

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

785016

ACC

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890

Military Law
Feb. - Aug. 1944

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Phone:
478201

Ref/125/66/CA.

18 August 1944.

SUBJECT: Powers and Rights of Allied Forces and
Allied Military Government in Unoccupied Italy.

TO : Distribution below.

1. Attached hereto is copy of AAI Administrative Instruction No. 48 dated 8 August 1944.
2. This supercedes our letter 125/18/CA dated 23 March 1944.

NORMAN E. FISKE,
Colonel,
Deputy Executive
Commissioner.

DISTRIBUTION:

Group 2 & List "C".

3100

SECRET

HQ., ALLIED ARMIES IN ITALY

AAI/3064/A(0)

8 Aug. 44

ADMINISTRATIVE INSTRUCTION NO. 43

POWERS AND RIGHTS OF ALLIED FORCES AND ALLIED MILITARY GOVERNMENT IN
SOUTHERN ITALY

This Instruction supplements Administrative Instruction No. 6, reference
AAI/3064/A(0) dated 15 Jan. 44.

1. Definition

For the purposes of this instruction the term "Italian Government Territory" refers to territory administered with the ITALIAN Government, in such territory forming part of Italian Government Territory which may be handed over to the ITALIAN Government from time to time, in respect of which full powers of Government will also be possessed by the ITALIAN Authorities.

2. General

The object of this instruction is to clarify the more important rights reserved to the Allied Forces by agreement with the ITALIAN Government, in such territory forming part of Italian Government Territory which may be handed over to the ITALIAN Government from time to time, in respect of which full powers of Government will also be possessed by the ITALIAN Authorities.

Apart from those reserved rights, Allied Military Government in ITALIAN Government Territory must be on equal terms with the ITALIAN Government and the ITALIAN Government and those who have authority over it are no longer operative; no such proclamation or measure may be issued in the future.

Although there will be officers of the Allied Control Commission in ITALIAN Government Territory, they will be there to advise and control the ITALIAN Government, and not as Government. One of the most important functions of the Regional and Provincial Offices of the ACC will be liaison between Allied Military Governments in the area and the ITALIAN administrative officials. All but the most routine dealings between the ITALIAN administration and the Allied Military Government must be conducted through the local ACC.

When the ITALIAN Government is directly represented on a control board or committee the Military Government, of course, does not interfere with that organization without the intervention of ACC.

3. Requisitioning

The Allied Forces have reserved the power and right to requisition private and public property as defined in Italian Government Territory - this right must be exercised primarily in order for persons of genuine military necessity. This right will be exercised through the ITALIAN authorities. If, for example, a building is needed by the military, it should be requisitioned through the Sindaco of the town where the building is situated, with the assistance of the Provincial Office of the ACC. The usual conditions of requisitioning used in

1. Definition

For the purposes of this instruction the term "Italian Government Territory" refers to territory forming part of Italy, Sicily and adjacent islands handed over to Italy by agreement and liquidation, subject to the guidance and instruction of the Allied Control Commission under the Chief Commissioner acting for the Commander-in-Chief, A.A.L.

2. General

The object of this instruction is to clarify the more important rights reserved to the Allied Powers by agreement with the Italian Government, in such territory forming part of Italian Government Territory which may be handed over to the Italian Government from time to time, in respect of which full powers of Government will also be possessed by the Italian Authorities.

Apert from these reserved rights, Allied Military Government in Italian Government Territory shall be an arm. All Proclamations and Orders of the Military Governor and those made by his authority cease and are no longer operative; no such Proclamation or Order can be issued in the future.

Although there will be officers of the Allied Control Commission in Italian Government Territory, they will be there to advise and control the Italian Government, and not as Governors. One of the most important functions of the Regional and Provincial Offices of the ACC will be liaison between Allied Military Government in the area and the Italian administrative officials. All but the most routine relations between the Italian administration and the Allied Military Government shall be conducted through the local ACC.

When the Italian Government is directly represented on a control board or committee the Military Gov. of the area, dealing with that organization without the intervention of ACC.

3. Requisitioning

The Allied Forces have reserved the power and right to requisition private and public property and services in Italian Government Territory - this right must be exercised in conformity with the provisions of genuine military necessity. This right will be exercised through the Italian authorities. If, for example, a building is needed by the Military Gov. it should be requisitioned through the Sindaco of the town where the building is situated, with the assistance of the Provincial Office of the ACC. The usual facilities of requisitioning used in Military Government territory will be strictly followed in Italian Government territory. The property of fascist parties, whether dissolved or not, must not be seized without giving a receipt, and when only is required for reasons of military necessity.

