Programs with Respect to Relief and Rescue of Refugees Other Government Agencies

War Shipping Administration
CROSS REFERENCE ON COOPERATION WITH OTHER AGENCIES:
OTHER GOVERNMENT AGENCIES (WSA)

FOR:

Amendment to this License
Extension of this License
Renewal of this License
Correspondence concerning this application
Other (Specify)

1. FOR MATERIAL RELATIVE TO THIS FILE
2. FOR MATERIAL RE VARIOUS TRANSPORTATION DIFFICULTIES INVOLVED IN THE PLAN TO EVACUATE 500 JEWISH CHILDREN FROM SWITZERLAND TO EIRE
3. FOR MATERIAL RE SOLUTION OF CERTAIN SHIPPING PROBLEMS INVOLVED IN PROJECTED EVACUATIONS THROUGH PARTISAN TERRITORY
4. FOR CORRESPONDENCE WITH WAR SHIPPING ADMINISTRATION

SEE:
1. PROGRAMS WITH RESPECT TO RELIEF AND RESCUE OF REFUGEES: EVACUATION TO AND THROUGH TURKEY
2. COOPERATION WITH OTHER GOVERNMENTS; NEUTRAL EUROPEAN (EIRE)
3. PROGRAMS WITH RESPECT TO RELIEF & RESCUE OF REFUGEES: OTHER EVACUATION PROJECTS (EVACUATIONS TO ITALY AND THE MEDITERRANEAN AREA)
4. EVACUATION OF REFUGEES TO TURKEY
My dear Admiral Landa:

I wish to express my personal appreciation for the close and sympathetic cooperation with the War Refugee Board in North Africa by your Algiers representative, Mr. Sasseville. The Board's Special Representative for the Mediterranean area, Mr. Ackermann, has informed me of Mr. Sasseville's invaluable assistance in carrying out the highly important evacuation of hundreds of refugees from Spain to Camp Lyautey in North Africa. After four previous attempts by others to obtain an evacuation ship had failed, Mr. Sasseville stepped into the picture and quickly obtained the necessary facilities.

I am pleased to observe that the same spirit of close cooperation existing in Washington between the War Shipping Administration and the War Refugee Board also prevails abroad.

Sincerely

(Signed) J.W. Fehle

J. W. Fehle
Executive Director

Honorable Admiral S. Land,
Administrator,
War Shipping Administration,
Washington 25, D. C.
FROM: Secretary of State, Washington
TO: American Embassy, Ankara
DATE: April 28, 1944

This is VTB cable no. 28.

As previously advised, you should obtain in Turkey all insurance required by charter for SS VTB except war risk on vessel. As indicated in our no. 28 of April 8 war risk on vessel will be placed here through War Shipping Administration. Advise us immediately when VTB is ready to depart in order that war risk insurance can be placed here.

This matter has been discussed with Hiagashina who is in complete accord.

RfL

PARAPHRASE OF TELEGRAM SENT

FROM: Secretary of State, Washington.
TO: AMBASSADOR, Ankara.
DATE: April 8, 1944.
NUMBER: 306.

The following message is War Refugees Board No. 39 from War Refugees Board to the Ambassador,

We refer to your telegram of April 3, 1944, no. 590.

If SS April is chartered to War Refugees Board, our risk will be insured through War Shipping Administration at the rate of seven and one-half per cent. You should notify us at once when insurance is to be placed so that arrangements can be made here. We will need the following information: We will have to know that the vessel will depart within fifteen days of the time we obtain the insurance and also know that the vessel is safely in port. You are requested to inform us of the final value placed upon the boat so that the value in dollars may be computed in determining the premium and insurance.

DECLASSIFIED
HILL, R. J., Dec. 5, 1972
By R. J. Hill.

CD: Miss Chauncey (for the Becky), Abrahamson, Alain, Bernath, Cohn, Dubois, Friedman, Coston, Haskell, Laughlin, Lesser, Lusford, Mann, Mannon, Marko, McCormick, Paul, Penin, Pollak, Reine, Sagoff, Smith, Standish, Stewart, Weintraub, White, Allen.

