

THE COURTS OF ALLIED POWERS IN GREAT BRITAIN

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The present war has provided the British Parliament with many problems of legal interest, not the least of which, perhaps, is the position as regards the administration of justice in respect of the nationals of Allied Powers within the United Kingdom. The subject is one of great interest and concern not only to those Powers the seat of whose Government is in the United Kingdom, but to all nations who have armed forces stationed there, and it may, accordingly, be of interest to consider how the British Parliament has dealt with this problem.

Before entering upon an examination of the legislative provisions which have been made, it is material to bear in mind that within the British Isles, in addition to British, Dominion and Colonial troops, there have been stationed large forces of the United States of America and of the Fighting French, and troops of eight Sovereign States whose Governments are now in the United Kingdom and whose territories have been over-run by a common enemy. These Governments having allied themselves with Great Britain, her Dominions and other Allied Powers, have resolved¹ "to continue the struggle against German and Italian oppression until victory is won" and to "assist each other in this struggle to the utmost of their respective abilities".

The existence of circumstances in which the Governments of eight Sovereign States function and command armed forces within the jurisdiction of another Sovereign State creates a situation which has historically no precedent, and gives rise to nice questions of international law which will no doubt occupy the minds of international jurists for a long time to come.

It is not the intention to deal in this article with the position in international law or to enter the field of discussion, upon which a sharp conflict of opinion appears to exist, as to whether or not the admission upon its territory by a Sovereign State of the armed forces of a foreign Power in the service of that Power confers extra-territorial jurisdiction upon such foreign Power so as to vest in it the exclusive right to

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1. Resolution passed at the Inter-Allied meeting held at St. James's Palace, London, on the 12th June, 1941, at which were present in addition to representatives of the United Kingdom and of Canada, Australia, New Zealand, South Africa, India and Burma, representatives of the Governments of Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia, and representatives of the Fighting French.

deal with and punish members of those armed forces who offend against the criminal law.²

It is proposed, on the other hand, to confine this article to an examination of the municipal enactments of a Sovereign State which has voluntarily accorded to foreign Governments and "recognized authorities" having armed forces, as well, be it said, as civilian nationals, within its jurisdiction extra-territorial status for certain of their codes of law and conduct. The subject may perhaps most conveniently be studied by examining separately the provisions made for the operation of service courts to deal with members of naval, military and air forces, and of maritime courts to exercise jurisdiction over certain civilians.

I. SERVICE COURTS³

It is clear that if the armed forces of the Allied Governments and the Fighting French are to play their full part in the war effort of the Allied Nations, they must be furnished with the necessary powers to exercise control over and to discipline the forces which they command. Some of these Allied Powers command forces belonging only to one or two of the fighting services; other forces belonging to all three, affecting which they have already in existence their own naval, military and air force codes of conduct.

Except for certain small allied units in one or other of the fighting services, which are serving as part of a larger British force, the fighting forces of Allied Governments and of the Fighting French have remained independent units working within the general framework of the allied command.

In considering the approach of the British Parliament to the question of service courts for members of foreign forces in the United Kingdom, it should be appreciated that members of the armed forces of the British Crown are subject not only to the special law affecting them laid down by the Naval Discipline Act, the Army Act and the Air Force Act, but to the general law of the land. A soldier, therefore, who has committed a criminal offence is liable not only to be brought before a court martial under the Army Act, but to be charged before the ordinary civil courts. It is not unnatural to find, therefore, that the British Parliament has tended to make service personnel of foreign Allied Powers subject also to this double jurisdiction.

2. For a full discussion of this problem see HALL, *INTERNATIONAL LAW* §§ 54, 56; WHEATON, *ELEMENTS OF INTERNATIONAL LAW* (6th ed.) 234; CARNEGIE ENDOWMENT, *THE CLASSICS OF INTERNATIONAL LAW* (edited by George Grafton Wilson) (p. 133) § 99; HYDE, *INTERNATIONAL LAW* (p. 432); § 247; ZOLL, *Exterritorialität*, STRUPP, *WÖRTERBUCH DES VÖLKERRECHTS*; I OPPENHEIM, *INTERNATIONAL LAW* (Lauterpacht's ed. 1937) §§ 127, 445; BAR, *DAS INTERNATIONALE PRIVAT- UND STRAFRECHT* § 145; I RIVIER, *PRINCIPES DU DROIT DES GENS* (1896) 333.

