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EXCHANGE OF NOTES

(May 24 and August 13, 1943)

BETWEEN

CANADA

AND

THE UNITED STATES OF AMERICA

CONSTITUTING AN AGREEMENT

IN RESPECT OF THE EXERCISE
OF JURISDICTION OVER PRIZES
CAPTURED ON THE HIGH SEAS

TOGETHER WITH

ORDER IN COUNCIL AND PROCLAMATION



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SUMMARY

	PAGE
I. Note, dated May 24, 1943, from the Secretary of State of the United States of America, to the Canadian Minister at Washington.....	3
II. Note, dated August 13, 1943, from the Canadian Chargé d'Affaires <i>ad interim</i> at Washington, to the Secretary of State of the United States.....	4
<i>Appendix I</i> : Order in Council, P.C. 6092, passed by the Governor General of Canada, at Ottawa, August 3, 1943	5
<i>Appendix II</i> : Proclamation of the President of the United States of America, done at Washington, September 27, 1943	7

**EXCHANGE OF NOTES (MAY 24 AND AUGUST 13, 1943) BETWEEN
CANADA AND THE UNITED STATES OF AMERICA CONSTITUTING
AN AGREEMENT IN RESPECT OF THE EXERCISE OF JURISDIC-
TION OVER PRIZES CAPTURED ON THE HIGH SEAS, TOGETHER
WITH ORDER IN COUNCIL AND PROCLAMATION.**

I

*The Secretary of State of the United States
to the Canadian Minister at Washington*

DEPARTMENT OF STATE

Washington, May 24, 1943.

Sir:

Reference is made to the Legation's memorandum of April 15, 1943¹ stating that the Canadian Government would be glad to make an arrangement with the Government of the United States concerning the exercise by either country in the territorial waters of the other of jurisdiction in cases of prize. Reference was made to the arrangement with the United Kingdom referred to in the President's Proclamation No. 2575 of January 30, 1943.²

Public Law 704—77th Congress, an Act to facilitate the disposition of prizes captured by the United States during the present war, and for other purposes, was approved on August 18, 1942. A copy of the Act is enclosed.³

It will be perceived from section 3 of the Act that jurisdiction of prizes brought into the territorial waters of a cobelligerent shall not be exercised under the authority of the Act, nor shall prizes be taken or appropriated within such territorial waters for the use of the United States, unless the Government having jurisdiction over such territorial waters consents thereto. It is therefore suggested that your Government notify me of its consent to the exercise of such authority within its territorial waters as well as of its acquiescence in the exercise in Canada by special prize commissioners of the duties prescribed for them in cases arising under the Act referred to. In this connection your attention is called to section 5 of the Act. It will be noted therefrom that the district courts of the United States may confer on such special commissioners such powers and duties, in addition to those already prescribed for prize commissioners, as may be deemed necessary or proper for carrying out the purposes of the Act. The duties of prize commissioners are set out in Title 34, U.S.C., Section 1138, which reads as follows:

"Par. 1138. Duties of prize commissioners. The prize commissioners, or one of them, shall receive from the prize master the documents and papers, and inventory thereof, and shall take the affidavit of the prize master required by section 1134 of this title, and shall forthwith take the testimony of the witnesses sent in, separate from each other, on interrogatories prescribed by the court, in the manner usual in prize courts; and the witnesses shall not be permitted to see the interrogatories, documents, or papers, or to consult with counsel, or with any persons interested without

¹ Not printed.

² United States Executive Agreement Series 393, p. 4.

³ See 56 Statutes of the United States 746.

special authority from the court; and witnesses who have the rights of neutrals shall be discharged as soon as practicable. The prize commissioners shall also take depositions *de bene esse* of the prize crew and others, at the request of the district attorney, on interrogatories prescribed by the court. They shall also, as soon as any prize property comes within the district for adjudication, examine the same, and make an inventory thereof, founded on an actual examination, and report to the court whether any part of it is in a condition requiring immediate sale for the interests of all parties, and notify the district attorney thereof; and if it be necessary to the examination or making of the inventory that the cargo be unladen, they shall apply to the court for an order to the marshal to unlade the same, and shall, from time to time, report to the court anything relating to the condition of the property, or its custody or disposal, which may require any action by the court, but the custody of the property shall be in the marshal only. They shall also seasonably return into court, sealed and secured from inspection, the documents and papers which shall come to their hands, duly scheduled and numbered, and the other preparatory evidence, and the evidence taken *de bene esse*, and their own inventory of the prize property; and if the captured vessel, or any of its cargo or stores, are such as in their judgment may be useful to the United States in war, they shall report the same to the Secretary of the Navy."