4. Allied Military Forces

As the Proclamation of the Military Governor ceases to operate in Italian Government Territory

3093

-2-

Government Territory, all crimes will normally be tried under ITALIAN law and in ITALIAN Courts. The Allied Forces, however, have reserved to themselves the right to hold Allied Military Courts in ITALIAN Government Territory for the trial of civilians who commit acts seriously hostile to the Allied Forces and to punish them in accordance with the ITALIAN Penal Codes.

The reservation of this right is not intended to encourage the trial of civilian offenders by Allied Courts, but to enable them to deal with the most serious offenses against Allied personnel or property which cannot be dealt with by the ITALIAN Courts. If such an offense has been committed the military authorities will give a full statement of the facts to the local representative of the ACC with the request that an Allied Military Court be convened to hear the charges. It will be the responsibility of ACC to frame the charges and constitute the Court. It is emphasized that only in the most exceptional circumstances will any case in ITALIAN Government Territory be referred to Allied Courts and then only on order of ACC.

Consequent on reservation of the power to try such offenders there is reserved to the Allied Forces the power to arrest persons who are believed to have committed such offenses. High ranking ITALIAN officials and officers of the ITALIAN Armed Forces should, however, only be arrested in collaboration with the appropriate ITALIAN official (e.g. the Prefect or the Commanding Officer of the officer concerned). In all cases of arrest the agreement of the local ACC officer will be obtained beforehand, except in an emergency, when he will be informed immediately after the arrest.

5. Military Zones.

The right is reserved by the Commander-in-Chief to declare specific areas in ITALIAN Government Territory to be Military Zones. Upon the issue of such a declaration, the right to exercise the powers of military government in the Zone in question becomes once more vested in the Commander-in-Chief. It is hoped that the need for the establishment of such Zones will never arise, but should the situation in any area become such as to convince the District Commander that such action is necessary, he should, after consulting the Regional Commissioner, report accordingly to HQ AMI giving full reasons to justify his view. The Allied Forces may also re-occupy any part of ITALIAN territory, but the right to constitute a Military Zone will render it unnecessary to exercise this right in respect of any local disorders.

6. Military and Civilian Internees

The Allied Forces may continue to hold or require the ITALIAN Government to hold in custody military or civilian internees in ITALIAN Government Territory. If the Allied Forces require to arrest any person for security or other reasons such arrest should be carried out in collaboration with ITALIAN officials unless, in any particular case, it is thought that a request to the ITALIAN police to arrest a suspect would be ineffective. In all such cases the local ACC officer must, except in emergency, be informed of the intention to make the arrest, whether it is to be effected by the Allied or ITALIAN authorities. If he is not in agreement, the matter will be referred to higher authority. Normally such persons will be detained in 374 PW Camp.

7. Use of Troops in Aid of the Civil Power.

It may happen that the local ITALIAN authorities may ask for the assist-

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7. Use of Troops in Aid of the Civil Power.

It may happen that the local ITALIAN authorities may ask for the assistance of Allied troops in quelling civil disturbances.

If such a request is made the local commander will point out that the quelling of civilian riots or disturbances is a matter for the ITALIAN Administration and he will refuse such assistance, unless he is of the opinion that it is necessary for the protection of Allied Military interests. Furthermore, before rendering such assistance the local commander will warn the local official requesting his assistance that the territory in question will be made forthwith an Allied Military Zone (see para 5 above).

/If time

-5-

para 7 contd.

If time permits the local commander will consult the local AOC officer and seek instructions from his Superior Commander before giving assistance; in any event he will inform his Superior Commander of any request made to him and the action taken thereon without delay.

8. Process in ITALIAN Courts

No member of the Allied Forces may be prosecuted or sued in ITALIAN Courts.

9. Emergency Action

It is appreciated that an emergency may arise which requires immediate action by the Allied Forces for their protection and security, but except in such emergency all action required from the ITALIAN Administration should invariably be taken through the medium of the Regional or Provincial Commissioner. Where immediate action is taken without previous reference to AOC for emergency reasons, the appropriate AOC Officer will be informed as soon as possible.

10. Assistance to ITALIAN Authorities.

Apart from the powers and rights described above, it should be remembered that the transfer of territory to the ITALIAN Government is made as part of the policy of the Allied Governments.

It is the duty of all Allied officers to assist the central and local Government authorities in acquiring and maintaining authority, and to avoid thoughtless acts which may undermine the authority of the police, the Sindaco, or the Prefects.