3. The expression "service courts" is used throughout this article to cover naval, military and air force courts.

The task of the British Parliamentary draftsman was simplified by the existence of the Visiting Forces (British Commonwealth) Act, 1933,⁴ the full title of which is as follows:—"An Act to make provision with respect to forces of His Majesty from other parts of the British Commonwealth when visiting the United Kingdom or a Colony; with respect to the exercise of command and discipline when forces of His Majesty from different parts of the Commonwealth are serving together; with respect to the attachment of members of one such force to another such force, and with respect to deserters from such forces". The provisions of this Act were used—and used with some skill—as a precedent for the measure which, passing into law on August 22, 1940, as the Allied Forces Act, 1940, conferred full extra-territorial status upon the service codes, the service courts and authorities of forces belonging to foreign Governments in Great Britain; provided a legal basis for the service codes, courts and authorities of forces raised by any authority, not being itself a foreign Government, recognized by the British Crown as competent to maintain armed forces for service in association with British forces; and required the British civil authorities to provide the necessary machinery for enforcement in order that full effect should be given to the service courts and codes.

How then was this effected?

A. Allied Powers Other Than the United States of America

First, the Act provides⁵ that in matters of discipline and internal administration the service courts of Allied Powers may within the United Kingdom or on board any of His Majesty's ships or aircraft exercise in relation to members of their naval, military or air forces such powers as are conferred upon them by their own laws over such forces: that is to say, the service courts are given full extra-territorial status. That is the most important of the statutory provisions.

Secondly, the Act preserves⁶ the jurisdiction of the British civil courts in respect of breaches of British law committed by members of such allied forces, but specifically provides⁷ that in respect of an offence against that law a member of an allied force who has been acquitted or convicted by a British civil court shall not again be put on trial before his own service court. On the other hand, if he has been tried by his own service court for an offence which is also a breach of the British criminal law, he may be brought⁸ subsequently before

4. 23 GEO. V, c. 6 (1933).

5. s. 1 (1).

6. s. 2 (1).

7. s. 2 (3).

8. s. 2 (2).

the civil court, but in that event the court, if it also convicts, must in awarding punishment have regard to the punishment already inflicted by the service court.

Finally, the Act provides⁹ the necessary machinery for enforcing the powers of the service courts through the civil authorities, by enabling certain provisions¹⁰ of the Visiting Forces (British Commonwealth) Act, 1933,¹¹ with such "adaptations, modifications and exceptions" as may be necessary, to be applied by Orders in Council in relation to the forces of the foreign Powers concerned as they are applied to Dominion and Colonial forces under that Act. In pursuance of this power several Orders in Council¹² have been made, which apply to the fighting forces of Belgium, Czechoslovakia, Greece, the Netherlands, Norway, Poland and Yugoslavia, and there is set out in a schedule to one of these Orders¹³ the "modified and adapted" provisions of the 1933 Act. Broadly, these Orders deal with such matters as the privileges of the courts and witnesses, arrest, sentences, detention and evidence, and with the relationship of the allied forces with the civil authorities.

Members of an allied service court¹⁴ and witnesses appearing before it enjoy the same immunities and privileges as are enjoyed by courts set up under the British Naval Discipline Act, Army Act and Air Force Act. This means, for example, that proceedings before service courts are the subject of absolute legal privilege and no action for libel or slander will lie against any member of the court or any witness in respect of any statement made by him material to the proceedings before the court. The courts are given exclusive jurisdiction to deal with all matters affecting pay, terms of service or discharge of members of the allied forces, and no proceedings in respect of any of these matters may be entertained by any British court.

As regards the apprehension of alleged offenders, the British Admiralty, Army Council or Air Council as the case may be, if requested by an officer commanding allied forces or by the Government of an Allied Power to which the force belongs, may direct members of the British forces to arrest any member of the allied force alleged to have been guilty of an offence against the law of that Power and to hand

9. § 1 (3).

10. §§ 1 (2) to (5), 2, 3, 5 (1) and (3), and 6.

11. 23 Geo. V, c. 6 (1933).

