

Occupation:
Military Postage Stamps

October 2, 1943

Mr. D. W. Bell

Mr. Laxford

In your note of September 27 you inquired as to whether we had consulted the Post Office regarding the points I had outlined in my memorandum of June 10 concerning Allied postage stamps.

For your information I am attaching a copy of a memorandum regarding our discussions with the Post Office Department on those aspects of the problem on which we felt their views might be helpful. You will note from such memorandum that such consultation does not modify our views concerning the legal status of such stamps.

(Initialed) A.F.L.

Attach.

Copies to: Mr. O'Connell
Mr. Pehle
Mr. Taylor

Mr. Kubie

Mr. Kinsciff

Supplementing Memorandum re Authority of Allied
Military Command to issue Postage Stamps in
Areas which it Occupies and Controls.

In a previous memorandum on this subject dated June 8, 1943, the opinion was expressed that under the authorities and in accordance with international uses the Allied Military Command would be authorized to issue postage stamps and that such stamps would probably enjoy the same treatment both internally and externally that was accorded to similar stamps issued by the preceding civilian government. The caveat was made that such neutral countries as are motivated by political or security reasons might deviate from the settled principles which underlie the full recognition of such stamps.

In a covering note it was mentioned that the memorandum was based on Treasury sources and that the Post Office Department was not consulted. Since then information obtained from the Post Office Department (Mr. Grayson, International Stamp Division) has given further support to the position adopted in the original memorandum.

The situation with regard to the treatment of Russian mail during the period when Russia was not recognized by the United States is somewhat analogous to that which obtains in present day Sicily. The mails to and from Russia continued to be exchanged just as though nothing had happened. The only difference which might be noted is that official correspondence with Moscow was signed by a superintendent of International Postal Service and not by the Postmaster General or any other high official. This was merely to make certain that it would be clearly understood that such correspondence did not constitute recognition.

Apart from the legal approach it may be said that, as a practical matter, in international postage service the stamps do not make much difference just as long as there is a reasonable charge for the postage. Stamps as such are not recognized by different countries. Any country can adopt any stamp that it desires. The important thing is that there be a reasonable

charge for the postage so that no one country could permit its people to flood other countries with commercial mails by permitting a too low postal rate. The purpose is not for revenue since each country keeps its own postage and ships mails on a reciprocal basis.

When we are at war with a country we immediately suspend all service. However, the severance of diplomatic relations does not make any difference to postal services; nor does non-recognition of a de jure or de facto government make any difference.

When the Russian government changed there was no change in the Postal Convention and no formal action was taken in connection with adherence to the Convention by the new Russian government. However, as has been pointed out in the earlier memorandum, if it is desired formal adherence can be signified by following the procedure set forth in the Convention.

The situation in the last World War is not particularly helpful since when Germany took over Belgium and Holland no mail was sent from those countries. During the present war when Germany took over Denmark even though they continued the Danish Postal Service we neither received mail from nor sent mail to Denmark.

In summary it may be said that any country which was a member of the Postal Convention would probably recognize and honor mail which bore the stamp issued by a de jure or de facto government or military government just as long as the stamps issued conformed with the regulations set forth in the Convention.

This memorandum is not based on any documentary research. The information was obtained as a result of telephone conversations with the Post Office Department.

COPY

Mr. Bell

June 10, 1943

Mr. Luxford

I am attaching a memorandum on the authority of the Allied Military Command to issue postage stamps in areas which it occupies and controls, prepared by two of my men. I think the memorandum is a fair statement of the situation and confirms my oral statement to you the other day.

I call your attention to the fact that we have checked no source outside the Treasury facilities regarding this matter in view of the subject involved. One obvious source I would like to have checked would be the Post Office Department, since I am sure that facets of this problem have come up in the past, as for example, Russian mail during the period when Russia was not recognized by the United States. I merely mention that this avenue of research was not examined, but I feel quite sure that, if it were examined, it would confirm the position taken in this memorandum.

Attachment

AFL:skg--6/10/43

June 8, 1943

Mr. Luxford

Mr. Minskoff and Mr. Brenner

Re: Authority of Allied Military Command
to issue postage stamps in areas which
it occupies and controls.

