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(VOL. 2)

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(VOL. 2)

LEGAL OPINIONS (MISC.)
JUN. 1944 - JAN. 1946

FILE CLOSED : 21 January 1946.

HEADQUARTERS
ALLIED COMMISSION
LIAISON OFFICE
LEGAL DIVISION
NAPLES

L-3020

21 January 1946

SUBJECT: Protection of Allied property against
Italian civilians (Airdromes).

TO : Chief Legal Advisor, Headquarters,
Allied Commission, Legal Sub-Commission,
APO 394, U.S. Army.

1. The Chief Liaison Officer, Naples, has instructed me to write for clarification concerning the action which can be taken against Italian civilians for access to R.A.F. airdromes and other military installations. Particular reference was made to those cases in which the Italian civilian is not committing or attempting to commit a crime: i.e., the military authority has forbidden entry into airdrome and adjacent areas to Italian civilians. The question arises with the violation of such notice by the Italian civilian.

2. May any steps which have been taken on a national scale towards the protection of Allied property against Italian civilians with reference to airdromes be transmitted to this office.

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For the Senior Liaison Officer.

Rosario A. Gaziano
ROSARIO A. GAZIANO
Captain, Infantry
Senior Legal Officer

US COMMISSION
CLO
DCLO
→ RAG/ms
→ Chief Liaison Officer
CLO
Italian Liaison
CL RKs
Recd. 22 Jan 46.

over

I discussed the answer
hereto with Captain Gaziano
on my last trip to Naples.

An answer to this letter
is therefore unnecessary

31/I/46

Shonitzer
col inf

HEADQUARTERS ALLIED COMMISSION
Navy Sub-Commission APO 394

CONFIDENTIAL

NSC/4429
15 January 1946

From: Navy Sub-Commission, Hq. Allied Commission.
To: Legal Sub-Commission, Hq. Allied Commission.

Subject: Italian Naval Munitions Production.

1. There exists at the Caproni Works of Milano 4 miniature submarines known as "Maiali-Delta". In the course of an investigation in November concerning illegal Italian naval munitions production, an Allied naval representative contacted Ing. Vincenzo Goeta, the naval consultant for Caproni, and the files of the firm were examined. The following is an excerpt from a report made by the above-mentioned Allied naval officer, giving the history of the 4 miniature submarines:

"Approximately one month ago work was completed upon 4 Mezzi d'Assalto known as the "Maiali-Delta". This is an underwater naval weapon which was used by the CAMM GROUP of the 10th MAS Flotilla for attack upon Allied shipping. Goeta was questioned about his authority to complete these weapons without definite Allied approval. He assumed all responsibility for this production, however stating that several months ago Lt. Comdr. Crabb, RNVR, of the Allied Naval Experimental Station at Venice visited the Caproni plant and evidenced a possible interest in using these "Maiali" if they were completed. However, Goeta admits that no order to complete these weapons were given to him by Lt. Comdr. Crabb. He completed them hoping that the company could sell them to the Allies for experiments. In the meantime, he continued, the Allied Experimental Station salvaged several "Maiali" in Venice and there was no further need for the Caproni product. These weapons were examined at Caproni by this officer and they were found to be complete in every detail minus the explosive charge in the warhead. This was the only evidence of production of naval munitions in this plant altho they are producing civilian goods. No manufacture of any submarine or section thereof was noticed. Orders were given to the Caproni officials to put these weapons in a locked warehouse and to cease all production of naval armament unless definite authority was received."

2. The existence of the above-mentioned miniature submarines was reported to the Commander-in-Chief, Mediterranean. It is the latter's desire that the Allies take possession of the submarines and destroy them.

3. The Navy Sub-Commission would appreciate being informed whether or not it has the legal power to take possession of the miniature submarines and dispose of them as it sees fit.

H. W. Zioli
H. W. ZIOLI,
COMMODORE, U. S. NAVY,
FOR REAR ADMIRAL
CHIEF, NAVY SUB-COMMISSION, AC.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

GCH/ns

21 January 1946

AG/14326/P.S.

SUBJECT: Cases against Adessa Oga, Abbagiam and Abbadilo
Ethiopian citizens.

TO : The Minister of Justice.

1. The file of this matter has, after multiple peregrinations, been transmitted for advice to this Sub Commission. Before any legal opinion can be given on the actual status of the case, it will be necessary to obtain some clear evidence as to the offences allegedly committed by the accused.

2. Such evidence at the present time is so scanty as to make it impossible to formulate any views on the actual legal position of the case. Therefore this Sub Commission will be much obliged if you could forward a memorandum setting out the facts as they are known to the Italian authorities and at the same time quoting all evidence on which the charges are based.

3. There is no doubt in the mind of this Sub Commission that Italian Courts have full jurisdiction to try offenders whether they are citizens of the United Nations or not, for common offences committed in Italy.

4. However under existing instruments and legislation if the offenders enjoy the status of military personnel or even of camp followers the jurisdiction to try them would automatically devolve to the Allied Courts, unless SAC granted permission for the trial to take place before local juridicators.

5. It is therefore essential to ascertain
a) the exact status of all the accused
b) the relevancy and bona fides of the charges preferred against them.

6. This sub Commission will appreciate all the assistance you may be able to give in this connection.

/s/ G.G. Hannaford,
Lt. Colonel,
Deputy Chief Legal Advisor.

Copy to: Displaced Persons.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/1005/L

UGB/ns
22 January 1946.

SUBJECT : Tug " Ausonia "

TO : Navy Sub Commission.

Considering the policy which has been followed by Allied authorities under Art. 3 of the short and 14 of the long terms of Armistice the provisions of the Cunningham - de Courten agreement, there does not appear that the question of treating the Italian mercantile marine as prize of war has at any time been contemplated. On the other hand under the said agreement sets out (para 2) that the United Nations "have the right to make such other disposition of any or all Italian ships as they may think fit".

Consequently the future destination of Tug Ausonia rests entirely within the jurisdiction of Allied authorities. There is therefore no legal objection whatsoever, under existing instruments to the ship being returned to her original owners as soon as the cost of salvage and repair have been refunded to U.S. Naval Base, Salerno, that is if the U.S. authorities intend to claim such refund.

Prima facie the requisition effected by the Ministry of Marine would under Italian law, be still technically valid. This point, however, must be left to the Italians to settle.

G.C. HANNAFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION
AFS 394
LEGAL SUB COMMISSION

AC/4005/L

COH/ns
21 January 1946

SUBJECT : Horses.

TO : Food and Agriculture Sub Commission.

1. Under Art. 53 of the Hague Convention the Stallions are clearly war booty if they are the property of a statal or para statal institution, and therefore can be disposed of at will by the occupant as being usable for operations of war.-

2. This Sub Commission has always taken this view, sometimes in conflict with AFIA, who argue that such sales were contrary to certain instructions issued by SAC and AFHQ.

3. There can be no objections, however, to a refund, as it is not the intention of the Allied authorities to hold such funds which under the present policy will be transferred in due course to the Italian government.

Incls. are returned

G.O. HANNAFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

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Ext. 263

HEADQUARTERS ALLIED COMMISSION
APO 394
FOOD & AGRICULTURE SUB-COMMISSION

RE-7/19

95A

ACR/881

17 January 1946

SUBJECT: Claim for Refund of Captured Enemy Horses
TO : Legal Sub-Commission

1. The enclosed letters pertain to horses captured by the Allied Armies during the Sicilian campaign, and later sold at public auction in October 1943.
2. The claim is made by the Director of the Italian Stallion Depot at Catania that some of the horses sold were stallions belonging to the Italian Government, and that consequently a repayment should be made for these animals.
3. The AG Memorandum No. 168, mentioned in paragraph 6 of the Ministry of Agriculture's letter of November 9, was not enclosed with that letter; neither were the receipts, which the Ministry stated they were forwarding, received by this office.
4. Although it appears that AG has approved the request for payment, it is desirable to have a legal opinion on the matter before further action is taken. It would seem that, since the Allies were still at war with the Italian Government when the animals were taken in possession, that they could be construed as legal war booty.

W.J. 1000
W.J. 1000
Director

Enclosures

Correspondence as above

DCLO

Chief Counsel

CJO

Italian Section

CL RKS

Recd. 21 Jan 46

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

92A

AC/4005/L

GGR/es
15 January 1946

SUBJECT : Information re/ Co.Ge.Na.

TO : French Liaison Office - A.C.

Correction
1. ~~It appears that the enclosed letter was sent by Mr. Lopes, General of the American Embassy, now detached to AC, who is investigating a particularly important case.~~
counsel to A.C.

2. It would be very much appreciated if the "Commandement Militaire Francais" could find its way to facilitate Mr. Lopes' researches, as they are particularly delicate as including a considerable amount of Allied interests.

3. This Sub-Commission regrets the answer given to General Le Countoulx de Caumont, as it was unaware of Mr. Lopes' letter.

4. The undersigned thanks the "French Command" in advance for their well known spirit of collaboration.

G.G. HANFORD,
Lt. Col.,
Deputy Chief Legal Advisor.