/VRI

Major General
Major General,
Chief Administrative Officer.

DISTRIBUTION

5 (US) Army
Eighth Army
5 Corps
2 Polish Corps
1 District
2 District
3 District
MZF Adv. Base
Adv. Adm. HQ UDF CMF
FES
C-in-C MED
HQ MAAF
AAF/MIO
26 E.L.V.

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Copies to:- 3098
AFHQ G1 (Br) (25)
AOC (12)
List 'B'
War Diary
File 3076/A(0) (2)
(1)

SECRET

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/GR

ACG/4027/L

29 February 1944

SUBJECT: Construction of Phrase "Allied Forces".

TO : HIO Region 2, 4, & 5.
HIO 5th & 8th Army.

The question has recently arisen as to proclamation offences against members of armed forces such as Yugoslav and Polish contingents and the Corps Expéditionnaire Français who are fighting on the Allied side in Italy and the following directive is issued for your guidance.

1. The expression "Allied Forces" when used in Proclamation No. 2 and other relevant proclamations in describing offences against the Allied Forces will be construed to include organized contingents of other nationalities (such as the above) who are under the command of G in C Italy.

This does not include Italian troops who are only cobelligerents and who in any event have ample resources in their own courts for punishing offenders.

2. In some cases e.g. Proclamation 2 Art II Sec 30 a different wording is used and in this case the normal construction will be used and if for instance words disrespectful to members of the C.E.F. are used it is not an offence under that section.

3. Allied Military Courts have no jurisdiction over members of the "Allied Forces" (Procl 4 Art II Sec 2(a)) and Courts will not therefore try members of organized contingents of armed forces of other nationalities who are under the command of the G in C Italy. This does not preclude trial in A.M. Courts (1) of soldiers of other nationalities who are not in an organized body under the G in C. (2) of Italian soldiers but normally and in the absence of some reason to the contrary they will be handed over to their own Military Courts for trial.

Copy to: VP RS & MS
VP Admin. Sec.
VP Political Sec.
Army Subcommittee.

G. H. WITCHIN, Colonel
Chief Legal Officer.

3097

Mr. Caccia ~~and Mr. Foster~~

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION

ACC/4027/L

GRU/jpl

17 February 44

SUBJECT : Offences against French and other forces in Italy.

TO : V.L. Administrative Section.

1. By Proclamation No. 2, Section 30 it is provided that any person who:

"Utters any speech or words hostile or disrespectful toward the United States or Great Britain, the armed forces of either or any member thereof or the Allied Military Government or the government of any other of the United Nations"

and by Section 45 of the same Article it is provided that any person who:

"Does any act to the prejudice of good order or safety or security of the Allied Forces or any member thereof;"

shall, upon conviction by a Military Court, be liable to punishment by such fine or imprisonment, or both, as the court shall direct.

2. A case has arisen in the 5th Army Area where disrespectful words have been used towards an officer of the Corps Expeditionnaire Francaise and the question arises as to what action should be taken.

3. It is plain that Section 30 as it stands does not cover the case because even if the words used were disrespectful to the French Committee in Algiers that Government is not the Government of a United Nations.

4. An alternative charge could no doubt be brought under Section 45 if Allied Forces be construed to include all Forces under the command of the C. in C. ACEF.

This construction raises a question of policy for two reasons:

(a) Offences against the "Allied Forces" are set out in numerous sections of Proclamation No. 2 and the same construction should be given to the phrase in all sections.

(b) If the French Forces in Italy are to be included in the phrase Allied Forces because they are under the command of the C in C this would include Yugoslav, Polish, and other bodies including the Italian Army itself, and this would seem to involve a political issue. It may be that the Italian Army should be

3096

- 2 -

excluded as they have only the status of
cobelligerency.

Your decision is requested.

- (1) Whether Section 30 should be amended to
include in its scope offences against all
personnel of whatever nationality under the
command of the C in C and if so whether a
private directive should be issued that
Italian Soldiers are not to have the
benefit of this section.
- (2) Whether in Proclamation No. 2 offences
against the "Allied Forces" are to be
construed as including all military bodies
of whatever nationality under the command
of the C in C.

No

Yes

Richard H. Wilmer
Lt Col CAC

for GERALD R. GIFFORD

Colonel
Chief Legal Officer

Copy to Deputy Chief Commissioner,
Military Section,
Mr. Cassie and Mr. Reber,
SLG 5th Army (thru SCAD 5th Army) Your 208/CA/7
dated 15th February 44 refers.