12. These are the Allied Forces (Relations with Civil Authorities) (No. 1) Order, 1940, (S. R. & O. 1940, No. 1816); Allied Forces (Penal Arrangements) (No. 1) Order, 1940, (S. R. & O. 1940, No. 1817); Allied Forces (Application of 23 Geo. V, c. 6 [1933]) (No. 1) Order, 1940, (S. R. & O. 1940, No. 1818); and Allied Forces (Greece & Yugoslavia) Order, 1941, (S. R. & O. 1941, No. 651).

13. S. R. & O. 1940, No. 1818.

14. By § 2 of S. R. & O. 1940, No. 1818, the expression "court" includes, in addition to the ordinary Court of Enquiry, any officer authorized to review the proceedings of a service court or himself to investigate or dispose of charges.

him over to the appropriate authority of the Allied Power.¹⁵ Certain provisions of the Army Act¹⁶ which relate to the arrest of deserters and absentees without leave from British military forces are applied to members of allied forces in the same manner as they apply to British troops.¹⁷ No alleged deserter from an allied force, however, may be arrested or dealt with except at the specific request of the Government of the Allied Power concerned or of the commanding officer of the allied force, and where such a request is made he must be handed over on arrest to the Allied Power concerned.¹⁸

As regards the detention or imprisonment of members of allied forces, it has been provided that any person sentenced by a service court of the Allied Power to which the force belongs to any form of imprisonment or detention, may, with the authority of the Admiralty or a Secretary of State, be temporarily detained in custody or be imprisoned or detained during the whole or any part of his sentence in a British prison or detention barracks.¹⁹

The costs incurred in this connection are defrayed by agreement between the British Government Department concerned and the Allied Power in question.²⁰

The British Admiralty, Army Council and Air Council are to make their own arrangements with the service authorities of the Allied Powers as regards the reception by those authorities of persons to be detained or imprisoned and as to their return to those authorities after their sentences of detention have been served, and also with regard to the circumstances in which such members of the allied forces are to be released.²¹

Where a service court passes sentence on any member of an allied force for a term of less than three years, the offender is to be dealt with under the British prison system as though he had been sentenced by a civil court to a term of simple imprisonment, but if the sentence of the service court is for three years or more he will be dealt with as though he had been sentenced to penal servitude by a civil court.²²

Moreover, the prison rules and regulations relating to the treatment of British forces detained in detention barracks and the manner in which they are to be dealt with in the event of their being or becoming

15. Schedule to S. R. & O. 1940, No. 1818, para. 1 (5).

16. Schedule to S. R. & O. 1940, No. 1818, para. 3 (2).

17. *Ibid.*

18. Schedule to S. R. & O. 1940, No. 1818, para. 3 (3).

19. Allied Forces (Penal Arrangements) (No. 1) Order, 1940, (S. R. & O. 1940, No. 1817, para. 2 (1)).

20. Schedule to S. R. & O. 1940, No. 1818, para. 2 (2).

21. *Ibid.*

22. S. R. & O. 1940, No. 1817, para. 2 (3).

of unsound mind are to apply to any members of foreign allied forces under sentence by a service court.²³

Detailed provisions are made by the Orders in Council as to the evidence which the British civil courts are to accept as to the proceedings of the service courts of Allied Powers. Where any sentence has been passed, whether within or without the United Kingdom, upon a member of an allied force by the service court of an Allied Power, then for the purpose of any legal proceedings within the United Kingdom, the court is deemed to have been properly constituted and its proceedings to have been regularly conducted; the sentence is deemed to have been within the jurisdiction of the court and in accordance with the law of that Power and if executed according to the tenor thereof is deemed to have been lawfully executed.²⁴ A certificate of the officer commanding an allied force that certain persons specified in the certificate sat as a service court of the Allied Power to which the force belongs is conclusive evidence of that fact.²⁵

A certificate under the hand of the Secretary of the Admiralty, the Secretary of the Army Council, or the Secretary of the Air Council that a request has been made by the Government of an Allied Power or the commanding officer of an allied force to arrest an alleged deserter is evidence of the making of such a request and a certificate by a commanding officer of an allied force that the person named in it was a deserter or absentee without leave is admissible without proof as evidence of the facts certified.²⁶