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 4005
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 ALLIED FORCE HEADQUARTERS
 G-5 Section
 AFO 512

4 January 1946

G-5: 383.4

SUBJECT: Rita ZUGA.

TO : Headquarters, Allied Commission,
AFO 394.

1. Reference is made to your AC/4005/L of 29 December 1945.
2. Matter has been transmitted to appropriate authorities for investigation and on receipt information will be forwarded.

BY COMMAND OF LIEUTENANT GENERAL MORGAN.

for 17 Thlen Col 8 JAN 1946
 R.L. HAMLEN,
 Brigadier General, GSC,
 Assistant Chief of Staff, G-5.

COMMISSION	
CLO	✓
DCLO	
Chief Counsel	
CJO	
Italian Section	
CLERKS	
8 JAN 1946	

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4122/1/L.

31 December 1945

SUBJECT : Sale of Vehicles by Region IV.

TO : Executive Commissioner.

1. This is the case I spoke to you about. Legally the Ministry of War and MMIA have no leg to stand on. To carry on the policy of seizing all vehicles without compensation would be an act of duress of the occupant incompatible with International Law which sets out that the rights of private citizens must be respected. In this case even more so when these rights have been established by an act of the occupant himself.

2. If MMIA can't see their way out I would suggest a round table conference between all parties concerned.

3. If no agreement was reached no doubt this matter will eventually go to London and Washington for decision, and this is obviously undesirable.

G.G. HANNAFORD,
Lt. Col.,
Deputy Chief Legal Advisor.

~~file~~
HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

89A

60/4005/L

JAS/ns
29 December 1945

SUBJECT : Mita ZUCCA

1. : AFM - G - 5 Section

1. There are attached hereto copies of letters received by the Chief Commissioner from Senator A.H. Vandenberg and Representative Paul Shafer, which are self-explanatory. It would seem that Mita Zucca is "Axis Sally". The Chief Commissioner has advised the Senator and Representative that her case is not in any way in his hands, but he would make inquiries of the appropriate Military Authorities to see what is her status and would communicate with them further.

2. May such information be furnished by the appropriate authority for transmission by the Chief Commissioner to the Senator and Representative?

For the Chief Commissioner

JOHN A. WEBER,
Colonel, Inf.,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

22 December 1945

MEMORANDUM :

TO : Chief Commissioner

1. No doubt you have heard over the radio and read in the press about the activities of "Axis Sally", in civil life known under the name of Rita Zucca. Because of the similarity of the names and the mention made in the letter to Senator Vandenberg that she is being held in Rome on some 'radio' charge, it is believed that Rita Zucca and Rita Louise Zucca are one and the same person.

2. It is unnecessary for me to inform you that persons held for War Crimes and violation of the espionage statutes of the United States, etc., are not the problem children of Allied Military Government. In fact we have been enjoined by existing orders not to concern ourselves with them.

3. It follows, therefore, that the most we can do is to inform the Representative and Senator that the person inquired about is not being detained under the authority or orders of Allied Military Government; that you do not know with certainty on whose authority she is being detained, but in view of items which have appeared in the press and as an aid in pursuing the inquiry it is suggested that inquiry be made to the Chief of Staff of the Army who is in a position to give accurate answers to their inquiries.

4. I am reluctant to draft the answers in letter form because of the personal tone of their inquiries. I will be happy to do so if you so desire.

JOHN K. WEBER,
Col., Inf.,
Chief Legal Advisor.

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Incls: Memo of Chief Commissioner.
4 copy letters.

COPY

Spare

NVA QUARTERS ALLIED COMMISSION

20 December 1945.

THE SCHIO MASSACRE CASE

1. At midnight, on 6 July 1945, fifty-four persons confined in the Schio jail were put to death in the prison by gunfire from automatic weapons in the hands of masked men. Seven members of the auxiliary police of Schio and ex-partisans were arrested and tried before an Allied Military General Court sitting at VICENZA, on 15th September 1945. The Court acquitted two of the accused and sentenced two of life imprisonment and other penalties; three of the accused, namely, FRANCESCHINI Renzo, FOZZERATO Antonio and BORTOLOSO Valentino were found guilty of murder of fifty-four persons and were sentenced to death.

2. The three death sentences were brought before me as Chief Civil Affairs Officer of Occupied Territory under Allied Military Government, Italy, for confirmation in pursuance to the established procedure. On review of the record of the trial, I am fully satisfied that the accused have received a full and fair trial, and that the sentences imposed were well founded.

3. The massacre committed at Schio was of such a nature as to put those responsible beyond consideration of clemency.

4. However, I feel bound to take into consideration the following facts:

- a) The fifty-four men and women murdered in the Schio jail were Italian men and women.
- b) The convicted murderers were Italian men.
- c) The law which they outraged and under which they were charged and sentenced by the Allied Military court was Italian law.

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- 2 -

- d) The crime which they committed was a crime against Italian sovereignty.
- e) The accused were ^{not} sentenced to death for violation of any order of the Military Governor.

5. Italy in 1889 was among the first nations of the world to abolish the death penalty. The abolition of the death penalty is not exclusively an Italian legal concept. In Switzerland, and even in the United States in certain states where the law is purely of Anglo-Saxon origin, the death penalty cannot be imposed. The banishment of capital punishment became a firmly established principle in Italian pre-fascist legislation. It remained so until the advent of fascism. The Penal Code of 1930 enacted during Fascist rule re-introduced the death penalty as a typical innovation serving the new regime, thus breaking the tradition of pre-fascist Italy. The first Bonomi Government passed the decree of 10 August 1944 once again abolishing capital punishment as a general form of punishment under the Penal Code.

6. At that time Allied military operations in Italy were in full progress, most of Northern Italy was in enemy hands and this decree was therefore not implemented by Allied Military Government in Northern Italy. As a result, the three accused in the present case were correctly charged and sentenced to death under the original and unamended text of the Penal Code. However, had the accused been charged with the same offense in territory restored to the Italian Government, they could not have been so sentenced, even in an AMG court. Similarly, the death sentence in this case could not have been confirmed by us had the Northern Regions been restored to Italian Government administration by this date.

7. In deference to the pre-fascist concepts of punishment under Italian law, which the present Italian Government has re-affirmed, because I consider that military authorities governing under the law of occupation in a civilized state are but custodians of its fundamental legal institutions, and because I do not conceive it to be Allied policy toward Italy to override Italian basic concepts of justice with respect to a civil crime committed by Italians against Italians, regardless of how such a crime would be dealt with in Allied countries, the death sentences against

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- 3 -

FRANCE CHINI Renzo, POCHESATO Antonio and BORTOLOSO Valentino are modified to sentences of imprisonment for life. Because of the nature of the crime, it is my intention to request of the Italian Government that no future general or individual amnesty be applied to these prisoners.

/s/

Ellery W. STONE

ELLEY W. STONE
Rear Admiral, USNR
Chief Civil Affairs Officer.

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MEMO ON SURRENDER
 AIRMAIL SERVICE TO THE U.S.
 TO BE MAINTAINED

Reference : C. 211.2 of 15 December 1945

1. There can be no question of the Allies requesting the Italian Government to enforce the legislation making strikes unlawful. The war is over and such enforcement would have most unfortunate repercussions both in Britain and America.

2. What is needed is that, whatever the political situation of the country may become, military communications remain untouched.

3. This will be better achieved by an agreement between the Italian Government, who is in a position, during the "state of war", to take over all forms of telecommunication and use, if necessary replace civilians by military personnel should the need arise. (Art. 20 of the Law of War approved by R.D. No. 1415 of 3 July 1938). The "state of war" still prevails at the present time until it will be declared terminated by a decree. The Italian Government to give their undertaking that the power of militarizing all forms of telecommunications will be assured at the time when the "state of war" shall have ceased. New legislation to this effect might be necessary.

4. It is agreed that the repositioning of Allied military

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2. What is needed is that, whatever the political situation of the country may become, military communications remain untouched.

3. This will be better achieved by an agreement between the Italian Government, who is in a position, during the "state of war", to take over all forms of telecommunication and may, if necessary replace civilians by military personnel should the need arise. (Art. 20 of the Law of War approved by R.D. No. 1415 of 2 July 1935). The "state of war" still prevails at the present time until it will be declared terminated by a decree. Adm. may ask the Italian Government to give their undertaking that the power of militarizing all forms of telecommunications will be assured at the time when the "state of war" shall have ceased. New legislation to this effect might be necessary.

4. It is agreed that the reorganization of Allied Military Government will under no circumstances be approved by the Combined Chiefs of Staff and the Government of Great Britain and United States.

Ex. Comm.

re Compagnia Nazionale aeronautica

1. This Sub-Commission is of opinion that the objections raised by the Ministero della Marina are not founded.

2. The powers of the United Nations vis a vis the Italian administration are set out:

a) Under art. 10 of the armistice terms where the Government pledges itself to make available to the Allies all informations about naval, military, air devices, installations and defenses etc.

b) Under art. 13 where the Italian Government must comply with any directions given by the United Nations for the manufacture, production or construction etc. of war material.

