude seventeen degrees, fifty-seven minutes, forty-eight seconds, north) on the road between Hartland's Post Office about one-fourth mile south of the railroad crossing; thence along a southeast line a distance of three statute miles; thence due south to the shoreline on Manatee Bay; thence generally west and north-

west along the shoreline to the small inlet about one-fourth mile northwest of Church Pen Gully outlet; thence north to an intersection with the road between Bushy Park Station and the village of Old Harbor; thence generally east to the crossing of the road between Bushy Park Station and Hartland's Station with Coleburn's Gully; thence generally northeast along this road (exclusive) to the point of beginning, the entire tract containing approximately thirty-four square miles.

(3) For shore defense batteries on the western side of Portland Bight and for installation of target ranges and other facilities. The metes and bounds of this area are approximately as follows:

Reference: Chart H.O. 1683; and Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.696 miles.

NOTE: The latter map is available in the Bureau of Yards and Docks, Navy Department.

Beginning at the point on the southern shoreline of Portland Ridge (peninsula) where it is intersected by longitude seventy-seven degrees, twelve minutes, thirty seconds, west (approximately, longitude seventy-seven degrees, thirteen minutes, west, on the Map of Jamaica, 1926, P.W.D.); thence north along this longitude to the northern shoreline of Portland Ridge; thence generally east, south, and west along the shoreline to point of beginning, the entire tract containing approximately eighteen square miles.

(4) For accommodating shore defense batteries in the middle of the entrances to Portland Bight:

Reference Chart H.O. 1683.

Pigeon Island (An area of about fifty acres).

(5) For an emergency and auxiliary landing field. The metes and bounds of this area are approximately as follows:

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Subject: Report of Board of Experts appointed in connection with the acquirement of Naval and Air Bases from the British Government. - Jamaica.

- -

Reference: Chart H.O. 1683; Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.698 miles.

NOTE: The latter map is available in the Bureau of Yards and Docks, Navy Department.

Beginning at the point on the improved road between Rest and May Pen where it crosses the canal running southeast from Rhymsberry to Manningsfield, along the road generally southwest for a distance of one statute mile; thence generally southeast for one statute mile; thence generally northeast to the canal; thence along the canal (exclusive) northwest to point of beginning, the entire tract containing approximately one square mile.

(6) For purposes of recreation and hospitalization. The metes and bounds of this area are approximately as follows:

Reference: Untitled land map of area north of Mandeville, scale four inches equal one mile; and Map of the Parish of Manchester, scale one inch equals one mile.

NOTE: The above maps are available in the Bureau of Yards and Docks, Navy Department.

Beginning at the point where the road between Dunkeld (approximately mile post 47) and Mandeville crosses the Jamaica Government Railroad, generally northwest along the railway right-of-way (exclusive) approximately eight hundred yards to fence line of Martin's Hill; thence west of south about one thousand yards to fence line; thence generally east along meandering fence line to fence corner; thence generally north along fence line to its intersection with the railway right-of-way; thence generally northwest along said right-of-way to point of beginning, the entire tract containing approximately two hundred twenty-five acres; provided that the highway right-of-way through the tract shall be excluded.

NOTE: Tract is a part of Martin's

Hill, owned by W. H. Coke; owner's attorney: E. W. Muirhead.

B. That construction of facilities on the above sites provide for the following:

(1) PORTLAND BIGHT; - Eastern Area and Goat Island.

Naval station for fleet services and naval local defense forces.

Seaplane ramps and parking area for twenty-four patrol planes with tender support.

Recreation and target range facilities for fleet personnel.

Repair facilities for two squadrons of destroyers and one squadron of submarines - inclusive of any repair facilities established at Port Royal Dockyard.

Floating dry dock for destroyer leaders.

Net depot and net and boom defenses, and listening posts for harbor entrance defense.

Magazines.

Landing field for joint Army and Navy use.

Docks and railroad facilities for handling stores for Army and Navy forces.

Permanent post and training areas for:

One regiment of infantry (less two battalions) reinforced to include the necessary harbor defense and anti-aircraft units (capable of ready expansion to accommodate one division reinforced).

One composite group capable of expansion to one composite wing; and

Supply point for Army garrison, capable of ready expansion to meet full base needs for the Caribbean Theater.

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(2) Portland Ridge Peninsula.

Necessary harbor defense, anti-aircraft, and aircraft warning service installations. (Note: Part of garrison listed under sub-paragraph (1) above).

Bombing ranges for Army and Navy airplanes.

(3) Pigeon Island.