000338
Secretary of State
Washington

April 21, 1942

Attention: First Quartermaster

I am here advised that local underwriters at
premium of 12 1/2 per cent on 100% of
purchase for your vessel. It will be
somewhat higher than usual and
is another matter for now to
headquarters.

In view of the fact that the US Government is paying
the amount and will be beneficiary of policy and
as the Government has undertaken to replace US MARI
of loss and repairs if damaged, Black recommends that
no extra risk be taken or that vessel be covered
through BIA. $500,000 valued at Turkish pounds
780,000 for insurance purposes which Black considers
somewhat high.

Sincerely,

[Signature]

NFS

cc: Adams, Abrahamson, Albin, Bernstein, Cohn, Jaffe, Friedman, Gaston,
Hodel, Heffernan, Lassau, Laxford, Mann, Marks, Mason, McCracken,
Murphy, Paul, Pollack, Raine, Seigal, Smith, Standish, Stewart, Weinstein,
Wright, Yehle, Yilek.
Mar. 23, 1944

Secretary Morgenthau

J. W. Fehle

As I have told you, Admiral Land has been very helpful in working out our shipping problems.

Accordingly it would be extremely helpful if you could telephone Admiral Land at your convenience to thank him for what he is doing for the War Refugee Board.

[Initialed] J.W.F.
Mr. J. E. DuBois
War Refugee Board
Room 172
Treasury Department
Washington, D. C.

Dear Mr. DuBois:

I thought you might be interested in the attached.

Sincerely yours,

[Signature]

Assistant General Counsel

Enclosure
March 6, 1944

Mr. Arthur M. Becker, Assistant General Counsel

Mr. R. P. Dickson

I. Effect of Transfer of Vessel to Neutral Flag on Belligerent's Right to Capture.

II. Exception From Capture of Vessel Engaged in Scientific, Religious, or Philanthropic Service.

I. Transfer to Neutral Flag.

The general rule is that the transfer of a vessel to a neutral flag, subsequent to or a short time prior to the outbreak of hostilities, will not exempt the vessel from capture, unless the transfer is absolute and not made for the purpose of avoiding the consequences to which the vessel would be subject because of its belligerent status. This rule is subject to certain presumptions which in actual effect alter the substantive rule according to the circumstances of the case and is also subject to the rules for determining the actual nationality of the vessel.

The Declaration of London of 1909 contains a detailed statement of rules in regard to the determination of nationality and the effect of transfer. This Declaration was not adopted by the signatory powers although some of the nations adopted certain provisions. The pertinent provisions of the Declaration are Articles 55, 56 and 57, which read as follows:

"CHAPTER V—TRANSFER TO A NEUTRAL FLAG

ARTICLE 55

"The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

"Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its object is such that neither the central of, nor the profits arising from the employment
of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

ARTICLE 56

"The transfer of an enemy vessel to a neutral flag is void unless it is proved that such transfer was not made in order to evade the consequences to which such an enemy vessel, as such, is exposed."

"There, however, is an absolute presumption that a transfer is void:

"(1) If the transfer has been made during a voyage or in a blockaded port.

"(2) If a right to repurchase or recover the vessel is reserved to the vendor.

"(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled."

CHAPTER VI—ENEMY CHAMOTAR

ARTICLE 57

"Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag under which she is entitled to fly."

The effect of the Declaration generally is discussed by Professor Westmanna in XXXIV Harvard Law Review 692, 693 in the following language:

"Early in the World War Great Britain and France, though they had not ratified the Declaration (of London), professed to adopt such of its novel provisions as were favorable to belligerents and simultaneously professed to reject such of its novel provisions as were favorable to neutrals; . . . . . . . . . . . . . This mode of dealing with a compromise document was both questionable on general principles and contrary to one of the express provisions of the document itself . . . . . : The Declaration as a declaration was never binding at all; . . . . the parts of it already parts of international law were
binding irrespective of this unratified Declaration, . . .
the novel parts of it never became binding, and from a
recognition of the old parts and an occasional assistance
upon the novel parts it is a mistake to infer any recogni-
tion of the Declaration as Declaration at any time. " . . ."