3. The powers of the Italian State in respect of its own nationals are clear. Although art. 53 of the Hague Convention could be interpreted in such a way as excluding the possibility of interference in private concerns once military operations are terminated, there is no doubt that the Italian Government under its own legislation possess the right to expropriate seize or requisition in the interest of national defence or for reasons of public necessity any patent, invention, war material etc. owned, manufactured or in the possession of private individuals.

4. Art. 16 of Law 1415 of 21 May 1940 deals solely with requisition of inventions, but the powers of the Italian State are more fully set out in art. 60 and foll. of T.U. 1127 of 29 June 1939 confirming art. 50 etc. of R.D. 1602 of 13 September 1934 etc.

5. The text of art. 60 reads as follows.

"The rights under patents, even if not already registered, can be expropriated by the State in the interest of the military defence of the country or for other reasons of public necessity". Such expropriation may be limited to the right to use the invention for the purpose of the military defence of the country.

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 "The rights under patents, even if not already registered, can be expropriated by the State in the interest of the military defence of the country or for other reasons of public necessity".
 Such expropriation may be limited to the right to use the invention for the requirements of the State.
 Such expropriation when it is effected in the interest of the military defence of the country and in regard to patents owned by Italian citizens transfers to the administration effecting the expropriation the right to register the patents concerned in foreign countries, unless the use of such right is abandoned or limited by the administration itself."

6. Therefore the objections put forward by the Ministry of Marine that Italian authorities are powerless to intervene and cannot enforce the production of the required documents by the Compagnia Nazionale aeronautica are completely groundless under their own legislation.

7. The procedure of expropriation is however cumbersome, but no doubt the powers held by the Italian authorities ought to enable them to obtain what is required without much difficulty.

13 December 1945
Legal Sub-Commission

G.G. HANNAFORD
Lt. Col.,
for Chief Legal Advisor.

Executive Commissioner,

re. Italian ships seized by Yugoslavs. The position appears to be as follows.

1. Under Art. 14 of the 1907 Convention "all Italian merchant ships, etc. wherever they may be, will be made available to the United Nations in good repair and in seaworthy condition." Art. 1(2) of the Cunningham-Courten agreement sets out that the provisions of this agreement do not affect the right of the United Nations to make such dispositions of any or all Italian ships as they may think fit. Their decisions in this respect will be notified to the Italian Government from time to time.

2. Both instruments are posterior and complementary to the Short Terms which must be considered as having been modified accordingly. Therefore Art. 3 of the Short Terms must not be read and interpreted alone but in conjunction with the later agreements to which Italy was also a party.

3. The only point in favour of the Italians and it is an important one in equity, is, as stated in Art. 3 of the Minister of Foreign Affairs' letter that "a disparity of treatment of Italian ships, merely based on their location at the time of capture could hardly be deemed to be justifiable." Furthermore this point of view has been upheld by qualified Allied representatives. Mr. Graham's letter of 31 Aug. 44 refers.

4. I think that the fact that some of the ships are sunken does not alter the legal position under the armistice and subsequent agreements.

5. Therefore if the armistice terms are deemed to apply to all Italian merchant shipping, wherever situated, the United Nations have the right to dispose of such shipping at their complete and unrestricted discretion. Under the armistice there has never been any question of considering Italian ships as

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the provisions of this agreement do not effect the right of the United Nations to take such dispositions of any or all Italian ships as they may think fit. Their decisions in this respect will be notified to the Italian Government from time to time.

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4. I think that the fact that some of the ships are sunk does not alter the legal position under the armistice and subsequent agreements.

5. Therefore if the armistice terms are deemed to apply to all Italian merchant shipping, wherever situated, the United Nations have the right to dispose of such shipping at their complete and unrestricted discretion. Under the armistice there has never been any question of considering Italian ships as a "war prize".

6. Whether the weeks and months have elapsed themselves bound by the armistice terms or not is a different question altogether.

W. S. C.
10 November 1945

G. S. HARRISON,
Lt. Col.
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/4005/L

all/na
3rd December 1945.

SUBJECT : Articles in the "Giornale di Medicina Militare":
Copyright.
TO : Land Forces Sub Commission.

1. Reference Your No. A 241 of the 26th Nov. 45

2. In the opinion of this Sub Commission publication by the Italian Ministry of War in its "Giornale di Medicina Militare" of "complete letters and articles from such British papers as the British Medical Journal and the Bulletin of War and Medicine" does not amount to an infringement of copyright in that the issue of the Ministry's Giornale to a limited class of persons does not amount to publication within the meaning of the Rome Copyright Convention, 1928, which governs the rights of foreign authors to protection in this country.

I might add that, even if the publication of the articles in question amounted to a technical infringement within the meaning of the Copyright Act 1911 and the Rome Convention of 1928, the chances of any action being taken by the writers or publishers of the articles is in my opinion so remote as to be scarcely worth taking into consideration.

MUSGRAVE THOMAS.
Italian Branch,
for Chief Legal Advisor.

171

4005

Subject: Italian Medical Journal.

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Land Forces Sub-Comm A.C.,
(M.M.I.A.) R O M E

A 24I

26 Nov '45.

To : Legal Sub-Commission,
Allied Commission.

1. The Italian War Ministry publish a journal the "Giornale Di Medicina Militare".
2. From time to time they extract and publish in this journal complete letters and articles from such British papers as the British Medical Journal and the Bulletin of War and Medicine.
3. This Sub-Commission would be grateful for your advice as to whether, by so doing, the Italian War Ministry is infringing "copyrights".

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
27 NOV 1945	

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*Major General*Major General,
M.M.I.A.

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LEGAL SUB-COMMISSION
HEADQUARTERS
ALLIED COMMISSION
APO 394

26 NOVEMBER 1945

Dear

In answer to your letter No. 12406/17/CA of 8 November 1945 concerning the grant of commercial landing rights to civil aircraft in Tripolitania and Cyrenaica, I have no available information at hand.

I have discussed the position with Mr. Hopkinson and Mr. Halford of the British Embassy and hope to be in a position to let you have a definite reply in the course of a week or so.

Yours

G.G. HANNAFORD,
Lt. Col.,
Deputy Chief Legal Advisor 169

LT. COL.
MAXWELL SETTON

Civil Affairs Branch
G.H.Q., M.E.F.

SIA
No. 12406/17/CA.
-----CIVIL AFFAIRS BRANCH
G.H.Q., M.E.F.

Tel. ME "George" Ext. 27

8th November, 1945.

Chief Legal Adviser,
H.Q., Allied Commission,
C.M.F.

I am to request your assistance in connection with a problem which has arisen out of an enquiry by the U.S. authorities relating to the grant of commercial landing rights to civil aircraft in Tripolitania and Cyrenaica.

It is desired to ascertain how far the Italian Government into whose shoes our Administrations have stepped in those territories were committed towards the U.S. Government to allow U.S. aircraft to fly over and land on Cyrenaican and Tripolitanian soil and embark and disembark passengers and cargo there.

It has been impossible from the material and information at ~~the~~ disposal of this Branch to clarify the following three points; viz:-

- (a) Whether or not the United States signed and ~~ratified~~ ratified or adhered to the Paris International Air Convention of 13 October 1919 of which Italy was a signatory

Whereas a note at the foot of page 63 of Prof. L. Franchi's "Leggi Usuali d'Italia" 8th Edit (1939) and statements on pp. 5679 and 5681 of the Raccolta

U.S. authorities to civil aircraft in Tripolitania and Cyrenaica.

It is desired to ascertain how far the Italian Government into whose shoes our Administrations have stepped in those territories were committed towards the U.S. Government to allow U.S. aircraft to fly over and land on Cyrenaican and Tripolitanian soil and embark and disembark passengers and cargo there.

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Whereas a note at the foot of page 63 of Prof. L. Franchi's "Leggi Usuali d'Italia" 8th Edit (1939) and statements on pp. 5679 and 5681 of the Raccolta Ufficiale Leggi e Decreti for 1922, suggest that the United States was one of the signatory States, the Official Bulletin of the International Commission for Air Navigation of March 1935 which sets out the Convention in full does not include the United States among the list of countries to which the Air Convention applied and the Civil Air Attaché to the U.S. Legation in Cairo has stated that his country did not in fact sign, ratify or adhere to the 1919 Convention.

- (b) Whether the special arrangement in regard to air Navigation concluded by way of an exchange of diplomatic notes between Italy and the United States which was signed in Washington on Oct. 13th and 14th 1931 and took effect on Oct. 31st 1931, extended to the Italian Colonies of Tripolitania and Cyrenaica or was limited in its application to the metropolitan territory of Italy,

P.T.O.

- 2 -

- (c) Whether any convention or arrangement other than the one referred to in para (b) above was concluded at any time between Italy and the United States whereby U.S. civil aircraft were granted commercial landing rights or other air navigation facilities in the Italian Colonies and more particularly in the territories of Tripolitania and Cyrenaica.

Any information which you may be able to give this Branch on the above points will be greatly appreciated.

Maxwell Setton

MAXWELL SETTON

Lt-Col.,

for CHIEF LEGAL ADVISER.

MS/AA.

