



NAVY DECLASSIFICATION/RELEASE INSTRUCTIONS ON FILE

MEMORANDUM FOR THE FILE

Subj: Salvage of Sunken Foreign Warships

1. The following discussion relates to legal aspects in connection with recovery of foreign warships that have not been officially abandoned by the nations that own the ships.
2. In its simplest form, salvage can be described as a service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so. (The Law of Salvage, Martin J. Norris, 1958 p. 2).
3. There are a variety of acts or actions which may, either alone or in combination, constitute a salvage service. The form which the particular service takes is not the paramount consideration to qualify as an act of salvage. In order to have a valid salvage claim, three elements are necessary and must be present in every salvage operation. They are: (a) a marine peril; (b) service voluntarily rendered when not required as an existing duty or from a special contract; (c) success in whole or in part, or that the service rendered contributed to such success.¹
4. The 1910 Brussels Convention on Assistance and Salvage at sea, excludes warships and public vessels exclusively used for public service from the right to request remuneration. U.S. law apparently does not prohibit warships from claiming salvage money, but as between parties to the Brussels Convention of 1910, such claims would be excluded.
5. However, the general law of salvage does not apply in the case of warships recovered from the ocean bottom. This is due to the inherent rights of sovereignty embodied in a ship of war. It is the consistent position of the United States and accepted international law that sunken warships remain the property of the flag nation until title is expressly transferred or abandoned. Abandonment cannot be implied from the absence of any interest overtly shown by the flag nation in locating the wreck. It makes no difference whether the sunken warship is located in the high seas or in the territorial waters of a foreign country. If the wreck constitutes a hazard to navigation, the flag nation must be consulted as to salvage. The flag nation has a right to determine what documents, classified material, etc., should be handed over in the event the vessel is salvaged or removed because it constitutes a hazard.

¹The Sabine (1879) 101 US 384, 25Led 982.

6. The flag does not wish the ship to be salvaged if it does not constitute a hazard to navigation. This issue was thoroughly examined when the wreck of the USS PEARY was supposedly located in Darwin Harbor, Australia. Although at some time it was claimed that title to the wreck had gone to the Government of Australia as "residual asset" under foreign liquidation agreement with that country at the end of World War II and the statement by the U.S. Navy that the ship had been stricken from the naval vessel register and the U.S. Navy had no longer any interest in it, and subsequently Australia transferred the right to salvage to a private salvage firm, it was later determined that title had remained in the United States in spite of all this, since no express abandonment by the Secretary of the Navy had been made. The U.S. requested that permission for salvage be denied since the U.S. Navy preferred that the wreck remain undisturbed as a place of rest for the gallant men who went down with it. As far as is known, the PEARY is still at the bottom of Darwin Harbor. Cases involving other warships in the territorial waters of foreign nations or the U.S. have been similarly handled.

7. From time to time claims have been made that enemy warships sunk in the territorial waters of a warring nation could be claimed by that nation as war booty. This proposition was made when the salvage of sunken Japanese ships in the territorial water of the TTPI was at issue. Japan claimed they still owned the ships and demanded the right to salvage them. The U.S. which had conquered the islands during the war and wanted to salvage these ships because they were hazardous to navigation, stated that it had acquired title as war booty. This legal issue was never clearly resolved, since the U.S. renounced all its possible rights to salvage by implication in the agreement which finally and at long last settled all claims still outstanding in the TTPI. The U.S. has never claimed that German U-Boats in U.S. territorial waters were war booty.

8. As to third party nations, it has been the consistent position of the United States Government that title remains with that government unless some specific notification to the world of intent to abandon has been issued. A specific country in point is the German Government. The United States has taken the position that unless the German Government has taken specific action to relinquish its interests in its sunken submarines the title remains in that government and thus, no authority exists to recover the vessel without permission from that government. This consistent position was taken as recently as January of this year in connection with a request for salvage rights on the Civil War ship USS MONITOR. It was the opinion of the Judge Advocate General in that instance:

"It has consistently been the position of the Navy Department with regard to sunken U.S. warships that abandonment cannot be implied from the absence, even over a long period of time, of

any acts evidencing interest in such wrecks. Under general principles of admiralty law, one of the principal elements of abandonment is the intention to abandon. Therefore, it is assumed that, unless the U.S. Government has taken specific action to relinquish title to "MONITOR," title to that ship remains in the U.S. Government."

9. Since the title to the warships remain with the flag state, the right to determine the disposition of the bodies remains with it as well. The Geneva Convention For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, sets forth a policy for handling bodies in the case of armed conflict. It also applies in an armed conflict not of an international character. Certainly, the criteria established for war time would be binding as a minimum in time of peace. (See Article 3). The important articles bearing on this subject are Articles 15, 16, and 17. They are quoted for ready reference.

ARTICLE 15

"At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled...."

ARTICLE 16

"...Parties to the Conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general, all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel."

ARTICLE 17

"Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body."

Bodies shall be cremated except for imperative reasons of hygiene. Approved For Release 2001/09/01 : CIA-RDP81-00261R000300060006-1 In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourable interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein." (emphasis added)

10. In summation:

(a) Title to sunken warships including everything aboard remain in the flag nation until express transfer or abandonment has taken place. Abandonment cannot be presumed by inactivity. This principle is recognized in international law based on the general sovereign aspects of the flag nation which follow its warships.

(b) The right to determine the disposition of bodies remains with the flag state. Despoiling of the dead is a concept which generates considerable feeling. Thus the reason for codification of procedures which apply to handling of the dead even during war time.

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