The history of the acceptance of the provisions regarding nationality
and transfer is set out in Hyde's International Law (1922) Secs. 784, 785, 786
and 787. Hyde concludes that those provisions have been approved by the Naval
War College and by the Oxford Manual of Naval War. No further states, however,
that the theory on which they are based should be re-examined because the de-
sire to avoid the consequences of war is frequently, if not commonly, possessed
by the vendor. The Tentative Instructions for the Navy of the United States
Governing Maritimes and Naval Warfare, issued by the Secretary of the Navy on
May 7, 1943, substantially adopts the Declaration of London in the following
language:

"CHARACTER OF VESSEL

"62. In the absence of evidence to the contrary,
the neutral or enemy character of a merchant or private
vessel is determined by the neutral or enemy character
of the State whose flag the vessel has a right to fly
as evidenced by her papers. (0. L. art. 57.)"

TRANSFER OF FLAG BEFORE HOSTILITIES

"63. The transfer of a merchant or private vessel
of a belligerent to a neutral flag is valid when completed
previous to the outbreak of war, provided the transfer is
made in accordance with the laws of the State of the ven-
der and vendor.

TRANSFER OF FLAG AFTER HOSTILITIES

"64. The transfer of a merchant or private vessel
of a belligerent to a neutral flag during war is valid
if in accordance with the laws of the State of the ven-
der and of the vendor and provided further that it is
made in good faith with a complete divestiture of title
by the vendor, that it is absolute, unconditional, with
no continued interest, direct or indirect, of the vendor,
with no right of repurchase by him, and is accompanied
by a payment sufficient in amount to leave no doubt of
good faith, and provided further that the ship does not
remain in her old employment. (0. L. art. 56.)"

The Courts, however, seem to rely upon the actual ownership or con-
trol of the vessel rather than upon the test prescribed in the Declaration."
Rule, supra, Sec. 764, notes 4 and 5. Walker's Pitt Cobbett's Leading Cases on International Law (5th Ed. 1897) states the rule as follows:

"Under the law as hitherto administered by the British and American Prize Courts, although the use of the enemy flag is conclusive against the vessel, yet the use of the neutral flag, even where a vessel is legally entitled to fly it, is not conclusive in her favour.

This arises from the fact that under the Anglo-American doctrine the primary test of hostile connection as regards maritime capture is found in the domicile of the owner. Hence, if a vessel, even though flying the neutral flag, is found to be really owned, either in whole or part, by a person domiciled and carrying on trade in the enemy country, his interest therein is deemed to be confiscable, as being in fact the property of an enemy. This is based on the ground that, otherwise, it would be open to persons domiciled and trading in the enemy country to carry on the enemy trade without risk by registering their vessels under the neutral flag. A vessel is also deemed to acquire an enemy character, even though flying the neutral flag, if she is virtually incorporated in the enemy navigation or trade; or if, whether owned by subjects or neutrals, she is found to be engaged in a trade carried on under the enemy's license."

This statement seems to be an accurate statement of the rule. Thus, a ship, to be exempt from capture, must satisfy both the test of the flag and the test of the domicile of the owner. The term domicile is defined in Pitt Cobbett, supra, p. 29, to be the "commercial" domicile created by a persona, being "so far identified with the state in which he resides and trades as to share its national character."

From these authorities, it appears that a vessel transferred to a neutral flag, either a short time prior to or after the outbreak of hostilities, will be exempt from capture only if it satisfies the provisions of the Declaration of London and also the test of domicile of the owner.