The question has been raised as to the legal incidents which will attach to the issuance of postage stamps by the Allied Military Command in areas which it occupies and controls. For the purpose of this discussion, it is assumed that the particular area over which the allied military forces have obtained control and for which they have assumed responsibility is one in which, as a result of the invasion or otherwise, the postal facilities are no longer adequate; and that as a result it has become necessary for the occupying military authorities to issue postage stamps in order to continue or reestablish communications within the area, and from the area to other parts of the world. The problem may be resolved into two parts: (a) will postage stamps issued by the Allied Military Command be valid for purposes of internal communication within the area, and (b) will such stamps be recognized in other countries to which mail bearing such stamps is directed or through which such mail must traverse.

Under international law and usage of nations such stamps should enjoy the same treatment, both internally and externally, that was accorded to similar stamps issued by the preceding civilian government, and only those neutral countries which are motivated by political or security reasons might deviate from the settled principles which underlie the full recognition of such stamps.

There is ample authority to the effect that the Military Commander of occupied territory has all the rights and powers normally incident to a de facto government. A number of cases decided in the United States Supreme Court, while not binding upon foreign governments, indicate the lines along which legal thinkers on problems of international law have proceeded in connection with the status of an occupying force.

In the case of Dooley v. United States, (1901) 182 U.S. 222, the Supreme Court, quoting Halleck on International Law, makes the following pertinent observations:

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession, is one of the incidents of war, and flows directly from the right to conquer. * * * Such authority and such rules are derived directly from the laws of war, as established by the usage of the world, and confirmed by the writings of publicists and decisions of courts--in fine from the law of nations. * * * He, nevertheless, has all the powers of a de facto government, and can at his pleasure either change the existing laws or make new ones."

A similar statement was made in New Orleans v. Steamship Company, (1874) 20 Wall. 387, where it was said:

"In such cases the conquering power has a right to displace the pre-existing authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."

The various textbooks, treatises, and digests on international law, which deal with the subject of military or belligerent occupation, are in substantial agreement with respect to the proper ambit of authority which may be exercised by the occupying force. (2 Lauterpacht, Oppenheim's International Law, secs. 165-172; Moore, International Law Digest, vol. 1, sec. 21, vol. 7, secs. 1143-1155; Higgins, Hall's International Law, secs. 153-161; 2 Hyde, International Law, secs. 688-699; Lawrence, Principles of International Law, secs. 171-180; Wilson, International Law, secs. 128-132.) It appears to be clear from these sources that the occupying force has the right to do whatever acts are necessary for the prosecution of the war and that the range of military necessity in particular cases can only be determined by the circumstances relative to each such case.

Moreover, the occupying force, having suspended or superseded the regular government, owes certain duties to the inhabitants of the territory under its control. Thus, it not only has the right but also the obligation to take whatever steps are necessary to secure public order. This necessarily includes the myriad functions and services of a normal peacetime government. Since postal communications within the occupied area and between that area and the outside world are essential to trade and commerce, and will operate to prevent confusion, social unrest and possible panic, it seems manifest that the military authorities not only may but must insure the existence of a postal communication system.

Article XLIII of the Second Hague Convention of 1907 (No. IV) clearly places the responsibility upon the occupying force for carrying out the normal functions of the government. That article provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in its power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

The above provision is manifestly born of necessity. The Military Commander, being the only effective administrator in the area and having the responsibility of maintaining order and continuing necessary governmental functions, must have the power to discharge his duties effectively.

Under the generally recognized powers of the Commander of the occupying forces, as well as under article XLIII above, there would seem to be little question but that the issue of Allied Military Command with the usage of nations. This is particularly true where the laws of the occupied country are not disturbed and where the existing statutes, decrees or regulations provide for a postal system substantially the same as that introduced by the occupying forces.