3095

HEADQUARTERS ALLIED CONTROL COMMISSION
POLITICAL SECTION
A/C 304

25 February 1944

MEMORANDUM TO: Mr. H. A. Caccia

SUBJECT: Offenses Against French and Other Forces in Italy

Dear Caccia,

After the conference on property control the legal adviser and public safety representative asked me to remain to discuss the attached letter of 17 February from Colonel Upjohn. They had your comments on their letter before them but wanted to go further.

They insisted that Italian law must be reversed only in co-belligerents and not acquire rights as belonging to an Allied force which may be used as a precedent with the French. The proclamation is worked out practically in military courts for French nationals in the Allied forces. The position of Polish soldiers has not yet arisen but it is desired to include Italian soldiers somehow (to avoid delay in trial by Italian courts) without including them in the title of units of the Allied command.

I do not know if this might need to go. To go it appears that they are trying to have their cake and eat it. I rather that they want to include Italians in a disciplinary command without establishing a precedent which might give them ideas above co-belligerency. I queried the expression "all military bodies" and was informed that it meant all military formations.

Colonel Upjohn is going to the vice-presidents' meeting on Monday and will reopen the subject with you there.

Yours very sincerely,

3094

BU number Feb 28

11.0 ~~Ans~~

SUBJECT : Offenses Against French and Other Forces in Italy

After the conference on property control the legal advisor and public safety representative asked me to remain to discuss the attached letter of 17 February from Colonel Upjohn. They had your comments on their letter before them but wanted to go further.

068

Colonel Upjohn is going to the vice-presidents' meeting on Monday and will reopen the subject with you there.

J. H. Pearson

He never Kennedy. *J. H. Pearson*
600 *2007*

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loc, Pd: Section, are considered before

Any specimen is finally taken Aug 28/2

Mr. Reber.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
AFO 394

AGC/4027/L

GRU/jpl

17 February 44

SUBJECT : Offences against French and other forces in Italy.

TO : V.P. Administrative Section.

1. By Proclamation No. 2, Section 30 it is provided that any person who:

"Utters any speech or words hostile or disrespectful toward the United States or Great Britain, the armed forces of either or any member thereof or the Allied Military Government or the government of any other of the United Nations"

and by Section 45 of the same Article it is provided that any person who:

"Does any act to the prejudice of good order or the safety or security of the Allied Forces or any member thereof;"

shall, upon conviction by a Military Court, be liable to punishment by such fine or imprisonment, or both, as the court shall direct.

2. A case has arisen in the 5th Army Area where disrespectful words have been used towards an officer of the Corps Expéditionnaire Française and the question arises as to what action should be taken.

3. It is plain that Section 30 as it stands does not cover the case because even if the words used were disrespectful to the French Committee in Algiers that Government is not the Government of a United Nations.

4. An alternative charge could no doubt be brought under Section 45 if Allied Forces be construed to include all Forces under the command of the C. in C. AGMF.

This construction raises a question of policy for two reasons:

(a) Offences against the "Allied Forces" are set out in numerous sections of Proclamation No. 2 and the same construction should be given to the phrase in all sections.

(b) If the French Forces in Italy are to be included in the phrase Allied Forces because they are under the command of the C in C this would include Yugoslav, Polish, and other bodies including the Italian Army itself, and this would seem to involve a political

issue. It may be that the Italian Army should be

309

- 2 -

excluded as they have only the status of
cobelligerency.

Your decision is requested.

- (1) Whether Section 30 should be amended to include in its scope offenses against all personnel of whatever nationality under the command of the C in C and if so whether a private directive should be issued that Italian Soldiers are not to have the benefit of this section.

No
SE HAC

- (2) Whether in Proclamation No. 2 offenses against the "Allied Forces" are to be construed as including all military bodies of whatever nationality under the command of the C in C.

(except Italian nationality)

Yes
SR HAC

ORLAND R. UPJOHN

Colonel
Chief Legal Officer

Copy to Deputy Chief Commissioner,
Military Section.

Mr. Casella and Mr. Reber.

SIC 5th Army (thru SCAG 5th Army) Your 208/CA/7
dated 15th February 44 refers.

Conference 24/2

Italians must be regarded as Co-Belligerents only. It is
unhelpful, practically in fact by force - French nationals being in Allied Forces.
But it is better to include Italian soldiers (to avoid delay in trial by Italian courts)
Apply to the Casella.

309