Necessary harbor defense and anti-aircraft installations. (Note: Part of permanent garrison listed under sub-paragraph (1) above).

(4) Rest - May Pen Area.

Runways, minor servicing facilities, and caretakers quarters, for auxiliary landing field. (Joint Army - Navy).

(5) Martin's Hill Area.

(1) Joint Army - Navy.

Permanent quarters for one-third the permanent military and civilian personnel of the Army garrison and the Naval Station.

Tent camp accommodations for rest and recreation for 1000 officers and men.

Recreational facilities for above.

(Note: The whole area when and if required may form a Hospital Center for the Caribbean Theater).

C. That the agreement with the British Government include the following provisions:

(1) That there will be reciprocal use of landing fields on Jamaica, when and as conditions permit.

(2) That the United States is granted the right to develop the resources and facilities of the Port Royal Dockyard, subject to reciprocal use by British and United States forces, when and as conditions permit, and subject to the condition that the development will preserve those

features of historic interest in the dockyard.

(3) That, in connection with the control to be exercised by the United States in Portland Bight, the right of entry of British vessels and the customary rights of fishermen and of industries on the north and west shores of the Bight, and on Pigeon Island, will be preserved in so far as consistent with military necessity.

(4) That the United States take over, maintain, and operate the present Government owned lighthouses in the leased areas and within the Portland Bight area.

(5) That the United States shall have the right to install, maintain, and operate additional aids to navigation to and within Portland Bight.

(6) That devices and facilities may be installed at the entrance to Portland Bight, when and as deemed necessary by the United States for the defense of its holdings therein.

D. That, in the acquisition of the bases outlined herein, the rights, powers, and authority to be secured to the United States by the British Government be incorporated in a lease in substance and form herewith transmitted as enclosure (D).

E. That the entire project in Jamaica for the construction of shore facilities, be carried out as a joint Army and Navy project to the end that no facilities be unnecessarily duplicated.

F. That, in the necessary construction, local labor and building materials be used to the maximum extent practicable.

G. That immediate steps be undertaken to improve the sanitation of the area to be leased in the vicinity of Portland Bight, and to prepare it for occupancy.

7. On October 7, 1940, a final conference was held with His Excellency, the Governor, the senior naval and military officers, the Colonial Secretary, the Director of Public Works, and the Medical Director General of Jamaica. The proposed recommendations of this Board were furnished His Excellency in the form of a memorandum, enclosure (E). Complete concurrence in the proposals of the Board was expressed by His Excellency and his advisers. His Excellency expressed his intention of communicating such concurrence to the British Government and to the British Ambassador at Washington.

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8. His Excellency and the local military, naval, and other governmental officials were most helpful, cooperative, frank, and cordial in aiding the investigations of the Board.

John W. Greenslade,
Rear Admiral, U. S. Navy, President.

Jacob L. Devers,
Major General, U. S. Army, Member.

Russell S. Crenshaw,
Captain, U. S. Navy, Member.

Duette W. Rose,
Captain, Supply Corps, U. S. Navy, Member.

Harry J. Malony,
Lieutenant Colonel, F.A., U. S. Army, Member.

Kendal B. Bragg,
Commander, Civil Engineer Corps, U. S. Navy, Member.

Calvin T. Durgin,
Commander, U. S. Navy, Member.

Omar T. Pfeiffer,
Lieutenant Colonel, U.S.Marine Corps, Member and Recorder.

NOTES ON FACILITIES FOR BASE AT OLD HARBOUR.

(1) NAVAL REQUIREMENTS.

(a) Anchorage. Portland Bight is considered capable of adequate defence and would provide a good anchorage for a large fleet.

No other port in Jamaica except Kingston is suitable for even a limited fleet anchorage.

(b) Defences. Sites for seaward defences could be made available from Polink Point to Portland Point. All cays in the approaches to the Bight could be used for ancillary defence purposes if required, and this also applies to Pigeon Island, where it should not be necessary to interfere with a small salt industry.

(c) Docking facilities. Sheltered docking facilities could be developed from the North-West end of Little Goat Island, if necessary by extention between this and Careening Island, or Tela Island, dependant on relative cost of considerable dredging and/or filling in. Development on this side probably preferable to similar facilities on mainland to East of Old Harbour Bay.

(d) Aircraft Facilities. Five alternative sites suitable on mainland to North and East of Goat Island and South of Spanish Town - Old Harbour Railway.

No difficulty anticipated in acquiring land and making necessary reservations. Galleon Harbour very suitable for flying boat operations.