Any member of an allied force who is detained in custody in pursuance of any sentence of an allied court or is detained pending the determination by a service court of a charge brought against him is deemed to be in legal custody, and a certificate of the officer commanding an allied force that a member of that force is being detained in pursuance of a sentence or pending the determination by a service court of a charge brought against him is conclusive evidence of the cause of his detention, *but not of his being a member* of the allied force.²⁷

Any question raised by a person charged before a service court as to the jurisdiction of the service court to try him on the ground that the accused is not a member of an allied force is not determined by the service courts of the Power concerned but by the British civil courts. The expression "member of an allied force" is defined²⁸ to include a person who, being a member of another force of the same

23. S. R. & O. 1940, No. 1817, para. 2 (4).

24. Schedule to S. R. & O. 1940, No. 1818, para. 1 (3).

25. *Ibid.*

26. Schedule to S. R. & O. 1940, No. 1818, para. 3 (4).

27. Schedule to S. R. & O. 1940, No. 1818, para. 1 (3).

28. S. R. & O. 1940, No. 1818, para. 2 (1).

Allied Power, is attached to an allied force. A person, however, is not to be deemed a member of a force of an Allied Power unless he serves in the armed forces of that Power in the capacity of an officer or serving sailor, soldier or airman.

Although not falling strictly within the ambit of an examination of allied service courts, it may be of interest to mention briefly two other matters dealt with by the Orders in Council.

First, special provisions²⁹ have been made under section 3 of the Allied Forces Act, 1940, applying to the air forces of the Fighting French and Poland serving either with the Royal Air Force or at a Royal Air Force station, under which alleged offenders are tried by mixed service courts consisting of an equal number of British and Fighting French or Polish officers, as the case may be, with a British President of the Court.

The British Air Force Act, with certain modifications, is applied to members of the Fighting French and Polish Air Forces, but no person who is tried under the Air Force Act is to be tried again for the same offence under the Allied Forces Act.

The Order which applies to the Polish Air Force contains a special provision that this shall not prevent a further trial of a Polish officer before a Polish Court of Honour.

Secondly, arrangements have been made³⁰ to regulate the relations between allied forces and the British civil authorities and civilians. The general effect of these is that any British Government Department, Minister of the Crown or other person in the United Kingdom may, by Order in Council, be authorized to perform at the request of such authority or officer, as the Order may specify, any function in relation to an allied force and its members which it or he can perform in relation to British forces. This provision does not, however, authorize any interference with regard to the discipline or internal administration of the allied force.

The functions so to be performed by British Government Departments and Ministers are not defined. It is apprehended, however, that they would include making orders or giving directions in connection with such matters as billeting, the supply of equipment and stores for members of allied forces, requisitioning of land and buildings for occupation and use, dealing with claims in respect of personal injuries or in respect of damage to property caused through traffic accidents, and so forth.

29. Allied Forces (Free French Air Force) Order, 1941, (S. R. & O. 1941, No. 260), and the Allied Forces (Polish Air Force) Order, 1941, (S. R. & O. 1941, No. 438).

30. Schedule to S. R. & O. 1940, No. 1818, para. 2 (1), and the Allied Forces (Relations with Civil Authorities) (No. 1) Order, 1940, (S. R. & O. 1940, No. 1816).

B. *The United States of America*

The position of the United States service courts in Great Britain merits separate consideration because of the departure from precedent made by the British Government in vesting in such courts exclusive jurisdiction in respect of criminal offences committed by members of the American forces, and because in certain other respects the legislative measures are distinctive from those affecting other Allied Powers.

In the first place the British Parliament adopted the procedure by Order in Council³¹ of applying to American troops then lately arrived in the United Kingdom certain sections of the Visiting Forces (British Commonwealth) Act, 1933.³² This order is in general similar to that previously made with regard to the other allied forces³³ and contains a schedule setting out the "modified" provisions of the 1933 Act which are to be applied. There are certain differences between the 1933 Act as it is applied by this order and by the previous corresponding one but almost all these differences are of minor importance. Three, however, appear worthy of note.

The first is that the American Order embodies provisions similar to those of the Allied Forces (Penal Arrangements) (No. 1) Order, 1940,³⁴ and accordingly no separate order on those lines has been made in the case of the United States forces.