Upon receipt from the Canadian Government of the consent required by section 3 of the Act, this Government will take appropriate measures in accordance with section 7 of the Act to confer reciprocal privileges with respect to prizes upon the Canadian Government.

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

For the Secretary of State:

BRECKINRIDGE LONG.

II

*The Canadian Chargé d'Affaires ad interim
to the Secretary of State*

CANADIAN LEGATION

Washington, August 13, 1943.

No. 423

Sir,

I have the honour to refer to your Note of May 24, 1943, concerning a proposed arrangement between the Governments of Canada and the United States in respect of the exercise by either country in the territorial waters of the other of jurisdiction in cases of prize.

Under instructions from my Government I am now enclosing herewith copies of an Order in Council, P.C. 6092, dated August 3, 1943, authorizing the exercise of original jurisdiction by District Courts of the United States in regard to prizes captured on the high seas. It is understood that in view of this action on the part of the Government of Canada, a proclamation will now be issued by the President of the United States, conferring a like jurisdiction on the appropriate Canadian Courts.

Accept, Sir, the renewed assurance of my highest consideration.

MERCHANT MAHONEY,
Chargé d'Affaires.

APPENDIX I

ORDER IN COUNCIL AUTHORIZING THE EXERCISE OF ORIGINAL JURISDICTION BY DISTRICT COURTS OF THE UNITED STATES OF AMERICA OVER PRIZES CAPTURED ON THE HIGH SEAS

P.C. 6092

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 3rd day of August, 1943

PRESENT:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS the Minister of National Defence for Naval Service reports:

(a) That by United States of America Public Law 704, 77th Congress, entitled "An Act to Facilitate the Disposition of Prizes Captured by the United States During the Present War, and for Other Purposes", the District Courts of the said United States are given original jurisdiction of all sizes captured during the present war on the high seas if said capture is made by authority of the said United States or is adopted and ratified by the President thereof and the prize is brought into the territorial waters of a cobelligerent or is taken or appropriated for the use of the United States on the high seas or in such territorial waters, including jurisdiction of all proceedings for the condemnation of such property taken as a prize.

(b) Section 3 of the said Act provides that the said jurisdiction of prizes brought into the territorial waters of a cobelligerent shall not be exercised, nor shall prizes be taken or appropriated within such territorial waters for the use of the said United States unless the Government having jurisdiction over such territorial waters consents to the exercise of such jurisdiction or to such taking or appropriation.

(c) Section 7 of the said Act provides that a cobelligerent, which consents to the exercise of the said jurisdiction with respect to prizes of the said United States brought into its territorial waters and to the taking or appropriation of such prizes within its territorial waters for the use of the said United States, shall be accorded, upon Proclamation by the President, like privileges with respect to prizes captured under authority of such cobelligerent and brought into the territorial waters of the said United States or taken or appropriated in such territorial waters for the use of such cobelligerent and that reciprocal recognition and full faith and credit shall be given to the jurisdiction acquired by Courts of a cobelligerent thereunder and to all proceedings had or judgments rendered in the exercise of such jurisdiction.

(d) The Government of the United Kingdom, a cobelligerent, has consented to the exercise of this jurisdiction with respect to prizes of the United States of America brought in, taken or appropriated within the territorial waters of the United Kingdom and Sierra Leone and the United States Government by a proclamation of the President of the United States dated 30th January, 1943, has accorded the United Kingdom Government like privileges with respect to prizes captured under the authority of the said Government and brought in, taken or appropriated in the territorial waters of the said United States.