Handwritten routing slip with an arrow pointing to the right. The slip contains the following text:

CLO	
DELO	
Chief	
CLO	
Bottom	
CL. B.	
1.4 NND	

S-1 R-1-T

80A

HEADQUARTERS ARMS COMMISSION
APO 394
LEGAL SUB-COMMISSION

/wda

AC/ACOF/L.

23 November 1945

SUBJECT : Patent Attorneys' Files, Disclosure of
Information in.

TO : Senior U.S. Naval Liaison Officer, ROME.

1. Reference your AS-2 Serial: 60445 Secret of 2nd November 1945.
2. This Sub-Commission is asked to advise "as to the proper procedure for obtaining authority to examine and obtain on loan patents and other data in the files of the patent attorneys listed." The list contains the names of fifty-seven patent attorneys in the principal Italian cities. It is understood from the last sentence of your letter that the request to examine and obtain the loan of patents is based upon the Armistice terms.
3. The Armistice terms contain no specific reference to patent rights. Under Art. 35 the Italian Government undertakes to "Supply all information and provide all documents required by the United Nations." The only reasonable interpretation to be placed on such a vague statement is that it is intended to apply only to information and documents necessary for the purpose of prosecuting the war, and in any event it can only bind the Italian Government to supply information and documents in the possession and control of the Government itself.
4. Under the Hague Convention of 1907 an occupying power has the right to make requisitions, and although requisitions are almost always material things, property, and goods, intangible rights such as contracts and patents are not excluded. Patent rights could therefore be taken, but only if they are required "for the needs of the army of occupation," a condition that is indispensable to all requisitions. It is quite clear from your letter that the information is not wanted for the needs of the army of occupation.

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5. From the possibility of making use of patent rights which are strictly necessary for the needs of the army of occupation to compel the disclosure of secrets by searching the private files of the principal patent agents in the country is a far step. It is certain that such a step would be most strenuously resisted, and that such resistance would be successful, for such action by an occupying power would be a serious invasion of the rights of private persons and contrary to international law.

HERBERT THOMAS
Italian Branch,
for Chief Legal Advisor.

C O P Y

HEADQUARTERS ARMED FORCES
APO 794
LEGAL DIVISION

Haj. Mem

FILE

4005

C/4005/92/1.

9 November 45.

SUBJECT : Case of Franceschini Renzo et al
(Chile massacre).

TO : Chief Commissioner, H., Ad.

1. Herewith are submitted for your consideration the records and petitions in the Chile massacre cases in which the General Court sitting at Valparaiso on 13 September 1945 sentenced three defendants to death and various terms of imprisonment and two to life and various terms of imprisonment. Two were found not guilty on all charges and discharged by the Court. The names of those tried with court's judgment and sentences are as follows :

FRANCISCHINI Renzo
BECU Luigi

Not guilty on all charges
Discharged

FRANCISCHINI Renzo

On charge of possession of ammunition
and explosives
Not guilty

FRANCISCHINI Renzo
BOCHASSATO Antonio
BOCHASSATO Valentino

Guilty of possession of arms:
15 years
Guilty of murder of 54 persons with
premeditation and guilty under Arts
979-977 (3) 61 (4) and as charged:
Death
Attempt of murder of 11 persons with
premeditation and guilty under Arts
979, and 980: 24 yrs. 24 and 15
concurrent.

FRANCISCHINI Aldo
CABOYA Mariano

Guilty of possession of arms: 15 years
Guilty of murder of 54 persons (as
above but mitigated by non participation
in actual shooting):

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of the jail. Said that they wanted to question some prisoners about operations at Santa Agre. A third man came dressed as an Alpine. They then took him back to the jail. After being held under guard in the prison office they threatened him and he gave up the keys. In the office one man called "Toga" was trying to pick out names of those to be shot and was constantly prodded to hurry by another man who was wearing a gas mask. (See pages 4-5-6).

8. The jailer, his wife and some others were kept under guard. Later he heard shots upstairs and downstairs in the cells. Then someone shouted for help and the jailer and those with him shouted for help. A prisoner opened the door for them and they saw wounded in the courtyard. They found the telephone wire cut. Two men were in jail, one political and one common. Wife of jailer testified that the three men who returned her husband to the jail at the point of a gun were Manchukuo soldiers. One was in Alpine uniform and cap.

9. Witness, Bo China Liao, recognized one of the three as Scottsboro man, who had been shot down. (See pages 7 to 10). Later Scottsboro man had not been captured.

10. Witness, Paochimi, who was wounded in the courtyard, recognized the accused Paochimi man by his build and voice as one of the five taken into the jail. He wore Alpine uniform and saw him well. Said he was one of the five who knelt and fired some sort of automatic weapon at the prisoners lined up against the wall. He not recognize any of the others. Saw one soldier, Paochimi, who was 70 years old man but for pity on account of his age. (See pages 11-12).

11. Witness, Paochimi, also wounded, whose testimony was about the same as Paochimi's identified accused Paochimi. Had seen him since childhood. (See page 13).

12. Witness, Paochimi, also wounded, identified Paochimi. (See pages 14-15-16).

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1. It is stated that the... (The text is extremely faint and largely illegible. It appears to be a list of points or a report. The first point mentions 'It is stated that the...' followed by several lines of text that are difficult to decipher. The text seems to be a report or a list of points, possibly related to a historical event or a political situation. The second point mentions 'The second point...' and the third point mentions 'The third point...'. The text is too faint to transcribe accurately.)

13. Witness, Gogagio Alessandro, testified about the loyalty oath referred to in previous witness' testimony. He said that the oath was administered to all members of the army of justice, military discipline maintained in the mountains and of severe punishment to violators. He did not remember whether there had been a demonstration in Chile prior to massacre. There were manifestations after funeral of Marxist-Leninist Partisans who had been prisoners, tortured and died slowly at Mathausen. Thought Chile incident was result of popular feeling. Heard nothing of

plans for massacre. (See pages 23-24).

20. Other witnesses spoke of conditions in the town, one priest saying that the Allies could have prevented the incident. Several testified to the good character of the accused FRANCHINI, FORTINHO and CAROVA. Another testified that the partisan organization in Vicenza was the most active; they lost about 2000 dead, hundreds injured in Germany and about ten, including the witness, imprisoned for political reasons. The case is closed its case. (See pages 23-24-25).

The accused in person said:

- FRANCHINI - "I only obeyed orders"
- FORTINHO - "I was invited shortly before and knew nothing about it"
- FORTINHO - "I came in at last moments; the responsibility was others".
- FRANCHINI - "I refused to participate and did not stand at the gate. I acted under orders".
- CAROVA - "I went downstairs because I did not have the courage to shoot".

21. The plans for the defence deal with fine work and suffering of the victims and urge that the confession of the accused are of no value because they lack corroboration. This is not true and even if it were a good plea because there was absolutely no evidence that the confessions were obtained by force. Art. 28, Sec 2, Para 1 of the Consolidated Instructions states:

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"There is no rule of law in Allied Military Courts that a man may not be convicted on an uncorroborated confession; but if there is evidence that the confession was obtained by force, corroboration is obviously necessary."

22. Another plea is that there was no premeditation. The evidence contradicts this and shows that the massacre

had been planned for more than a week and was postponed once. It was stressed also they were only carrying out orders.

21. Three accused, DRAGOSCHINI, POCHENATO and BORTOLOZZO, sentenced to death, have filed a joint application for review of their sentences which contains arguments dealing mostly with extenuating circumstances, calling attention to the fact that they had no selfish motives but merely sought to satisfy the participants' thirst for justice. The petition denies the existence of premeditation, stating that premeditation could only have been in the minds of the superiors who ordered them to carry out the massacre; further, they sought to withdraw themselves from this duty. The evidence does not support this as to these three accused. The petition then asked a plea for the tranquility of the people.

24. Under the Form 1 application of these three
accused, persons of Italian nationality in Italian are also
forwarded. The one in Italian is with green ribbon in
line of red ribbon with red ribbon in line of red ribbon
to contain 26,000 pages. It will be noted that they have
been taken the trouble to have the heading specially printed.
It would require six copies of the entire document
to fill.

25. I have carefully reviewed the record of trial and the exhibits and found no difficulty in reaching the conclusion that the findings of "Guilty" in respect to the Defendants, FRANCISCO RANCO, DOMINGO Antonio, DOMINGO Valentino, CASTAGNOLINA also and CARVAJAL as well as the findings of "Not Guilty" in respect of the Defendants FRANCISCO RANCO (on charge of possession of ammunition), DOMINGO Domingillo and CARVAJAL are well founded in light of fact and of law.

As for the sentences rendered by the
as equally satisfied that all penal
or deprivation imposed by the

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entirely appropriate and should not be disturbed.

However, when considering the three death sentences which are now before you for final action, I felt compelled to embark upon an extended inquiry of a basic nature; as a result, the case under consideration has received more attention than any other case ever dealt with by this Commission. Due to the particular implications of a legal and political character I thought it advisable to set out in some detail the line of thought I had pursued. This might be of some benefit to you when determining the final disposition of the case.

26. As you are aware the death sentence was pronounced in the case of the defendant on the following circumstances:

An Allied Military Court sitting in Military Government Territory and applying Italian law imposed a death penalty despite the fact that the death penalty has been abolished in Italian Government Territory for all except certain cases.