Secondly, the provisions with regard to deserters are omitted from the American Order.

Finally, a new paragraph³⁵ dealing with the summoning of witnesses is included, which does not correspond with any provisions in the earlier Order. Under this paragraph the British Naval Discipline Act, the Army Act, and the Air Force Act are to apply in relation to United States service courts as if for the method of summoning witnesses there were substituted such method as may be prescribed by the Admiralty, the Army Council or the Air Council. Under the powers so created Orders³⁶ have been made which provide that any civilian witness whom it is desired to call before an American service court may be summoned to attend by the trial judge advocate or recorder of such court. Failure to obey such a summons is an offence in respect of which the witness is liable to proceedings in the British courts.

So far, then, there is no substantial difference between the constitution and powers of American service courts and those of the other

31. The United States of America (Visiting Forces) Order, 1942, (S. R. & O. 1942, No. 966).

32. 23 Geo. V, c. 6 (1933).

33. See note 13 *supra*.

34. See note 19 *supra*.

35. Para. 4 (3) (proviso).

36. S. R. & O. 1942, No. 1679, made by the Army Council and Air Council; S. R. & O. 1942, No. 2192, made by the Admiralty.

Allied Powers. But a fundamental distinction was introduced by the passage into law on August 6, 1942, of the United States of America (Visiting Forces) Act, 1942,³⁷ which divested the British civil courts of jurisdiction to deal with offences against the criminal law of the country committed by the military and naval forces of the United States. Under the Act³⁸ no criminal proceedings may be prosecuted in the United Kingdom before any court of the United Kingdom against a member of the military or naval forces of the United States of America. If, however, the Government of the United States so requests with respect to a particular case, that case may be dealt with by a British court. The powers of the British civil authorities remain unaffected as regards arrest, search, entry or custody with respect to offences committed or believed to have been committed against the British law.³⁹

A remarkable feature of the Act is that in a schedule to it there are set out in full the notes on the subject exchanged between His Majesty's Government in the United Kingdom and the United States Government. These notes make it clear that the British Government agreed to introduce this measure on the assumption that the United States service authorities and courts concerned will be able and willing to try and, on conviction, to punish all criminal offences which members of the United States forces may be alleged on sufficient evidence to have committed in the United Kingdom, and that the United States authorities are agreeable in principle to investigate and to deal appropriately with any alleged criminal offences committed by members of the United States forces in the United Kingdom which may be brought to their notice by the competent British authorities, or which the American authorities may find to have taken place.

The notes also make it clear that the trial of any member of the United States forces for an offence against a member of the civilian population is to be in open court (except where security considerations forbid this) and to be arranged to take place promptly in the United Kingdom and within a reasonable distance from the spot where the offence is alleged to have been committed, so that witnesses shall not be required to travel great distances to attend the hearing. The notes also appear to imply that reciprocal arrangements will be made in respect of criminal offences by members of British forces which may be stationed in territory under American jurisdiction.

The American service courts, as do the other allied service courts, apply the law of their own country to cases coming before them.

37. 5 & 6 GEO. VI, c. 31 (1942).

38. § 1 (1).

39. § 1 (2).

An interesting question, however, arises as to the position where an American soldier in Great Britain commits an act (*e. g.* exposes a light contrary to the "black-out" regulations) which is a criminal offence according to British law but not an offence expressly covered by American military law. The answer which has been given⁴⁰ is that there are two Articles in the American Articles of War governing the armies of the United States at all times and in all places, which are of a sweeping character and would be prayed in aid to meet the situation. One of them⁴¹ directs the dismissal from the service of an officer convicted of conduct unbecoming to an officer and a gentleman. The other⁴² provides for the punishment of persons subject to American military law who have been guilty of acting to the prejudice of good discipline. Perhaps failing completely to close one's curtains may be regarded as being prejudicial to good discipline, but hardly as unbecoming conduct.

C. *The Fighting French*

The armed forces of the Fighting French under General de Gaulle and the Fighting French National Committee presented the British authorities with the peculiar difficulty that, not being forces of a sovereign Power allied with His Majesty's Government, there was no authority under which service courts could be established, nor were there extant naval, military or air force codes which could be enforced by such courts, if created.