(e) Buildings. Goat Island is suitable for building purposes. Storehouses, workshops, etc., could be sited on the low land adjoining the harbour, and living quarters on the seaward slopes, to take advantage of the prevailing breeze.

Magazines and other storage spaces could be excavated in the hillside.

Local information indicates the probability of being able to obtain fresh water by sinking wells.

(2) ARMY REQUIREMENTS.

(a) Wharfage facilities. Can be combined with the docking facilities outlined in (1) (c) above, or alternatively installed on the mainland immediately East of Old Harbour Village.

(b) Supply Base. Alternative sites exist on Goat Island and on the mainland. In the event of it being considered desirable to erect the wharves on Goat Island, where less dredging is required and the Supply Base on the mainland it is believed feasible to connect the two by a bridge carrying a railway.

(c) Anti-Aircraft Units. It is not possible, on the information available, to define the area required, the extent of which would depend on the system of air defence and the type of weapons to be used. It is anticipated, however, that ample ground for this purpose is available in the area under consideration.

(d) Aerodromes. Alternative sites are available as outlined in (1) (d) above.

(3) GENERAL.

(a) The Western side of Portland Bight is not recommended on account of exposure to prevailing South-Easterly Wind and swell.

No ready-made facilities are available.

It is considered undesirable and unnecessary to interfere with the vicinity of Old Harbour Bay Fishing Village or Salt River Bay Sugar Industry.

(b) It is probable that in addition to the Goat Island area and adjacent ground on the mainland, which would form one enclave, the United States of America will require a portion of Portland Ridge to establish a fort thereon for defence of the harbour entrance.

(c) It is understood that the area on the mainland adjacent to Goat Island is at present malarious and both draining and filling in of swamps would be necessary.

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Lease to the United States of America by His Majesty's Government in the United Kingdom of certain areas of land and water in Jamaica, B.W.I.

His Majesty's Government in the United Kingdom, being desirous at this time to execute in part the declarations made on its behalf by his Excellency The Right Honorable The Marquess of Lothian, C.H., British Ambassador Extraordinary and Plenipotentiary, in his communication of September 2, 1940, to the Government of the United States of America, a copy of which is hereto appended and made a part hereof, do by these presents to that end, make and execute the following:

His Majesty's Government hereby lease to the United States of America for the period of ninety-nine years from the date on which possession thereof shall be formally transferred, the following areas of land and water situated in Jamaica, British West Indies:

(1) The waters of, and approaches to, Portland Bight, including Galleon Harbor, and Goat (Great and Little) Island and the adjacent cays; the land area included therein being approximately two square miles.

Reference: Chart H.O. 1683.

(2) Beginning at a point (about longitude seventy-seven degrees, zero minutes, thirteen seconds, west; latitude seventeen degrees, fifty-seven minutes, forty-eight seconds, north) on the road between Hartland's Post Office about one-fourth mile south of the railroad crossing; thence along a southeast line a distance of three statute miles; thence due south to the shoreline on Manatee Bay; thence generally west and northwest along the shoreline to the small inlet about one-fourth mile northwest of Church Pen Gully outlet; thence north to an intersection with the road between Bushy Park Station and the village of Old Harbor; thence generally east to the crossing of the road between Bushy Park Station and Hartland's Station with Coleburn's Gully; thence generally northeast along this road (exclusive) to the point of beginning, the entire tract containing approximately thirty-four square miles.

Reference: Map of The Plains of

St. Catherine, scale two inches equal one mile.

(3) Beginning at the point on the southern shoreline of Portland Ridge (peninsula) where it is intersected by longitude seventy-seven degrees, twelve minutes, thirty seconds, west (approximately, longitude seventy-seven degrees, thirteen minutes, west, on the Map of Jamaica, 1926, P.W.D.); thence north along this longitude to the northern shoreline of Portland Ridge; thence generally east, south, and west along the shoreline to point of beginning, the entire tract containing approximately eighteen square miles.

Reference: Chart H.O. 1683; and Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.698 miles.

(4) Pigeon Island (An area of about fifty acres).

Reference: Chart H.O. 1683.

(5) Beginning at the point on the improved road between Rest and May Pen where it crosses the canal running southeast from Rhymsberry to Manningsfield, along the road generally southwest for a distance of one statute mile; thence generally southeast for one statute mile; thence generally northeast to the canal; thence along the canal (exclusive) northwest to point of beginning, the entire tract containing approximately one square mile.