The extent to which neutral countries recognize de facto administrations of the type discussed herein is indicated by the case of Bank of Ethiopia v. National Bank of Egypt and Liquori, decided by the British High Court of Justice, (1937) 53 Times L.R. 75. In that case the Bank of Ethiopia demanded settlement of its accounts with the National Bank of Egypt. The Egyptian bank admitted the existence of the accounts and the fact that they were unsettled but claimed that settlement

should be made with Liguori, who was the Italian liquidator of the Ethiopian bank. It was contended by the Ethiopian bank that Italy was only a military occupant and that, under article XLIII, its authority was limited to those acts necessary to maintain the safety of the army of occupation and did not extend to the modification of local laws with respect to the status of established Ethiopian corporations.

The High Court of Justice rejected the contention of the Ethiopian bank, stating that it had -

" * * * no relevance in principle to the case of a de facto government set up in an area from which the former government has departed and in which there is no government authority except that of the de facto government."

Commenting on this decision, Wright points out in (1937) 31 American Journal of International Law 687, that these conditions would necessarily exist in all cases of belligerent occupation.

Apart from this concept which apparently regards all occupants as de facto governments, it is well to note that the interpretation of article XLIII is sufficiently realistic to sanction the vesting of broad powers and authority in the occupying force regardless of whether it is called an occupying force or whether it is accepted by other nations as a de facto government.

Applying the broad and general powers and duties of the occupant to the specific administration of one of the many public functions and services that it will be called upon to perform, it becomes apparent that the issuance of postage stamps by the occupant, in its own name, in order to meet the needs of the area, is precisely the type of function which it is contemplated will be performed.

In connection with the recognition of such stamps by other nations, it is necessary to consider the provisions of the Universal Postal Convention of May 23, 1939, which became effective July 1, 1940, and the Regulations of Execution of the Universal Postal Convention. Nearly all nations are members of the Union and provision is made for the adherence of any country which failed to sign the original Convention. Article 2 provides as follows:

"Any country is permitted at any time to adhere to the Convention.

"Notice of the adherence shall be given through diplomatic channels to the Government of the Swiss Confederation and by the latter to the Governments of all the countries of the Union."

Under this procedure, the particular occupied area would have merely to notify the Government of the Swiss Confederation, through the appropriate officer of the occupying forces, that it adhered to the Convention and that it would continue or resume, as the case might be, the performance of its obligations under the Convention.

Apart from political considerations or other types of pressure, it may fairly be assumed that all members of the Union would accord to the occupied area the privileges of membership and would grant its postage stamps due recognition. As a practical matter, the basis on which the Union is founded is the reciprocal treatment which each member country expects to receive with respect to mail passing through the territorial jurisdiction of other member countries, and since the occupied area will be in a position to discharge its obligations of membership there would be no reason or motive, other than that referred to, for failing to accord full recognition to mail originating in the occupied area and bearing a stamp issued by the Allied Military Command.

In making plans for printing the proposed stamps, attention should be given to the following provisions of the Convention and Regulations:

- (1) All ordinary mail must be fully prepaid by the sender. (Article 35 of the Convention)
- (2) Prepayment must be effected by means of stamps or impressions of stamping machines. (Article 47 of the Convention)
- (3) Postage rates are fixed and can be varied by reductions not exceeding 20% and increases not exceeding 40%. (Article 34 of the Convention and Article II of the Protocol)
- (4) The number of monetary units or fractions thereof must appear on the stamps to indicate their value in accordance with the table of rates. (Article 106 of the Regulations)
- (5) Stamps must indicate the country of origin. (Article 106 of the Regulations)
- (6) Stamps for single-rate letters are to be blue, stamps for post cards are to be red, and stamps for single-rate prints are to be green. (Article 106 of the Regulations.)

Since it is difficult to ascertain in advance the value of the monetary unit to be used, the requirement that the postage value in monetary units appear on the stamps issued will give rise to the following problem: The printing of the stamps, or at least the final over-printing of the country and monetary unit, will have to be postponed until after a determination is made with respect to the exchange rate of the currency to be used in the area. This is a problem which will arise, in connection with stamps issued for external use, as a result of the provisions of the International Postal Convention. With respect to stamps issued for internal use, the postage value will not be a significant factor.

Incidentally, the table of rates referred to in the Convention and Regulations is based on the postal gold franc which contains 10/31 of a gram of gold .9 fine. This was the value of the French franc prior to its devaluation.