This difficulty was met under the Allied Forces Act, 1940, by a provision⁴³ that where any "foreign authority" is recognized by His Majesty as competent to maintain naval, military or air forces for service in association with His Majesty's forces, that authority may, with the concurrence of the British Admiralty or a Secretary of State, lay down a service code based on the present or former national code of the country from which the fighting forces came and establish the necessary service courts to administer that code.

Having thus authorized the establishment of service courts and codes, the Act then proceeds to deal with members of the forces of a competent foreign authority on precisely the same lines as it does with

40. Press statement issued by the United States Army Headquarters in the European theatre of operations.

41. 41 STAT. 806 (1920), 10 U. S. C. A. § 1567 (Supp. 1942), being Article 95 of the American Articles of War.

42. 41 STAT. 806 (1920), 10 U. S. C. A. § 1568 (Supp. 1942), being Article 96 of the American Articles of War, is as follows: "Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes and offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

43. 3 & 4 GEO. VI, c. 51, § 1 (2) (1940).

the forces of Allied Powers by enabling⁴⁴ certain provisions of the Visiting Forces (British Commonwealth) Act, 1933, to be applied to the forces of the authority in question.

Under the powers conferred by the Act an Order in Council⁴⁵ was made which recited that the Leader of the Free French (in the Order referred to as "the French authority") was recognized by His Majesty as an authority competent to maintain naval, military and air forces for service in association with His Majesty's forces and applied certain provisions of the Visiting Forces Act in relation to the forces so maintained by the French authority. The Schedule to the Order contains the provisions of the Visiting Forces Act as so applied. These provisions are substantially similar to those set out in the Schedule to the original Order made in respect of the forces of Allied Powers other than the United States.⁴⁶ The French Order, however, refers to "the French service code" instead of to the law of the Allied Power in question.

This Order in Council has been followed by others,⁴⁷ which are also similar to those made in respect of Allied Powers.⁴⁸

The position, then, is that a member of the forces in the United Kingdom of any Allied Power other than the United States is subject to a double jurisdiction—that of his own service courts and that of the British civil courts—in respect of any offence which is a breach both of the military law applicable to him and of the British criminal law. Members of the United States forces alone are subject only to the jurisdiction of their own service courts.

All members of allied forces in the United Kingdom are subject only to the jurisdiction of their own service courts in respect of matters affecting pay, terms of service or discharge, military discipline and internal administration.

This dual jurisdiction of civil and military courts is a commonplace in Great Britain and all British troops are subject to it. In practice in the case of British troops the military courts deal with minor offences against the criminal law but not with grave offences such as murder, manslaughter or rape. The civil courts sometimes deal with minor offences against the criminal law and always deal with grave offences. There is every reason to suppose that the same course will

44. § 1 (3).

45. The Allied Forces (Application of 23 GEO. V, c. 6 [1933]) (No. 2) Order, 1941, (S. R. & O. 1941, No. 47).

46. See note 13 *supra*.

47. These Orders are the Allied Forces (Relations with Civil Authorities) (No. 2) Order, 1941, (S. R. & O. 1941, No. 48); and the Allied Forces (Penal Arrangements) (No. 2) Order, 1941, (S. R. & O. 1941, No. 49).

48. See note 12 *supra*.

be followed with regard to offences by members of those allied forces in Great Britain which are also subject to the dual jurisdiction.

II. MARITIME COURTS

Fully to appreciate the significance of the action of the British Parliament in passing into law on May 22, 1941, the Allied Powers (Maritime Courts) Act, it is necessary to bear in mind that never previously in the constitutional history of Great Britain has Parliament allowed the establishment within its jurisdiction of a foreign civil court with jurisdiction to deal with offenders against the criminal law of the foreign power concerned.

Indeed, the jurisdiction of a Sovereign State in criminal matters is based upon territoriality, although it is true that individual states exercise such jurisdiction over their own nationals in respect of certain serious crimes committed abroad—and Sovereign States accordingly have regarded as being exclusively within their jurisdiction the trial and punishment of all offenders against the criminal law within the boundaries of their own territories, and do not as a general rule take cognizance of offenses against the criminal laws of other Sovereign States.