These rules apparently apply only to private ships and not to public ships. Hyde, supra, Sec. 765. The distinction between private and public ships is apparently based upon whether or not the vessel is built for war, but in the light of modern "total" or "industrialized" war, the possibility that all ships, under the actual control of a belligerent's government, might be considered public ships, should not be overlooked. There is an apparent right to absolutely disregard the transfer of a public ship although the case cited by Hyde appears to involve a situation where the vessel was in imminent danger of being captured upon its leaving a neutral port.
Assuming that a transferred ship would not be subject to capture as a public ship or because of the doctrine of the transferee, the test would seem to be whether or not the transfer was made to avoid the consequences to which the vessel is exposed by its enemy status. Hyde apparently construes this test as applying to the state of mind of the vendor, Sec. 787. Thus, if the transfer were made to avoid the consequences of the war upon the vendor's personal interests, it would be invalid. This, of course, is a motivating cause in all but exceptional cases. The language of the Declaration itself would seem to make the test the effect of the transfer upon the consequences to the vessel itself. Obviously this test, literally applied, would be incapable of satisfaction except where the ownership was transferred by operation of law. The mere statement of the rule indicates that some transfer will be recognized. Thus, there must be some middle ground wherein the transfer would be valid even though it would not strictly comply with the above test. Perhaps, if it were shown that the transfer was made for a purpose that would not affect the fortunes of war of either of the belligerents and that neither the vendor nor his government reserved any control over the vessel or received any benefit other than the purchase money, such as the sale of a vessel by a belligerent to a neutral for use in unquestionably neutral service, the transfer would be recognized as valid despite the fact that the vessel was relieved of the incidents of its enemy character. Of course, the transfer has to be absolute in any event, and the retention by the vendor of any interest would subject the vessel to capture.

II. Exception of Vessel Engaged in Scientific, Philanthropic or Religious Service.

This exception was formalized in the Article IV of The Hague Convention of 1907 which reads as follows:

"ARTICLE IV

"Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture."

This provision was unanimously adopted by the commission responsible for the convention. Hyde, supra, Sec. 785. It apparently is a codification of a previously existing and established usage. Fitt Cobbe, supra, p. 227; Phillisine's Wheaton's International Law, 5th English Ed. p. 558. This provision has likewise been adopted by the Drafting Instructions for the Navy of the United States Government Maritime and Aerial Warfare, 1941 (page 70) except that it is there qualified by the phrase "when innocently employed." No authority has been found defining "religious," "scientific" or "philanthropic" as used in this connection except in the case of the P.L.M.A.T. during the last war. In that case, the German government protested against the seizure of the vessel on the ground that it had been ordered by the Governor of Taung-tao to transport the women and children from there to Tientsin, before the

The siege of Tsing-tao began. In reply to the protest, the British said in part:

"In the view of His Majesty's Government the conveyance of women and children from a fortress which was about to be besieged (an action which would have the effect of increasing the power of resistance of the fortress) cannot be regarded as a philanthropic mission within the meaning of the Articles; and it would indeed appear that the PLANAT might more properly be considered as being employed on a service connected with the operations of war."

Applying the reasoning of this restriction to modern war would result in holding almost every religious, scientific, or philanthropic mission to be excluded from the exemption. It is important, especially, to contemplate the application of this reasoning to scientific missions. Due to the increased part science is playing in modern warfare, few scientific missions would be exempt.

Ralph F. Dickson

RFDickson/rq
My dear Admiral Landt

Thank you very much for your letter of February 23, 1933, with respect to guaranteeing to the Turkish Government the replacement of the "S.S. Vatan" should it be lost in the transportation of refugees. Your expeditions and foresighted action has enabled us to advise our representative, Mr. Hirschmann, to approach the Turkish Government on the basis of this guarantee, and we now have high hopes of success in this humanitarian endeavor.

Our representative in Turkey will undoubtedly find it necessary, upon many occasions, to deal with problems involving a knowledge of ships and shipping. One of the greatest opportunities for saving many lives exists in the areas adjacent to Turkey and the Black Sea. As we have indicated to you there are in Transylvania, Rumania and Bulgaria, substantial numbers of refugees in imminent danger of death who probably can be brought to Turkey if necessary transportation be found. It is indispensable that such transportation be found as soon as possible, and we are presently negotiating with the Swedish and Turkish Governments to this end.

