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Declassified E.O. 12356 Section 3.3/NND No.

785017

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10000/109/1077

TREATMENT OF
NOV. 1944 - FEB.

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TREATMENT OF ITALIAN NATIONALS BY YUGOSLAVS
NOV. 1944 - FEB. 1945

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5 is for information & concerns the execution & bringing to trial of Italians in Yugo Slavia. In para 3 AFH is asked for its advice. 1 & 2 is a legal opinion on the matter, 3 & 4 contain available details of the allegations.

Handy
Col. S. J. 25/11
[Signature]

25/11

211

C50

22-10 are in reference to Italian firs detained in Yugo Slavia. Minute 10 above originated this so far will see detentions are still being made.

PA [Signature]
30/11

29 Jan 45

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Declassified E.O. 12356 Section 3.3/NND No.

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2244
6524

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Ref: N/821

26th February 1945

Subject: Treatment of Italian Civilians
by YUGOSLAVS.

TO : G-5 Section, Allied Force Headquarters.

FEB 28 1945

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10

With reference to this Section's letter No. 820 of the
26th January 1945.

2. A copy is attached of a further memorandum from the
Italian Ministry of Foreign Affairs reporting the
abduction by the Yugoslav authorities of an Italian officer
of the 85th Infantry Regiment.
3. The Political Section would be grateful if enquiries
could be made regarding this incident and a report
thereon furnished for transmission to the Italian authorities.

For the Chief Commissioner:

H.L.S.A. HOPKINSON,
Acting Vice-President,
Political Section.

PA 86

2554

1 enc: copy of memo. from Italian
MFA dated 3rd February 1945.

Copies to: Executive Commissioner, Allied Commission.
Civil Affairs Section.
British Resident Minister, AFHQ.
U.S. Political Adviser.
U.S. Embassy.
British Embassy.
Representative at Bari of the British Resident Minister.

PA 111 2/3

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COPY

Ministero degli Affari Esteri

6/359/156

Subject: Disappearance of an Italian
Officer of the "Garibaldi"
Division.

10

14

Memorandum for the Political Section, A.C.

The Ministry for Foreign Affairs, with memoranda n. 5/1025/43A of November 12th and n. 6/186/92 of January 17th, have interested the Allied Commission in the trial and execution of some Italian officers carried out by units of the Yugoslav National Army of liberation.

The Ministry for Foreign Affairs have now been acquainted with another very serious case, to which they feel bound to draw the attention of the Allied Commission; i.e. to the disappearance of 2nd Lt. Gianni Tolla of the 3rd Regt. of Infantry, "Venetia" Division, a member, since the foundation, of the 2nd Brigade of the "Garibaldi" Division.

According to information furnished by an officer and M.C.O. of the latter Division, recently repatriated, Lt. Tolla, captured in Bosnia by the Germans and interned at Ragusa, refused on the liberation of their city to follow the Germans and joined the partisans. These, however, arrested him on the charge, it is said, of carrying out propaganda in favour of the Allies. According to other reports he would have been victim of the revenge of a Yugoslav political Commissar, whom he reported to his superiors for attempting violence against the wife of an Italian medical Captain.

At Braşna (Serbia) the mortar company commanded by 2nd Lt. Tolla was personally commanded by Marshal Tito.

Towards the end of November he left Ragusa by car in company of some partisans and since then nothing more has been heard of him.

This new regrettable incident confirms the already reported attitude of the Yugoslav partisans towards the Italian soldiers who volunteered to fight with them and the Ministry for Foreign Affairs beg therefore the Allied Commission to do all that is possible in order to obtain precise information on the fate of Lt. Tolla.

ROME, 3rd February 1945.

2353

Ref: P/820.42

26th January 1945

SUBJECT: Treatment of Italian
Officers by Yugoslavs.

JAN 27 1945

TO : G-5 Section,
Allied Force Headquarters.

N/R *enc*

Reference your letter G-5 091.713-4 (Italy) of
December 15th.