Great Britain has not stood alone in this connection, for no Sovereign State has hitherto allowed the judiciary of any other Sovereign State to function within its territory, with the possible exception—if it be an exception—of those few special cases where, by treaty, extra-territorial rights have been granted to foreigners. It is, accordingly, the more remarkable, and indeed it is significant of the spirit which actuates the allied nations, that the British Parliament has conferred upon foreign—though allied—Governments within the United Kingdom the right to set up their own courts of justice with jurisdiction to try offenders in the United Kingdom against the criminal law of those foreign countries.

It may accordingly be of interest to consider the provisions of the Maritime Courts Act, which, though of comparatively short extent, constitutes a legislative enactment of historic interest and without precedent.

To understand the need for this legislation it is necessary to look back to the earlier days of the war, when hostile invasion of the territory of many of the Allied Powers, whose Governments are now in the United Kingdom, gave little enough time to arrange for the evacuation overseas of even a small proportion of the fighting forces of the countries concerned. Nevertheless, there was even then the realization that a successful issue of the struggle must depend to a very great extent upon

shipping, and orders were issued not only to the Service ships but to the mercantile marine of such countries to proceed as soon as possible to Britain or neutral ports.

As a result, there was accumulated in the ports of the United Kingdom and of the British Empire a substantial tonnage of merchant vessels, and many thousands of merchant seamen—30,000 from Norway alone—crossed the seas to Great Britain. These men continued to serve the allied cause aboard the ships in which they had previously sailed, but where breaches of discipline or violations of the law occurred aboard such a vessel outside British territorial waters, though the offender might still be subject to his national laws, there was no court of competent jurisdiction before which he could be brought. And so the British Parliament decided to place in the hands of the allied Governments concerned the necessary powers to enable them to enforce the national laws by which the conduct of their merchant seamen was governed.

Accordingly, the Allied Powers (Maritime Courts) Act, 1941⁴⁹ empowers any Power allied with His Majesty or any Power for the time being at war with another Power, with which His Majesty is for the time being at war, to establish and maintain in the United Kingdom courts of justice, to be called Maritime Courts, having the criminal jurisdiction conferred on them by the Act.⁵⁰

The Maritime Courts are constituted, and the practice and procedure of the courts are regulated, in accordance with the law of the Power concerned and members of the courts as well as all persons taking part in any judicial proceedings before the court enjoy the same immunities and privileges as are enjoyed by a superior court of record in the United Kingdom.⁵¹

The offences with which the Maritime Courts may deal⁵² are acts or omissions constituting offences against the law of the Power concerned, namely (a) any act or omission committed by any person on board a merchant ship of the Power concerned; (b) any act or omission committed by the master or any member of the crew of a merchant ship of that Power in contravention of the merchant shipping law of that Power; and (c) any act or omission committed by any person who is both a national of the Power concerned and a seaman of that

49. 4 & 5 GEO. VI, c. 21 (1941).

50. § 1 (1).

51. § 1 (3) and (5).

52. § 2 (1).

Power as defined by the Act⁵³ in contravention of the mercantile marine conscription law of that Power.

There are certain limitations placed on the powers of Maritime Courts: first, they have no power to try any British subject;⁵⁴ secondly, they have no jurisdiction to try any person for an offence committed before the passing of the Act, except an act or omission committed not more than six months before the date of the Act constituting an offence against some law of the Power concerned in force at the time, other than the merchant shipping law and the mercantile marine conscription law;⁵⁵ thirdly, the courts have no jurisdiction to try any person unless he has been required to appear before the court for trial by means of a summons issued under the Act and served upon him in accordance with the rules, or has been brought before the court for trial by means of a warrant for his arrest issued under the Act;⁵⁶ and fourthly, the court has no jurisdiction to try any person for any offence for which he has been acquitted or convicted by any British court.⁵⁷

British subjects who commit some act or omission on board a merchant ship of an Allied Power, which is an offence against the law of that Power or an offence against the merchant shipping law of that Power, and at the same time, if committed on board a British ship would have constituted an offence against British law or the merchant shipping law of the United Kingdom, may be tried and convicted by the British courts for that offence.⁵⁸