In view of the foregoing I am convinced that Mr. Hirschmann's efforts to solve this most urgent problem would be greatly facilitated if he had the active assistance in Turkey of a man who has a thorough knowledge of the detailed and intricate subject of shipping. In this connection, I understand that the War Shipping Administration has representatives in Cairo, Egypt. I should like to inquire whether it would be possible to secure the assignment, on a temporary basis, of one of these persons to assist Hirschmann with the shipping problems which now confront him. From my dealings with you and your staff, I feel that someone from the War Shipping Administration would be by far the best qualified to give us this help.

Let me thank you again for your cooperation.

Very truly yours,

J. W. Fohle,
Acting Executive Director
WAR SHIPING ADMINISTRATION
Washington

February 23, 1944

Mr. John W. Pehle
Acting Executive Director
War Refugee Board
Washington, D.C.

Dear Mr. Pehle:

Attached hereto is a letter signed by Admiral Lend in reply to your memorandum of February 23.

It is understood that if the vessel is actually replaced, you will obtain the consent of the White House if we at that time believe such consent is necessary.

Sincerely yours,

/s/ A. M. Becker

Arthur M. Becker
Lt. Comdr., USNR
Assistant General Counsel

Enclosure

cc: Messrs. Pehle, Luxford, DuBois, EMBernstein, JHFriedman, Lesser, Stewart, HRPollack, and Miss Hodal.
WARR SHIPPPING ADMINISTRATION

Washington

Administrator

February 23, 1944

Mr. John W. Pohle
Acting Executive Director
War Refugee Board
Washington, D.C.

Dear Sir:

This is in reply to your memorandum of February 23, attaching a copy of the cable received from Hirschmann, representative of the War Refugee Board in Turkey.

In said cable it is indicated that if the United States can offer to the Turkish Government a guaranty to replace the vessel referred to therein, if the same is lost, it is believed that the Turkish Government might permit the use of the ship for the purposes indicated.

The War Shipping Administration may, as a lend lease transaction, with the approval of the Foreign Economic Administration, replace this vessel if the same is lost, with a vessel as similar and from as nearby waters as may be available. The War Shipping Administration will replace the vessel under those circumstances and you are authorized to commit this Administration to such a replacement plan. It is understood that before the vessel is actually replaced, the consent of the Foreign Economic Administration will be obtained and the War Shipping Administration will be reimbursed for the reasonable value of any vessel delivered as a replacement.

Sincerely yours,

/s/ E. S. Land

E. S. Land
Administrator

KA-877
This telegram must be paraphrased before being communicated to anyone other than a Governmental agency. (BR)

Ankara
Dated February 18, 1944
Rece'd 2:24 a.m., 19th

Secretary of State
Washington

232, February 18, 11 a.m.
FOR JOHN F. HANEY DIRECTOR OF WAR REFUGEE BOARD
FROM HIRSCHHORN.

I am gradually getting a picture of some of the possibilities and of the enormous difficulties facing our work. Although the Turks express themselves as sympathetic thus far they have been helpful only to a limited extent. They may be due to some of the circumstances recited below. In dealing with the Turks I shall rely entirely on Ambassador Steinhardt who enjoys their full confidence.

Bulgaria through which almost all refugees from Europe and the Balkans must pass in transit to Turkey or beyond has for quite some time past been withholding transit visas for those coming from other parts of Europe and the Balkans and withholds exit visas for Jews residing in Bulgaria. In the past fortnight only one Jewish family succeeded in leaving Bulgaria and reaching Istanbul.

While I hoped that we would not have to avail ourselves immediately of the special authority to deal with the enemy I feel that you in Washington and we here will be compelled to use this means.