1. There is attached a copy of a further memorandum from the Italian Ministry of Foreign Affairs enquiring whether any progress has been made towards the release and repatriation of certain Italian officers held by the Yugoslav authorities.
2. The Political Section also encloses a copy of a telegram which the Ministry of Foreign Affairs desire to send to the Italian Embassy at Moscow, on the same subject.
3. We should be glad to learn whether any replies have been received to the two cables to Brigadier Maclean copies of which formed the enclosures to your memorandum under reference. If the information requested in the cables has not yet been received, the Political Section suggests that the Ministry's telegram to Moscow should be forwarded through military channels, subject always to over-riding military objections on the part of Allied Force Headquarters.

For the Chief Commissioner:

H.L.d'A. HOPKINSON,
Acting Vice-President,
Political Section.

2 enclosures: memo. from MFA dated 17.1.45

telegram from MFA No. 17 to
Italian Embassy at Moscow,
dated 22.1.45

Copies to: Chief of Staff, A.C. ✓
Deputy Chief of Staff, Civil Affairs Section
British Resident Minister,
U.S. Political Adviser,
American Embassy,
British Embassy, (Resident
Rep. of the British Minister at Bari

COPY

MINISTERO degli AFFARI ESTERI;

6/196/92

MEMORANDUM FOR THE POLITICAL SECTION
ALLIED COMMISSION

Reference is made to memorandum of this Ministry number 6/1025/34 of 12th November last, concerning the prosecution and execution by Yugoslav Partisans incorporated in the Yugoslav National Army of Liberation of Lt. Colonel Ezio Staparelli, Major Antonio Monsani, Captain Caroti. In the same memorandum it was also mentioned that other 11 Italian officers were kept under inquest by the command of II Korpus N.O.V.Y.

The Italian General Staff have now informed this Ministry that on November 27th, according to news brought by an officer of the "Garibaldi" Division recently repatriated, General Isasca and Captain Panicucci were detained in jail by the Command of said II Korpus at Niksic. Furthermore, on such a date, the following officers of the "Garibaldi" Division were living in the outskirts of Niksic:

- 1) Colonel Bega - formerly commander of 19th art. df. "Garibaldi" Divn.
- 2) Lt. Colonel Sabini - formerly belonging to the 19th art. df. "Venezia" Division.
- 3) Major Ferro - formerly commander of II/83rd itr. df. "Venezia" Divn.
- 4) Major de Santis
- 5) Captain Poli - formerly belonging to the 19th art. df. "Venezia" Divn.
- 6) Captain Poppiano - formerly civil delegate at Kolasin.
- 7) Captain Paganoni - formerly civil delegate at Berane.
- 8) Captain Scenocchia - formerly commander of Royal Carabinieri Divn. "Venezia".

The above mentioned officers, although free to circulate, were kept under a very strict surveillance. From other reliable sources it appears moreover:

General Isasca and Captain Panicucci of the Division "Venezia" have been seen on 14th December at Bata ("Bocche di Cattaro") while they were transferred under arrest from Niksic to Cetinje where the Command of II Korpus N.O.V.Y. and the Government of Montenegro were then located.

General Isasca appeared tied by the wrist to another civilian and his physical conditions seemed to be very serious showing his deep sufferings.

/Captain

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copy

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Captain Panicucci, who was also handcuffed, begged an Italian officer to inform the Command of the Division "Garibaldi" of the situation.

According to another reliable information, it seems that the partisans had at that time already executed 38 persons; therefore, very few hopes seem to remain about General Isasca being still alive, and if alive that he can be saved.

The other Italian officers under inquest at the Command of II Korpus B.O.V.V. were at the date of December 18th, 1944, kept at Cetinje. On each of them the Yugoslav Partisans had brought several charges.

The Ministry for Foreign Affairs would be grateful if the Political Section could kindly inform about the steps which have been taken in the matter with the view to obtaining the release and the repatriation of the above mentioned Italian officers. This Ministry wish to emphasize the urgency of the matter and trust that the Allied Authorities will take it into their most favourable consideration.