Provision is made for the issue of warrants for the arrest of offenders⁵⁹ and for compelling the attendance of witnesses before the Maritime Courts⁶⁰ and the courts themselves are empowered to order detention or to impose a fine on any person not being a British subject who is guilty of contempt of court committed before that court.⁶¹ British subjects who commit before a Maritime Court any act or omission which, if committed before a British court of record, would have been punishable by the British court as a contempt of court are guilty of an offence under the Act and are liable on summary conviction by a British court to a fine and imprisonment.⁶²

53. Under § 17 "a seaman of that Power" means a person who since September 3, 1934, has been employed or engaged on board ships of that Power either as master or a member of the crew or partly in the one way and partly in the other for an aggregate period of not less than six months.

54. See note 52 *supra*.

55. § 2 (1) (proviso).

56. § 2 (2).

57. § 2 (3).

58. 4.

59. 5.

60. 6.

61. 7 (1).

62. 7 (2).

The decisions of the Maritime Courts are not subject to revision by a British court unless the question arises whether the Maritime Court has exceeded the jurisdiction granted by the Allied Powers (Maritime Courts) Act, 1941,⁶³ but an appeal may lie under the law of the Power concerned to a court of appeal set up by that Power.⁶⁴ Accordingly, the decisions of the Maritime Courts are absolute and no "exequatur" from a British court is necessary to carry them into effect. Provision is made for the authenticity of any sentence passed to be proved to the British prison officials,⁶⁵ and where sentence has been pronounced the court is deemed to have been competent and no question therefore arises as to whether the sentence is capable of execution or consistent with public policy.

Any fines imposed by a Maritime Court are, without prejudice, however, to any remedy under the law of the Power concerned, made recoverable summarily as a civil debt by the Government of that Power,⁶⁶ and the Secretary of State is authorized to make regulations governing the apprehension, conveyance, custody, treatment and release of any persons detained or ordered to be detained under the Act.⁶⁷

Any person required to appear before a Maritime Court to be put on trial or ordered to be punished for contempt of court by such a court, who claims to be a British subject, is entitled to have his claim determined by a local tribunal whose decision is final for all the purposes of the Act.⁶⁸ If the claim is allowed by the local tribunal all proceedings connected with the trial or punishment are void, except that the determination of the local tribunal is then conclusive for the purpose of any proceedings which may be taken against the alleged offender before a British court for any act or omission in respect of which British subjects are punishable under the Act.⁶⁹

The Act also makes provision for its extension by Order in Council, subject to such exceptions, adaptations and modifications as may be necessary, to any colony, British protectorate or mandated territory.⁷⁰ Such, briefly, are the provisions of the Act, of which five foreign Governments have taken advantage.

Belgian Courts have been established in London, Liverpool and Cardiff; a Greek court in Cardiff; Dutch courts in London, Cardiff,

63. § 11.
 64. § 2 (4) and § 11 (1).
 65. § 8 (1).
 66. § 8 (4).
 67. § 8 (6).
 68. § 9 (1).
 69. § 9 (3).
 70. § 14.

Fleetwood, Liverpool, Glasgow and Newcastle, with an appeal court sitting in London; Norwegian in London, Cardiff, Liverpool, Newcastle and Glasgow; and Polish in Liverpool, Glasgow and London, with an appeal court in London.

In concluding this article upon the Allied Courts in Great Britain, it may be said that in passing into law the Allied Powers (Maritime Courts) Act, 1941, the British Parliament at once made an entirely new departure in international law of outstanding interest, and, in doing so, exemplified the national will to allow no mere principal of sovereignty, however hallowed by age, to stand in the way of a practical act of friendship for Powers with whom Great Britain is united in a common cause and shares a common heritage of the sea. As has been said,⁷¹ the arrangements made to authorize the setting up of these Maritime Courts were not regarded as a favour conferred on exiles driven to take temporary refuge in the British Isles, but as a piece of co-operation between sea-loving and sea-using peoples who have the tradition of the sea in their blood and who will fight unflinchingly for the preservation and restoration of freedom, whatever be the forces of tyranny arrayed against them.

71. Address by the Viscount Simon, the Lord High Chancellor of Great Britain, on the occasion of the establishment of the Norwegian Maritime High Court on November 7th, 1941.