The Italian Decree (No. 24, of 10 August 1944) amending the penal code to this effect did not become effective in Military Government Territory due to an order of Allied Military Government.

27. The legality of the death sentences at the time their pronouncement will thus depend on whether or not the Allied Military Government exceeded its powers in imposing the death sentence by applying the Italian law in Military Government Territory.

(a) The powers of Allied Military Government in occupied territory are limited by the terms of the Armistice. In my view there is nothing in this document which would preclude the Allied Military Government from imposing the death sentence on the defendant excluding any and all acts of the Italian Government.

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from applicability in the occupied territory. It has been the practice of the Allied Military Government and of the Allied Commission to test the legality of its acts not only by the letter of the Terms of Surrender but also by the provisions of the Hague Regulations as containing a set of minimum standards designed to guide an occupying power. In this connection I have considered Art. 43 of these Regulations:

"The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".

At the time when the Allied Military Government was established in Northern Italy where the defendants committed their offences, "the law in force" was the Penal Code of 1930 which imposes the death penalty for certain offences. The aforementioned Decree No. 224 of the Italian Government abolishing the death penalty has never been "law in force" in Northern Italy. It could not become effective in Northern Italy at the time of its enactment in 1944 prior to the liberation of Northern Italy, due to the de facto rule by the so called Government of the Social Republic, a tool of the Commander of German Arms. It did not become effective therein on the day of liberation as the Allied Military Government and not the Italian Government, has assumed the de facto rule. Shortly after the liberation the bulk of the legislation enacted by the legitimate Italian Government was rendered operative in Northern Italy by order of the Military Government. Several decrees however, including D.L. 224, were not included in this order and consequently did not become effective in the area. Thus by refusing to extend such decree to AMG territory the Military Government cannot be said to have disregarded the "laws in force" within the meaning of Art. 43 of the Hague Regulations.

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line of Italy". In addition this decree contains the long term policy of Italy concerning the occupied territories in the eastern front thought of the present Italian jurisdiction. When the Italian Military Government took the decision not to apply this decree in military government territory, it was fully justified in doing so in the interest of the population in such territory. It is still justified in doing so.

(13) I have given some thought to the question whether any of the interests in the case under consideration, if tried by an Italian court, would have possibly been shared and continued to exist under the provisions of the aforementioned article 24. Furthermore, such penalty for certain offences, or in connection with the military law, could under which such penalty may be imposed in military government territory. I am advised by my Italian adviser that on the face of the facts which had transpired during the trial a possibility of such conviction is excluded. In any case the fact remains that the defendants were not charged under article 24.

(14) It should also be stated that in the personnel of its public policy I suggested above, the Italian Military Government has implemented in occupied territory the great bulk of the new Italian legislation including all other laws affecting the fundamental law of Italy. That law is still remains excluded.

29. (a) In the light of the foregoing, however, the question of an immediate implementation of the law in the territory would appear to be one of policy and involving the following problems: -

(1) Given the occupational policy and specifically the political interests in extending the fundamental law of new Italy in the entire occupied area immediate implementation?

- 15 -

(ii) Are the present conditions in Northern Italy such as to permit public order and safety to be maintained without the threat of a death penalty for other than proclamation offences?

The first problem is of an eminently political character and perhaps calls for a consideration by the policy making authorities.

The second problem will necessitate a factual examination of the present situation in Northern Italy and you might wish to hear the Public Safety Sub-Commission on this subject.

However in a final appraisal of the situation in Northern Italy it should be born in mind that any improvement which might have been observed is due at least in part, to the deterrent effect of the death sentences imposed by AMG courts in the present case and in other cases which are now equally under advisement on review. Obviously the commutation of these death sentences will do away with most of the deterrent effect.

(b) If the decision is taken to the effect that D.L. N° 224 should be implemented immediately then I must advise you to commute the death sentences in the case under consideration on the following ground:

(i) The death sentences must be considered in course of review and they have not become definite (irrevocable) as yet.

(ii) Art. 2 of the Italian Penal Code, which is in force in occupied territory states:

"If the law of the time when the offence was committed and the subsequent laws are different that law shall be applied whose provisions are more favourable to the offender, unless an irrevocable sentence has been pronounced."

An analogous principle can be found in anglo-saxon law.

(iii) The sentences should be commuted to imprisonment for life with hard labour in accordance with Art. 1 of D.L. N° 224.

(c) I wish to draw your attention to the fact that the same result will be achieved automatically if you will hold

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up the final action on the case until the time when Northern Italy is restored to Italian Government. At such time the Decree No. 224 will automatically become effective in Northern Italy with the consequent effect of commutation by operation of law.

(d) If it is determined that Decree No. 224 should not be implemented at this time then I must advise you that there is no obstacle to the execution of the death penalties. In such case, although there would be no legal ground for the reversal of the sentences, you still might consider an act of clemency.

10. On the subject of pardon I do not hesitate to say that, if viewed in the light of Anglo-American legal and social concepts, the defendants have placed themselves by their crimes beyond the borders of any compassionate consideration. Such concepts however, may not be considered as the only yardstick in the present case. This consideration prompts me to agree with the Regional Commissioner of Venetia Region (see letter of the Regional Commissioner in Folder R-1, File "22") that you exercise your power of clemency and commute the death sentences to terms of imprisonment for life with hard labour. Should it be deemed essential that a public statement be made in connection with commutation of the death sentences it would not be desirable, in my view, to mention the Regional Commissioner's reason for his recommendation, i.e., the desire to terminate bloodshed, as this might be taken as an indirect criticism of the death sentences inflicted on fascists by people's courts (Extraordinary Courts of Appeal) and executed with the permissive consent of AMG. Obviously if the Decree No. 224 abolishing the death penalty is at once implemented no public statement will be required as the commutation will take place, not by act of grace, but by operation of law.

11. The ages of the three accused sentenced to death are as follows: -

./.

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F. ARGENTI Renzi - 25 years
 POCHESATO Antonio - 24 years
 BORTOLLO Valentino - 22 years, 6 months.

32. The documents in this matter are forwarded to you in five folders.

Folder No 1 contains the important documents necessary for consideration of the case.

Folder No 2 contains the forms to confirm or contest the death sentences. If you wish to confirm the sentences of death, please sign the forms at "A", "B" and "C" therein. If you wish to contest the sentences of death, will you please sign the forms at "D", "E" and "F" also in Folder No 2.

33. Table of documents sent herewith is as follows: -

In Folder No 1	Flag "A" - Order conveying court and charge sheets Flag "B" - Typewritten copy of record Flag "C" - Prosecution speech Flag "D" - Judgment and sentence of court Flag "E" - Official application for review of sentence sent by death sentences Flag "F" - Opinion and recommendation of the Regional Commissioner, REGIONAL Region
In Folder No 2	Flag "G" - Original handwritten manuscript of record of proceedings Flag "H" - Press comments

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In
Folder No. 3

- Flag "I" - Computation form for FRANCESCHINI
Senzo
- Flag "J" - Computation form for FORTUOSO Antonio
- Flag "K" - Computation form for FORTUOSO
Valentino
- Flag "L" - Confirmation form for FRANCESCHINI
Senzo
- Flag "M" - Confirmation form for FORTUOSO Antonio
- Flag "N" - Confirmation form for FORTUOSO
Valentino

In Folder
No. 3

- exhibits 1 - 24

In Folder
No. 3

- Informal positions, letters and
telegramms on behalf of the accused.

JOHN F. WARREN,
Colonel, Infantry,
Chief Legal Advisor.

Index.

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6005 ✓

79A

SENIOR U. S. NAVAL LIAISON OFFICER, ITALY.
ROME, ITALY.

AS-2
Serial: 00145

2 November 1945

SECRET

From: Senior U.S. Naval Liaison Officer, Italy.
To : Legal Sub Commission, Allied Commission.
Subject: Italian Patents, Authority and Procedure for Obtain-
ing.

Enclosure: (A) List of Patent Attorneys.

1. It is desired to collect information relating to technical developments covered by patents concerning which data is believed to be in the possession of the patent attorneys listed in enclosure(A).

2. Information is requested as to the proper procedure for obtaining authority to examine and obtain on loan patents and other data in the files of the patent attorneys listed. It is considered desirable that this data be obtained through an agency of the Italian Government under the Armistice terms.

H. St. J. Butler
H. St. J. BUTLER,
Acting.

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJO	
Italian Liaison	
CL RKS	
7 NOV 1945	

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78A
 UNDERSTANDING TO BE GIVEN BY THE ITALIAN GOVERNMENT

WHEREAS, It is the desire of the Reconstruction Finance Corporation through its Office of Rubber Reserve (hereinafter called the Company) and of the Government of the Kingdom of Italy (hereinafter called the Italian Government) that an agreement should be concluded between them for the release by the Company to the Italian Government of the materials required for and the technical information concerning the compounding, vulcanization, use and properties of commercial and synthetic rubbers, the methods of testing commercial and synthetic rubbers and the results of tests conducted on commercial and synthetic rubbers, and,

WHEREAS, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Government of the United States of America and of the United Kingdom, and,

WHEREAS, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Government of the United States of America and of the United Kingdom

the methods of testing commercial and synthetic rubbers, and

results of tests conducted on commercial and synthetic rubbers, and, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Governments of the United States of America and of the United Kingdom, and.