(e) By Order in Council P.C. 2489 of September 5, 1939, the Exchequer Court of Canada on its Admiralty side is constituted and established a Prize Court and is thereby authorized and required to take cognizance of and judicially proceed upon all and all manner of captures, seizures, prizes and reprisals of all ships, vessels and goods.

(f) It is expedient and desirable, in view of the close coordination of effort in respect of maritime warfare that exists between the United States of America and Canada that the Dominion of Canada should enter into a reciprocal arrangement with the said United States regarding jurisdiction of all prizes brought into the territorial waters of the other or taken or appropriated for their use in such territorial waters.

(g) The Under-Secretary of State for External Affairs reports that the Secretary of State of the United States has given assurance that, upon receipt of the consent of the Government of Canada, as required by Sec. 3 of the Act above referred to, the said United States will take appropriate measures in accordance with Sec. 7 of the said Act to confer reciprocal privileges with respect to prizes upon the Government of Canada.

(h) The Chief of Naval Staff and the Deputy Minister for Naval Services report that it would tend to the best interests of the Naval Service if such a reciprocal arrangement were entered into.

2. THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of National Defence for Naval Services, concurred in by the Secretary of State for External Affairs and under and by virtue of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, and notwithstanding the provisions of any other statute, order or regulation, is pleased to consent to and doth hereby consent to and authorize the exercise of original jurisdiction by the District Courts of the United States of America of all prizes captured during the present war on the high seas if said capture was made by authority of the said United States or was adopted and ratified by the President of the said United States and the prize was brought into the territorial waters of Canada or was taken or appropriated for the use of the said United States on the high seas or in such territorial waters including the jurisdiction of all proceedings for the condemnation of such property taken as prize.

A. D. P. HEENEY,
Clerk of the Privy Council.

APPENDIX II

PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES
OF AMERICA

CAPTURE OF PRIZES

WHEREAS the act of August 18, 1942, 56 Stat. 746, contains in part the following provisions:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the district courts shall have the original jurisdiction of all prizes captured during the present war on the high seas if said capture was made by authority of the United States or was adopted and ratified by the President of the United States and the prize was brought into the territorial waters of a cobelligerent or was taken or appropriated for the use of the United States on the high seas or in such territorial waters, including jurisdiction of all proceedings for the condemnation of such property taken as prize.

* * * *

"Sec. 3. The jurisdiction of prizes brought into the territorial waters of a cobelligerent shall not be exercised under authority of this Act, nor shall prizes be taken or appropriated within such territorial waters for the use of the United States, unless the government having jurisdiction over such territorial waters consents to the exercise of such jurisdiction or to such taking or appropriation.

* * * *

"Sec. 7. A cobelligerent of the United States which consents to the exercise of the jurisdiction herein conferred with respect to prizes of the United States brought into its territorial waters and to the taking or appropriation of such prizes within its territorial waters for the use of the United States shall be accorded, upon proclamation by the President of the United States, like privileges with respect to prizes captured under authority of such cobelligerent and brought into the territorial waters of the United States or taken or appropriated in the territorial waters of the United States for the use of such cobelligerent. Reciprocal recognition and full faith and credit shall be given to the jurisdiction acquired by courts of a cobelligerent hereunder and to all proceedings had or judgments rendered in exercise of such jurisdiction."

WHEREAS the Government of Canada, a cobelligerent, has consented to the exercise of the jurisdiction conferred by the said act with respect to prizes of the United States brought into the territorial waters of Canada and to the taking or appropriation of such prizes within the territorial waters of Canada for the use of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me by the said act of August 18, 1942, do proclaim that the Government of Canada shall be accorded like privileges with respect to prizes captured under authority of the said Government and brought into the territorial waters of the United States or taken or appropriated in the territorial waters of the United States for the use of the said Government.



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IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-seventh day of September, in the year of our Lord nineteen hundred and forty-three, and of the Independence of the United States of America the one hundred and sixty-eighth.

(SEAL)

FRANKLIN D. ROOSEVELT.

By the President:

ADOLF A. BERLE, JR.,
Acting Secretary of State.