Reference: Chart H.O. 1683; Map of Jamaica, corrected to 1926, P.W.D. scale one inch equals 2.698 miles.

(6) Beginning at the point where the road between Dunkeld (approximately mile post 47) and Mandeville crosses the Jamaica Government Railroad, generally northwest along the railway right-of-way (exclusive) approximately eight hundred yards to fence line of Martin's Hill; thence west of south about one thousand yards to fence line; thence generally east along meandering fence line to fence corner; thence generally north along fence line to its intersection with the railway right-of-way; thence generally northwest along said right-of-way to point of beginning,

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the entire tract containing approximately two hundred twenty-five acres; provided that the highway right-of-way through the tract shall be excluded.

Reference: Untitled land map of area north of Mandeville, scale four inches equal one mile: and Map of the Parish of Manchester, scale one inch equals one mile.

The grant of the foregoing areas of land and water shall include the following:

(a) The right, power, and authority to use, fill, and occupy the waters adjacent to said areas and to improve and deepen the entrances thereto and the anchorages thereof and generally to do any and all things necessary to fit the premises for use as naval and air bases.

(b) Exclusive rights, power, authority, and control within the aforesaid areas and within the territorial waters and air spaces adjacent to or in the vicinity of such areas except as hereinafter otherwise provided.

(c) The right, power, and authority to assume military control and conduct military operations within any part of Jamaica and surrounding waters and air space to the extent which may become necessary or convenient for the protection of the property, instrumentalities, and activities of the United States of America or otherwise to safeguard its national interests.

(d) The right, power, and authority to control the anchorage, moorings, movements, communications, and operations of whatever character of all ships within the limits of the areas leased, and the territorial waters adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control, and defense of such areas.

(e) The right, power, and authority to control the anchorage, moorings, take-offs, flights, landings, movements, and operation of all aircraft within the limits of the areas leased, and within the territorial waters and air spaces adjacent to or in the vicinity of such areas, to such extent as may be found necessary or convenient in the use, control, and defense of such areas.

(f) The right, power, and authority to regulate and control all external and internal communications of whatever nature from, to, and within the areas leased.

(g) The right, power, and authority to employ and use all commercial or public utilities, services, and facilities, all roads, highways, bridges, viaducts, and similar channels of transportation to the same extent and under the same conditions as His Majesty's Government.

(h) The right, power, and authority to install, maintain, and operate at such sites as may be necessary or convenient, armament, underwater defenses, including mines, nets, booms, sound detection, and other similar devices; control stations, lights, warning or detecting devices, and military police, to such extent as may be found necessary or convenient in the use, control, and protection of the areas leased.

(i) The right, power + authority to acquire by supplementary lease from His Majesty's Government for the unexpired period of this lease, without consideration other than just compensation to private owners if any, additional areas, sites, locations, and right-of-way for auxiliary aircraft landing fields, roads, causeways, bridges, power lines, water mains, sewers and similar facilities to such extent as may be found necessary or convenient for the establishment, maintenance, use and protection of naval and air bases in the aforesaid leased areas.

(j) The right, power, and authority to repair, restore or construct on the site of the old naval station at Port Royal, on the Palisadoes Peninsula, shops, storehouses, piers, wharves, graving docks and other similar facilities useful and convenient for the supply, maintenance and repair of naval vessels, auxiliaries and similar craft. The foregoing facilities may be used jointly and on equal terms, within the limit of their capacity, when and as conditions permit, by the two contracting governments. The United States of America undertakes to preserve, in the foregoing development, in so far as may be convenient and practicable, features of historic interest.

(k) The right, power, and authority, without consideration other than just compensation to private owners if any, to enter upon any property in the vicinity of the leased areas for the purpose of inspecting, clearing, draining or taking any other measures considered necessary or desirable to protect the health of personnel quartered or stationed within those areas.

(l) The right, power, and authority to take over and operate lighthouses in the Portland Bight area and to install and operate such additional navigational aides and devices as may be considered necessary or desirable.

(m) The right, power, and authority to control the entrance into and egress from Portland Bight of all types of craft, surface, subsurface, and air.

The United States of America in exercising the foregoing right, power and authority, undertakes to preserve, in so far as may be consistent with naval and military necessity, the freedom of movement of public and private vessels of any government or the nationals of any government of the British Empire.