Whereas, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Governments of the United States of America and of the United Kingdom, and,

Whereas, the Governments of the United States of America and of the United Kingdom have agreed that for a period of fifty days after the 11th of September 1945 or such longer period as may be hereafter agreed (hereinafter called the period) such technical information within the possession of the United States of America or of the United Kingdom will be released to the Italian Government upon condition that the Italian Government, given and observed the undertakings hereinafter mentioned.

Now, therefore, the Italian Government, after due consideration by the Council of Ministers hereby undertakes as follows:

1. Upon receipt by the Italian Government of technical information concerning the composition, vulcanization, use and properties of commercial and synthetic rubbers, the method of testing commercial and synthetic rubbers and the results of tests conducted on commercial and synthetic rubbers, the Italian Government will supply to the Government of the United Kingdom and by means of the Government of the United Kingdom to the company, all technical information which now is in or during the period now goes into the possession of the Italian Government relating to synthetic rubber in general and in particular, but without prejudice to such generality, relating to the compounds, vulcanization and use thereof.

2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy save and except only those persons, firms or companies in Italy who are interested in and who have been authorized to the utilization of the Italian Government.

3. The Italian Government will obtain and inform from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to maintain secret all such

information.

4. The Italian Government will obtain and enforce all

persons, firms and companies to whom such technical information

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without prejudice to such generality, relating to the dissemination and use thereof.

2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy save and except only those persons, firms or companies in Italy who are invited by and loyal to have been authorized to the satisfaction of the Italian Government.

3. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to maintain secret all such information.

4. The Italian Government will obtain and enforce ¹⁴⁵ all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to supply to the Italian Government for communication to the Government of the United Kingdom and to the company all technical information within the possession of such persons, firms and companies relating to synthetic rubber in general and in particular, but without prejudice to such generality relating to the compounds and vulcanization and use thereof.

77A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

26 October 1945

AO/4005/L

SUBJECT : Allied Forces Immunity from Taxation - Tax on Alcohol.
TO : AFHQ, G-5 Section.

1. Reference your letter No. G-5: 012.2 of 16 Oct 45.

2. The Finance Sub Commission inform me that the Italian Government has made from time to time public announcements pointing out that members of the Allied Forces were not liable to taxes. The Finance Sub Commission is requesting the Italian Government again to make a public announcement in the sense of the AFHQ Admin. Memo 28 viz. that in pursuance of an understanding previously given by the Italian Government to the Allied Military Government no Italian taxes, imposts or duties of any nature are payable by the Allied Forces, or members thereof, including any organizations accompanying or serving with the Allied Forces.

For the Chief Commissioner

JOHN K. WELSH
Colonel, Infantry,
Chief Legal Advisor

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LEGAL

3/L

9014

76A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 012.2

16 October 1945

SUBJECT: Payment of Italian Liquor Tax by Allied Military
Personnel

TO : Headquarters, Allied Commission,
A.P.O. 394

1. Reference is made to your letter AC/4005/L of 24 September with your comment on letter of 7 September from Headquarters Florence Command (US Contingent) relative to Allied Forces immunity from taxation.

2. It is agreed that in civilian restaurants where drinks are dispensed by the glass the tax exemption is impracticable. However in controlled cafes and clubs, and in all cases where liquor is sold in quantity, it is felt that the Italian Government should not be permitted to collect any tax, and that the procedure set forth in AFHQ Administrative Memorandum 28 of 5 July 1944 should be followed. The Italian Government should be notified to bring this procedure to the attention of the public.

Nichols

in file 70/EC Admin. Memoranda
#38



A. L. Hamblen

A. L. HAMBLER
Brigadier General, G.S.C.
Assistant Chief of Staff, G-5

Copy to:

Headquarters,
Florence Command
(US Contingent)

US	
CLG	
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RUS	
15 SEP 1945	

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File

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB - COMMISSION

(75A)

AC/4005/L

8 October 1945

SUBJECT: Depth certificates

TO: The Minister of Pardon & Justice

A copy of a letter (No. PR/LE/513) of 26 Sept. from the R.L.O., Piemonte Region, regarding death certificates of Italian nationals dying in German concentration camps is forwarded for your consideration.

Am.
MUSGRAVE THOMAS
Italian Branch
for Chief Legal Advisor

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HEADQUARTERS
PIEMONTE REGION
ALLIED MILITARY GOVERNMENT
APO 394

4008
PR/LE/513

26 September 1945.

SUBJECT: Death Certificates.

TO : HDQRS., A.C., for Legal Sub-Commission.
(Attention Italian Branch).

1. The question of certificates of the death of Italian nationals who are believed to have died in German concentration camps has been raised here.
2. Apparently certificates can be obtained at some camps and a photographic copy of one is sent herewith: the original has been seen. The Procuratore Generale here has indicated that if the certificate is sent to him through A.M.G. channels by endorsement he will issue a regular certificate.
3. In this particular case we hold a certificate from a South African Officer that he has seen the entries in the card index at Dachau but that does not cover the matter. The key to the system is apparently that the + above the word certificate indicates that the man is dead and a pencilled date on the card becomes the last line of the certificate.
4. Possibly this matter has already been dealt with by A.C. or by the Ministry but it certainly does not seem to be a matter on which a decision should be made on Regional level: and any forwarding of the certificate through A.M.G. channels can only be to establish its authenticity.
5. Now that it has been established in Torino that such certificates can be obtained (previously the only method of proof was the sworn statements of three witnesses and that was generally impossible because of camp practice with the dying) it is anticipated that many cases will arise.
6. Our hesitation to forward the certificate to the

Procuratore Generale does not imply any disbelief in its authenticity. A ruling is requested.

For the Regional Commissioner.

BDM/FP.
1 encl.

D.D. Mc Colm
D.D. Mc Colm,
Major R.A.,
Act'g Reg. Legal Officer.

LEGAL SUB-COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CL RKS
3 OCT 1945

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Office of Dachau

Date 11.9.1945

[illegible]

is hereby certified that the ... B. F. U. N. I.

.....Alessandro....., born 31.1.1904

.....Penzoni, Monferrano was detained in Dachau

Concentration Camp from ... 9.10.1944. x x x x x x x x x x

$$K \otimes K = K \oplus X = X \oplus X = X \oplus K = K \oplus X = X \oplus X = X \oplus X = X \oplus X$$

listed in the Camp Books under the number ..

113209 He came from Stapo

Date of his death: 9.3.1945

M. A. SUTTON
DIRECTOR
TEAM P. I. UNRRA

C a m p O f f i c e

Camp Secretary.

Camp Secretary of Darchou

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Tel. 406

HEADQUARTERS ALLIED COMMISSION
APO 3946
ECONOMIC SECTION
PRODUCTION DIVISION

DLA:lrw

73A

Ref. ES/15.10

26 September 1945

Dear Col. Green:

I refer to your letter of the 18th September dealing with the method to be adopted in concluding the agreement with the Rubber Reserve Corporation.

I am informed by Sir Richard Mosworthy that instructions received by him from the British Foreign Office clearly indicate that action is not to be taken through the medium of the Allied Commission but through normal diplomatic channels.

Would you therefore please discuss the matter with Sir Richard so that some agreement as to procedure may be obtained.

Like you, I am most anxious to see the agreement finalized and shall certainly do everything I can towards that end. I may say that despite two reminders to Minister Gronchi, we have still not yet received the letter of intent from the Italian Government.

Yours sincerely,

D. L. ANDERSON, Brigadier.

D. L. ANDERSON
Brigadier
Deputy Vice-PresidentCol. G. A. Green
American Embassy
RomeCopy to:
Sir Richard Mosworthy
Col. Weber ✓

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4005

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUE. COMMISSION

255A

JLB/rm.

21 September 1945.

AG/4083/1/L.

SUBJECT : Case of BOAZZINI Vittore.

TO : Regional Commissioner (altm. Regional Leg 1 officer), Lombardia Region.

1. See your letter 15 September 1945, AG/5003, case of BOAZZINI Vittore.

2. The accused was charged with making a false statement in connection with an official matter. It was alleged that on or about 15 June 45, at Milan, as general secretary of the Pio Albergo Trivulzio, he made a false statement in his "scheda personale" denying he had been a fascist "ante-marci" or "squadrista".

3. The prosecution produced the "scheda personale" of the accused. In response to the question, "Hav- you any of the qualifications: Antemarcia? Squadrista?" the accused answered therein "no". There was introduced into the record as Exhibit B, a membership card in the Partito Nazionale Fascista, which appears regular in all respects and bears the photograph and signature of the accused. This card discloses that the accused was inscribed in the Fascist party as of 10 May 1921. There was introduced as Exhibit "C" a letter from the Federazione provinciale trentina addressed to the accused by notation on the fold on the back side, which purports to show that accused was a Squadrista on 31 October 1922 and was charged with the duty of assembling certain squads.