ROME, January 17th 1945.

2850

copy

R. MINISTERO degli AFFARI ESTERI

Telegramma in Partenza

Data: 22/1/45 Trasmite: A.C. No. coll: 310
Diretto a Italian Embassy, MOSCOW
Testo: (originale) No. 17 - January 22.

Last August members of Yugoslav Army of National Liberation summarily tried and shot two senior Italian officers and a captain of the Garibaldi Division. The charges made out against them were absolutely irrelevant i.e. changing into Italian a Slav surname, alleged ill-treatment of Italian soldiers, etc.

Furthermore, since November last, other eleven officers of the same Division are reported detained by the Command of the II Yugoslav Corps, among which General Iasona and four senior officers. It has not been possible to obtain information as regards their charges. Their physical and moral conditions are reported as being very distressing.

Steps have already been taken through the Allied authorities protesting against the unwarranted detention and asking the suspension of the proceedings and the repatriation of the officers.

Please interest that Yugoslavian Ambassador in approaching his Government on the matter with a view to obtaining release and repatriation of the officers, appealing to sense of humanity and justice. Such proceedings are clearly illegal as we must uphold principle that Italian soldiers belonging to regular formations must be tried by Italian courts. Italian feelings revealed by press have been gravely shocked by these events and cannot hide their disappointment in learning of treatment meted out to Italians who since

a year fight gallantly and loyally on the side of their
Yugoslav comrades against common enemy.

TO BE CODED

RESULTS

HEADQUARTERS ALLIED COMMISSION
POLITICAL SECTION
APO 394

Ref: 820

26 November 1944

2 NOV Recd

MEMORANDUM TO: G-5 Section, Allied Force Headquarters

1. In telegram No. 6486 of the 14th November, the Political Section reported that the Italian Ministry of Foreign Affairs had submitted an aide-memoire regarding the trial and execution by Yugoslav Partisan Units belonging to the Yugoslav National Army of Liberation of three Italian officers of the Garibaldi Division, and the placing under enquiry of eleven additional Italian Officers. The Political Section suggested that pending an examination of this question steps might be taken to suspend any further action by the Yugoslav authorities for the time-being.

2. A copy of the aide-memoire together with the enclosed memorandum on the legal aspects of the matter is transmitted herewith. It has been examined by the Legal Sub-Commission of the Allied Commission who have no comments to offer. From the Italian political point of view it is most desirable that any steps possible should be taken to prevent any victimization of Italian military personnel in Yugoslavia and that any action which may be taken against the individual Italian officers in respect of War crimes should be brought within the framework of the arrangements laid down by the War Crimes Commission in London of which it is understood the Yugoslav Government is a member.

3. The Political Section would be grateful if an investigation could be made into the facts of the case and if they could be informed, having regard to the above considerations, what reply should be addressed to the Ministry of Foreign Affairs.

For the Chief Commissioner:-

H. L. d'A. HOPKINSON
Acting Vice President, Political Section

Copies to: Chief of Staff, A.C.
Deputy Chief of Staff, Civil Affairs, A.C.
British Resident Minister, APHQ
U.S. Political Adviser
American Embassy, British Embassy,
Representative of British Resident
Minister at Bari.

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Ministry of Foreign Affairs

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6/1025/43/

HA

Aide Memoire

It appears that on the 15th August last, the following Italian Officers belonging to the "Garibaldi" division which, as is known, is fighting under Marshal Tito's orders, have been tried and shot by the Yugoslav partisans that are formed into units of the Yugoslav National Army of Liberation:

Lieut-Col. Ezio Stuparelli, former Chief of Staff of the "Venezia" Division.

Major Antonio Manzani, formerly of the Command of the "Taurinense" Division.

Captain Caroti, formerly of the Command of the "Venezia" Division.