(n) The right, power, and authority to import free from all dues, imports, excises, tolls, customs, levies, or assessments of any nature whatever, all ships, boats, aircraft, arms, machinery, supplies, materials, equipment, clothing, household furnishings, provisions, goods, wares, merchandise and articles similar to the aforesaid, consigned to or destined for any activity of the United States, its employees, its contractors and the dependents of the foregoing residing or stationed in the leased areas, whether civil, naval or military, subject to the condition that any property so admitted will not be further sold or transferred to other interests in Jamaica.

The United States of America shall be under no obligation to improve the leased areas in whole or in part for use as naval or air bases, nor to exercise any right, power, or authority herein granted: and if it shall make such improvements or exercise any such right, power, or authority it shall, nevertheless, have the privilege of abandoning any part or all of the foregoing at any time without consent of His Majesty's Government and without incurring any obligation by reason of such abandonment.

The United States of America shall be under no obligation or responsibility for the civil administration or defense of Jamaica or any part thereof, or for the maintenance of military or naval forces within or without the leased areas.

Crimes and misdemeanors committed within the leased areas during the occupation and use thereof by the United States of America shall be punishable either by the United States or the colonial authorities in accordance with their respective laws, dependent upon which shall first acquire jurisdiction of the person of the offender; except that either government may on request deliver the offender to the other for trial; that in all cases the colonial government shall bring to trial all offenders turned over to it by the United States upon request of the colonial authorities or otherwise, and that all offenders in the service of the United States, civil or military, shall on demand be apprehended and delivered to the government of the United States for trial whether or not the offense with which charged was committed within or without the leased areas; provided, that the colonial authorities shall not arrest any person or serve any process, civil or criminal, within the leased areas except upon application previously made to the commanding officer and approved by him: Provided further, that colonial laws of a regulatory nature, or which may otherwise interfere with the use of the leased premises by the United States, shall not be regarded as applicable within such areas.

His Majesty's Government undertake to deliver possession of all lands and facilities, including such as may be privately owned within the leased areas hereinbefore provided for, on such date as may be determined upon by the United States of America: Provided, that the United States of America shall pay to His Majesty's Government such sum or sums as may be mutually agreed upon to compensate the owners of private property for loss by expropriation or damage arising out of the establishment of naval or air bases in the leased areas.

CONFIDENTIAL

U. S. S. ST. LOUIS,
Kingston, Jamaica,
October 7, 1940.

Memorandum for His Excellency,

The Governor of Jamaica.

1. After our investigation and surveys conducted in general accordance with the requirements as explained to Your Excellency in my memorandum of October 4, 1940, it appears that the following areas meet the requirements as visualized by this Board:

(a) The waters of, and approaches to, Portland Bight for use as a fleet anchorage area inclusive especially of Galleon Harbor.

NOTE: In connection with the use of Portland Bight, the United States would undertake to maintain and operate Government lighthouses, and to install and maintain additional aids to navigation. When necessary for the defense of United States holdings in Portland Bight, the United States would install protective nets, booms, etc., at its entrance.

(b) A land area, to include Goat Island and adjacent Cays, and approximately thirty-three square miles north and east of Galleon Harbor, for accommodating shore facilities of a naval station, and for locating airfields, storage areas, recreation and training areas, magazines, quarters, etc., for the United States Army and Naval forces.

(c) An area on Portland Ridge to include the peninsula east of longitude 77 degrees 12 minutes 30 seconds west, and also Pigeon Island, for the location of defense batteries in connection with the defense of the harbor

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entrance, and for use as target ranges.

(d) An area of approximately one hundred acres in the vicinity of Williamsfield Station, for purpose of recreation and hospitalization.

(e) An area of about one square mile about five miles southwest of May Pen along Bakers Canal, for use as an emergency and auxiliary landing field.

2. The Board proposes to recommend that the United States be granted the right to develop the resources and facilities of the Port Royal Dockyard, under British control, for the joint use of the British and the United States forces within the limits of its capacity, subject to the condition that such development will preserve those features of the dockyard of historical interest.

3. The Board proposes further to recommend that the United States be granted the right, under British control, of common use by its military aircraft of the airfield at Palisadoes, within the limits of its capacity.

4. In connection with the control to be exercised by the United States in Portland Bight, the present rights of the fishermen, and of the sugar, salt, and other industries, will be preserved in so far as consistent with military necessity; and the installation of gun batteries on Pigeon Island will be effected with a view to interfering as little as possible with the salt industry now located there.

5. It would be appreciated if His Excellency would express his views as to the proposals set forth in this memorandum.

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6. Because of the nature of this memorandum, it is requested that the contents thereof be considered as confidential until final completion of negotiations.

J. W. GREENSLADE,
Rear Admiral, U.S. Navy.