4. In the instant case in the judgment of the Court there appears the following (page 6):

"In my judgment the letter, (Proc. ix. 3) is insufficient to establish the fact that defendant was a squadrista, and there is no other evidence tending to prove the fact.

The original membership card (Proc. ix. 2) is regular in every respect and proves prima facie that the defendant was a member of the Fascist party in good standing through out the year 1923 and that the date of his inscription in the party was 10 May 1921. The original card having been offered and received in evidence, it became the duty of the defendant to raise in the mind of the Court a reasonable

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- 2 -

doubt as to the date of his inscription in the party as evidenced by the card. This the defendant has failed to do".

5. From the above it is readily apparent that the card (exhibit B) was measured by a rule of law which differs from that with which the letter (exhibit C) was measured. The prima facie proof accorded the card (exhibit B) is rejected as to the letter (exhibit C); the court plainly indicates that as to exhibit C other proof was requisite.

6. The prima facie proof given by the Court to exhibit B can be sustained if the document in question was outside the boundaries of hearsay evidence. The rule excluding hearsay evidence is applicable to written or documentary evidence, as well as to oral evidence. A statement of a person who is not called upon as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the Court. (In the instant case the Court recognized and applied such rule to exhibit C). But in its application to documents of a public or official character the rule is subject to many important qualifications. In the case of many (but not all) such documents, the statements which they contain are, either under the general law or under express statutory provisions, admissible as evidence of the matters to which they relate. This is so, not because such documents are an exception to the rule but because the law indulges in a presumption that persons shown to be acting as public officers are presumed to be legally in office and to perform their duties properly.

7. Italian law indulges in such presumption in many of its documents of a public or official character. The question arises, was the document offered as "exhibit B" within such favored class? We are unable to answer this question as the record is silent on that point.

8. In answer to question (a) paragraph 4 of your letter, we give as our opinion that in the absence of a rule of law clothing such card with a presumption that the same is evidence of the matters to which it relates, it was admissible in evidence as hearsay but within the boundaries of the rules set forth in Consolidated Instructions.

9. In answer to question (b) of paragraph 4, it is our opinion that the customs, rules and regulations of the Fascist political party are controlling on the issue of whether or not by his conduct and that of the party, a person was a member of the party and a "fascista" or "squadrists". Even if a membership card carries a presumption as to matters to which it relates, it is still open to proof whether such facts are true. The issues of fact must be decided by the court on the evidence and under the rules prescribed for its observance.

- 3 -

10. If and when this absent matter is disclosed if it is still desired we will glad to rule on the case in the light of what has been written.

By command of Rear Admiral SIGNA:

JOHN A. SABON,
Colonel, Infantry,
Chief Judicial Officer,
for Chief Legal Advisor.

135.

733

Rome, Italy,
16 September 1945.

Brigadier Anderson,
Allied Commission,
Rome.

Dear Brigadier Anderson:

On August 22 and 24 meetings were held in Mr. Chapman's office, London (Mr. Chapman deals with rubber for the British Ministry of Supply). Miss McCleary and I were present. At these meetings we discussed various phases of the reactivation of the Italian Rubber Industry, including the Tripartite Agreement which represents the second stage in the acquisition by Italy of materials and technique necessary in connection with employment by Italy of U. S. synthetic.

According to Miss McCleary and Mr. Chapman, the Tripartite Agreement was received by the British Ministry of Production from B.R.M.M., Washington. On August 14 it was forwarded by the British Ministry of Production to A.C. by hand. It was sent A.C. for criticism on the part of A.C., the U.S. and U.K. Embassies, and the Italian Government, but not for signature by the Italian Government.

When the criticism has been received by A.C., they will return the Tripartite Agreement with their criticism to the Ministry of Production, who will forward it with the criticism from A.C., the U.S. and U.K. Embassies, and also the British Ministry of Production's criticism to B.R.M.M., Washington. The agreement will then be finalized between B.R.M.M., Rubber Reserve Corporation and U.S. State Department. 132

The agreement will be finally concluded either in London or Washington, and then forwarded to A.C., who will request the U.S. and U.K. Embassies to obtain the signature of the Italian Government. This will require time; hence the necessity for the letter of intent.

- 2 -

The State Department are anxious to have the Tri-partite Agreement finalized at the earliest possible moment; hence this memo.

Yours faithfully,

G. A. Green

cc: 1. Sir Richard Norworthy
2. Col. Weber

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/rlp.
24 September 1945.

SUBJECT : Allied Forces Immunity from Taxation - Tax on Alcohol.

TO : AFHQ, G-5 Section.

Ref your letter G-5: OIO.9-1 dated 16 Sept 1945.

1. This matter has been further discussed with the Finance Sub-Commission.

2. Although technically the tax is not due, it does not appear that in practice the exemption could be worked out without creating complete chaos in the Italian indirect revenue system.

3. May it be pointed out that if the Italian Government was made to repay 70 lire on every liter of spirit the Allied troops are estimated to have consumed in Italy, it would in all probability go bankrupt the next day.

For the Chief Commissioner:

Copy to: Finance S/C.

G. G. Harriman

G. G. HARRIMAN,
Lt. Col.,
for Chief Legal Advisor. 132

No. 785016

2025794

C. A. Section

71 A

20 SET 1945

ALLIED FORCE HEADQUARTERS

G-5 Section

AFO 512

G-5: 010.9-1

16 September 1945

SUBJECT: Allied Forces Immunity from Taxation.

TO : Headquarters, Allied Commission, APO 394.

1. Herewith copy of letter from Headquarters, Florence Command (US Contingent) relating to an alleged payment of taxes to the Italian Government by Allied Forces personnel.

2. It is requested that this Headquarters be advised whether you are of the opinion that the exemption desired by Headquarters Florence Command is practicable as an administrative matter.

F. T. Hammond, Jr.
Col 78C
for A. L. HAMBLIN,
Brigadier General, GSC,
Assistant Chief of Staff, G-5.

Incl:
as above

LEGAL SUB COMMISSION

CLO

DELO

Chief Counsel

CLO

20 SEP 1945

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710

C O P Y

HEADQUARTERS FLORENCE COMMAND
(US Contingent)
APO 512 US ARMY

HAE/gmg

7 September 1945

SUBJECT: Payment of Italian Liquor Tax by Allied Military Personnel.

TO : Commanding General, Allied Force Headquarters,
APO 512, US Army.

1. Italian Government tax is being charged on liquor bought exclusively for the use of Allied military personnel in Florence, apparently in violation of principles stated in a letter written 14 June 1945 by Colonel W. E. Behrens, Chief Legal Advisor of the Allied Commission, by command of Rear Admiral Stone to the Regional Commissioner of the Toscana Region. The following is an extract of the above mentioned letter:

"2) The Armistice terms themselves contain no reference to the payment of duties and taxes. It is clear, however, that in occupied territory troops of the occupying power are not subject to the laws of the occupied country, even if such laws are made applicable (e.g. by implementation) to the occupied territory for the benefit of the inhabitants.

"3) Moreover the Italian Government has expressly undertaken that no duties, taxes or imposts of any kind will be imposed directly or indirectly on the Allied Forces or members thereof.

"4) Strictly therefore, any attempt by the Italian Government to impose, through DDL No. 72, what amounts to a tax on drinks is, in occupied territory, unenforceable and in Italian Government territory, a breach of the above undertaking."

2. The tax on alcohol and the eight-percent (8%) sales tax now being charged increases the price of a liter of liquor by approximately seventy (70) lire. 130

3. Local Italian Government in Florence informs us that they can do nothing about the matter since the laws were made in Rome.

4. Request information and/or action.

FOR THE COMMANDING OFFICER:

(sd)

HARVEY A. SCOTT,
1st Lt., PA
Adjutant



11 September 45

(40A)

On 10 September, 45, Colonel Green of U.S. Embassy conferred with me, showing official telegrams re: rubber agreement.

On 11 September 45, I revised the draft of Colonel Behrens, incorporating changes set forth in Embassy letter of even date. The draft was delivered to Brigadier Anderson in person. It was agreed that Brigadier Anderson, Colonel Green and I call on the Minister (Italian) on 12 September and button up matter by having Ministry submit signed copy of agreement on their stationery.

JWS

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DRAFT

UNDERSTANDING TO BE GIVEN BY THE ITALIAN GOVERNMENT

WHEREAS, it is the desire of the Reconstruction Finance Corporation through its Office of Rubber Reserve (hereinafter called the company) and of the Government of the Kingdom of Italy (hereinafter called the Italian Government) that an agreement should be concluded between them for the release by the company to the Italian Government of the materials required for and the technical information concerning the compounding, vulcanization, manufacture, use and properties of commercial and experimental synthetic rubbers, the methods of testing commercial and experimental rubbers and the result of tests conducted on commercial and experimental rubbers and,

WHEREAS, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Governments of the United States of America and of the United Kingdom have agreed that for a period of fifty days after the 11th of September 1945 or such longer period as may be hereafter agreed (hereinafter called the period) such technical information within the

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rubbers and the result of tests conducted on commercial and experimental rubbers and,

WHEREAS, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Governments of the United States of America and of the United Kingdom, and

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WHEREAS, the Governments of the United States of America and of the United Kingdom have agreed that for a period of fifty days after the 11th of September 1945 or such longer period as may be hereafter agreed (hereinafter called the period) such technical information within the possession of the United States of America or of the United Kingdom will be released to the Italian Government upon condition that the Italian Government gives and observes the undertakings hereinafter mentioned.