The charges on which the abovenamed were tried and shot are, as far as it is known, absolutely irrelevant from the juridical standpoint and such as not to justify not only their sentence but not even legal proceedings against them. In fact, Lieut. Col. Stuparelli appears to have been charged with having at one time changed his surname from Stuparich to Stuparelli and to having been a "squadrista"; Major Manzani was accused of having strongly reacted at the disrespectful behaviour of an Italian soldier towards himself; Captain Caroti of have been a "squadrista".

It further appears that the following 11 Italian officers have been placed under inquiry by the Command of the II Corps of the Yugoslav National Army of Liberation:

General of the Brigade (of the Regular Army) Carlo Isason, former Infantry Commander of the "Venezia" Division;

Artillery Colonel (of the Regular Army) Beja Felice, formerly Commander of the 19. Artillery Regiment of the "Venezia" Division;

Artillery Lieut. Col (of the Regular Army) Mario Sabini, formerly of the 3rd Battalion of the 83. Infantry Regiment "Venezia";

Alpine Major (of the Regular Army) Lionello Albertini, formerly on the General Staff of the Command of the "Venezia" Division.

Artillery Major (of the Regular Army) Eugenio De Santis, formerly in the Artillery Regiment of the "Ferrara" Infantry Division;

Captain of the Royal Carabinieri, Sconocchia, formerly Commander of the Carabinieri in the "Venezia" Division;

Captain Foppiano, formerly of the 83. Infantry Regiment, "Venezia" Division and formerly Civilian Delegate at Kolasin.

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B.

Captain Paganoni, formerly of the 83. Infantry Regiment, "Venezia" Division and formerly Civilian Delegate at Berane;

Captain Panicucci, formerly of the 83. Infantry Regiment, "Venezia" Division.

It has not been possible to obtain as yet any information concerning the charges against these Officers.

The above information, confirmed also by another reliable source, is of an extremely serious nature and compels the Italian Government to enlist the interest of the Allied Authorities in the matter. The Italian Government formally protests against the unlawful trial of the abovenamed 14 Officers and against the barbarous sentence passed and executed on three of them. The Italian Government demands that any judicial action or any other action of whatsoever nature against the 11 Officers at present under inquiry be suspended and, further, that these last be forthwith repatriated.

A short aide-memoire is herewith enclosed wherein are set out certain considerations regarding the illegality of the lamented proceedings.

The various deplored incidents show-even apart from their merit-that the principle cannot be accepted that members of the "Italian Garibaldi Division" be subjected to a military jurisdiction other than that of the State to which they belong.

The re-affirmation and the respect of this principle is all the more necessary not only in order to safeguard the sovereign rights of the Italian State and the respect of international rules which must exist particularly between States united in a common struggle, but also because it would be inhuman to pretend that Italian soldiers should continue to fight, to suffer, and to die alongside the Yugoslav soldiers, when these co-belligerents do not recognize to the first these rights that the comity of civilized Nations and the particular obligations of the Allies have fixed and sanctioned.

ROME, 12th November, 1944.

Copy.

Ministry of Foreign Affairs

AIDE MEMOIRE

1. A universally accepted and practised rule of international law lays down that members of any Expeditionary Force stationed in a Foreign Country shall not be subject to the jurisdiction of local tribunals and shall be exclusively subject to the military jurisdiction of the national army to which the said Forces belong.

Now, owing to the fact that the "Garibaldi" Division, of which the shot Officers and those at present under inquiry are members, is formed by units of the Italian Divisions, "Venezia," and "Turinonee", and owing also to the fact that on its reorganization, it was, by the very same Yugoslav Command, called the "Italian Partisans Garibaldi Division", it must be considered as a regular Expeditionary Force on Yugoslav territory, operating as a co-belligerent alongside the Yugoslav Partisans Army. The men serving in this Expeditionary Force cannot, therefore, be subjected to any jurisdiction other than the Italian military jurisdiction.