The satellite countries namely Hungary, Rumania and Bulgaria are most anxious to whitewash themselves in the eyes of the Allies. We must exploit this anxiety at once. We must bring every pressure brought to bear through neutral agencies or any other means at your disposal, as well as by direct contact with the representative of the above mentioned satellites.
They must be given to understand in no uncertain terms that unless they take immediate steps which will facilitate our work the Allies will loop upon them as real enemies who are fully collaborating with the Nazis in their work of extermination and that this will be held against them when the war is over. It should be made clear to them that no apologies or extenuations will be accepted. I expect to telegraph you more fully about the Bulgarian situation in a few days.

I think it would be helpful if you would call on the Turkish Ambassador in Washington to request of him that he cable his government the determination of the United States Government to carry out its rescue program with all energy and resource and that immediate aid on the part of the Turkish Government will be highly evaluated.

I am informed that in view of the Bulgarian impasse the Jewish agency officially dealing with transportation of Jewish refugees from the Balkans has extreme difficulties with land route bottlenecked in Bulgaria. They obtained promise of provisional charter for SS VITAN 3700 tons owned by Balkanline Riza Turkish shipowner who is willing to take her first Turkish to Constanza to bring out to Istanbul 800 to 1000 refugees, mainly children from Transylvania whom Romanians are at present willing to release, but who may at any moment be in danger of starvation and death. International Red Cross promises to procure safe conduct for this ship from all belligerent powers concerned. The Turkish Government fully controls all private shipping and is faced with extreme transport difficulties of its own. It refuses to permit eastern to enter into Charter Agreement because of danger of loss of ship even when under safe conduct as has occurred.

To overcome anxiety as to possible loss of ship, we strongly urge immediate offer of guarantee by the United States to the Turkish Government to replace ship. Will you cable us authority to offer this specific guarantee of ship replacement immediately from nearest waters which please designate in your reply in order to reopen negotiations on this question of Turkish ship. Have reasons to believe that this guarantee would offer basis for reopening question.
As an alternative there are Swedish ships carrying food from Canada to Greece under the auspices of Swedish Red Cross. The exact number is unknown here. Complete information on this is available only at Stockholm which I suggest you procure at once. These empty Swedish ships could possibly proceed from Greece to Constantza and transport some refugees. Turkish officials suggest this alternative plan. We prefer first plan as it would save time in a situation which can disintegrate quickly. Also once this ship is allowed the first voyage and accomplishes voyage successfully we can work to continue these trips to save additional refugees.

Please also explore at once the possible use of other neutral ships from Portugal or Spain. The point is that we must under all circumstances get a ship at once.

Please advise.

STEINHARDT

EDA
MEMORANDUM

Ref: Discussion with Lt. Commander Becker* and Mr. Sasseville* of War Shipping Administration

General conclusions were:

1. A letter should be written to Admiral Land* and sent to Becker requesting that a War Shipping Administration representative be sent from Cairo to Ankara to assist Hirschmann* in the shipping program. Becker, upon receipt of the letter, will prepare the necessary cable and try to get the thing to Land.

2. Hirschmann should be advised that we are attempting to get such a representative and may also be informed that the Izmir, a former passenger ship now trading between Greece and Turkey might possibly be obtained for the purpose of evacuation and he may wish to investigate the matter.

3. With respect to the question of taking refugees' children to Ireland, Becker stated that if there are children in Portugal and Spain, shipping can most possibly be arranged in one of the following ways:

(a) British ships probably could be obtained for the evacuation and this perhaps is the most feasible way even though risk of transporting would be run.

(b) Certain Portuguese ships now carry phosphates from Casablanca to Ireland and arrangements might be made to have them carry children. Becker indicated that War Shipping has its best man in Algiers that he has contacts with British Merchant Marine and could be of invaluable help in arranging for shipping.

4. In order to put the Irish to the test we should immediately ascertain whether there are children in Spain or Portugal who can presently be evacuated. This information can perhaps be obtained from Mr. Joy* of the Unitarian Service Committee and from other private agencies. Once it is ascertained that there are children who can be evacuated we should get in touch with the Irish Government concretely proposing the evacuation of the available number of children to be evacuated. We could then, through War Shipping, and other forms, make efforts to arrange the necessary transportation.

J.B. 74