It is here opportune to point out that this principle would still maintain its full value even in the event that the above Division did not dispose of a pre-established Military Tribunal, formed by suitable organs of the Military Judiciary, as in such cases the Italian war emergency law contemplates the formation, with the available means and at any moment, of a War Emergency Military Tribunal for the purpose.

2. Apart from this prejudicial exception to the incompetence of the Partisans Tribunals to try troops belonging to the "Garibaldi" Division - which would in itself be sufficient to show the illegality of the procedure followed - it must be pointed out that the three instances, in respect of which the charges are known, show an absurd claim to consider as crimes - vis - a - vis Italian citizens - facts which must be considered utterly irrelevant to the Yugoslav juridical system. As a matter of fact one of them is considered by Italian legislation, the only one competent to judge in the matter, as perfectly lawful. Reference is here made to the Officers who have been shot for having been "Squadristi", a fact absolutely outside the legal powers of the Yugoslav Court to judge, and to the case of Lieut. Col. Stagerelli, sentenced to death for having, inter alia, modified his surname, an act, this, that took place in conformity with the laws in force in the Country of which the Officer was a citizen.

3. The inadequacy of the charges brought against the above Officers to justify the capital punishment inflicted and the fact that, owing also perhaps to the scarce information available the reasons for which General Isasca and ten other Officers are placed under inquiry are unknown, give rise to fears that the Partisans authorities have proceeded and intend to proceed against them as war criminals.

However, in this instance also, according to the provisions embodied in the "Declaration on Italy", issued by the Ministers for Foreign Affairs of Great Britain, Russia and the United States on the conclusion of the Moscow Conference of October 1943 (and which must be considered to be binding also on Yugoslavia), the legality of the intervention of the Yugoslav Partisans Tribunals must be denied, and for the following two different reasons:

- 2 -

a) The above Officers, both owing to the character of the charges and to their military rank, cannot be considered war criminals:

b) These Officers, however, inasmuch as they are Italian citizens, even if charged with having acted as war criminals, must in any case be judged by the Italian jurisdictional authority.

As regards point a), in fact, the abovementioned "Declaration" in laying down, differently to the provisions applicable exclusively to Germany set out in the "Declaration of atrocities" issued at the same time, that legal proceedings are to be taken for war crimes only in respect of "fascist chiefs and army generals", leaves in force the ordinary international rule, according to which only those who have given the orders to accomplish acts that constitute war crimes can be tried and eventually punished, excluding therefore that any action can be taken against those who materially carried out the orders, as, on the contrary, in the case of Germany, where it has been laid down that action can be taken against any officer, any individual and any member of the Nazi party. Now, the abovementioned Italian Officers of whom only one is a General, cannot be considered as executors of orders given by others. Furthermore, the charge brought against some of them of having, together with the Kothaks, carried out war operations against the partisans, not only does not constitute a real and proper war crime, as contemplated by the "Declaration on atrocities", but does not even represent an infringement of the common rules of international war law. The abovementioned "Declaration," in fact, limits war crimes to acts of exceptional gravity consisting in "atrocities, massacres, and executions in mass committed in cold blood".

As regards the second point b), whilst in respect of Germany it is specified that the guilty of war crimes "shall be sent back to the countries where their abominable misdeeds were accomplished so as to be judged and punished according to the laws of the liberated countries and of those Governments that will therein be established", in respect of Italy it is instead generically contemplated that the guilty "shall be arrested and handed to justice". Lacking the specific provisions set out in respect of German war criminals, this justice must be intended to mean national justice and, in this case, Italian justice.

From these two considerations it is clear that, even if it were question of proceedings for war crimes, the Yugoslav partisan authorities would equally have acted unlawfully, inasmuch as they would have violated the abovementioned "Declaration on Italy", both in sentencing Officers who owing to their rank could not possibly have been considered guilty of war crimes, and in claiming the right of judging them. This right, in accordance with the well-established international rule which is not contradicted by the said "Declaration", is reserved to the Tribunals of the Italian State.

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