NOW, THEREFORE, the Italian Government after due consideration by the Council of Ministers hereby undertakes as follows:

1. Upon receipt by the Italian Government of technical information concerning the compounding, vulcanization, manufacture, use and properties of commercial and experimental rubbers, the methods of testing commercial and experimental rubbers and the results of tests conducted on commercial and experimental rubbers, the Italian Government will supply to the Government of the United Kingdom and by means of the Government of the United Kingdom to the company, all technical information which now is in or during the period may come into the possession of the Italian Government relating to synthetic rubber in general and in particular, but without prejudice to such generality, relating to the manufacture, compounding, vulcanization and use thereof.
2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy save and except only those persons, firms or companies in Italy whose integrity and loyalty have been established to the satisfaction of the Italian Government.
3. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to maintain secret all such information.
4. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to supply to the Italian Government for communication to the Government of the United Kingdom and to the company all technical information within the possession of such persons, firms and

without prejudice to such generality, relating to the manufacture, compounding, vulcanization and use thereof.

2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy save and except only those persons, firms or companies in Italy whose integrity and loyalty have been established to the satisfaction of the Italian Government.

3. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to maintain secret all such information.

4. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to supply to the Italian Government for communication to the Government of the United Kingdom and to the company all technical information within the possession of such persons, firms and companies relating to synthetic rubber in general and in particular, but without prejudice to such generality relating to manufacture, compounding and vulcanization and use thereof.



THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

69A

AMERICAN EMBASSY
Rome, Italy.

September 10, 1945.

Dear Colonel Weber:

Early in August 1945, AC prepared a temporary agreement or letter of intent which when signed by the Italian Government, would enable release by the U.S. Rubber Reserve Corporation of materials and technique necessary in connection with the employment of U.S. synthetic by Italy. The temporary agreement or letter of intent will later be superseded by a temporary tripartite agreement, signatories being U.S., U.K. and Italy. Ultimately, there will be a bipartite agreement, signatories being U.S. Rubber Reserve and Italy. Purpose of temporary agreement or letter of intent is to avoid delays which must inevitably occur in connection with preparation of tripartite and bipartite agreements.

Temporary agreement or letter of intent was shown to us by AC. We cabled an analysis of the contents to the State Department per attached paraphrase. In response, the State Department suggested that action be withheld pending further advice from them which procedure was agreed to by AC.

We have now received a copy of secret cable COM 204 ACWAR from CCS, which approves temporary agreement or letter of intent with three minor changes namely:

A. Reconstruction Finance Corporation through its office of rubber reserve to be substituted throughout the document for rubber reserve company.

B. The words manufacture as well as use to be included where reference is made to the information which is to be furnished Rubber Reserve by the Italian Government.

C. An extension of the 50 day period as originally established in the temporary agreement or letter of intent.

AC has or undoubtedly can obtain a copy of COM 204. We have also received advice from the State Department withdrawing their objection to the temporary agreement or letter of intent, for details see attached paraphrase of the State Department cable on this subject.

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X

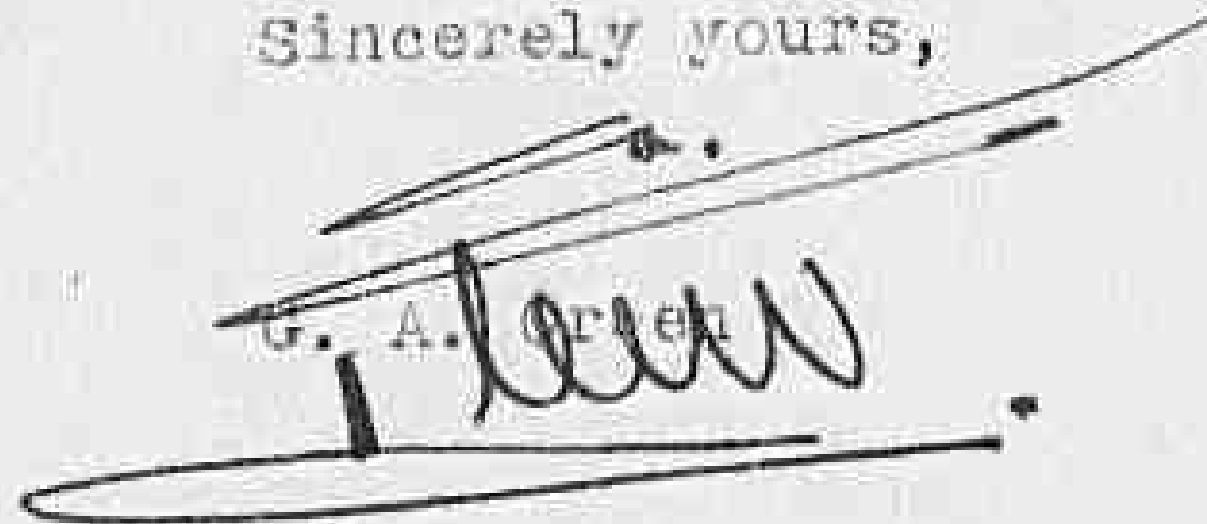
In view of the foregoing, we now suggest that the temporary agreement or letter of intent as originally prepared by AC be modified in accordance with the three points as set forth in COM 204, and that the Italian Government be asked by AC to sign the letter of intent so that they may receive the required technical information, etc.

It does not appear that any action is necessary regarding the modified letter of intent which was prepared in London and sent to Brigadier Anderson by Miss McCleary on August 24, 1945.

Sir Richard Norsworthy of the British Embassy concurs in the recommendations as set forth in this letter.

The above confirms my conversation with you as of today.

Sincerely yours,


G. A. Green

cc: to Sir Richard Norsworthy, British Embassy.

GAG:rf

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COPY

TELEGRAM

From: Department of State
Washington

To: American Embassy, Rome

Dated: August 31, 1945.

Department concurs with the terms outlined in
COM 204 of August 25 authorizing Allied Commission
to arrange for disclosure of rubber processing know
how.

COPY

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X

PARAPHRASE OF TELEGRAM.

August 4, 1945

1) In view of a letter from Mr. Harden, of UK Ministry of Production to Brigadier Anderson, AC, dated July 21, a temporary agreement for the release by the United States Rubber Reserve Corporation of materials and technique required in connection with the use by Italy of US synthetic has been prepared by AC and is in process of being submitted to the Italian Government for its signature.

2) Later a temporary tripartite agreement with the US, the UK and Italy as signatories will supersede the temporary agreement. There will ultimately be a bipartite agreement with the US Rubber Reserve Corporation and Italy as signatories. The temporary agreement's purpose is to avoid delays which inevitably must occur in connection with the preparation of the tripartite and bipartite agreements just mentioned.

3) It is required by the temporary agreement that for a period of 50 days following its signature or such greater period as may be agreed hereinafter technical information of which the US or the UK are in possession will be released on the following conditions to Italy:

a) Italy upon receiving technical information etc, will supply UK Government, and by means of that Government the US Rubber Reserve Corporation all technical information relating to synthetic rubber processing in general which is now in Italy's possession or which may come into its possession during the period. 23

b) There will not be disclosed by Italy any technical information received as aforesaid to any firms, companies, or persons, within Italy or outside Italy, except only Italian companies or firms the loyalty and integrity of which have been established to Italy's satisfaction.

c) There will be obtained and enforced by Italy from all firms, companies and persons to whom is

disclosed

- 2 -

disclosed any technical information as aforesaid
a covenant to maintain all such information secret.

d) There will be obtained and enforced by Italy from all firms, companies, and persons to whom is disclosed as aforesaid such technical information a covenant to supply Italy for communication to the United Kingdom and US Rubber Reserve Corporation all technical information possessed by such firms, companies, and persons relating in general to synthetic rubber.

* * * * *

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

6 September 1945. /rlp.

NOTE FOR COL. CAMPERILL:

1. CITAN points out:

a. that there was no time limit fixed in the contract to start the repairs of the bus nor a definite date for the year of service for AEG to start running.

b. Bus No. 1939 was part of a whole fleet of cars and busses, and as regards the 50 other vehicles CITAN state that they have kept their undertaking.

c. They further point out that had AEG-AC closed down six months ago there would have been no question of jurisdiction, as the previous owner could only address himself to the Italian Courts for redress.

d. Finally they claim (and I think they may be legally correct) that even at the present stage AEG cannot decide in Italian territory as to the ownership of property between two Italian citizens.

Please approach this matter with caution as we do not wish to have the Italian Government intervening on the pretext that AEG or AC is exceeding their power under the terms of restoration of territory to the Italians.

G. G. HARRINGTON,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4034/12/L.

21 August 1945.

SUBJECT : Italian property in Venezia Giulia (Jugoslav occupied)
TO : Economic Section.

1. Yugoslavia must be considered to be the occupying power in that part of Venezia Giulia under her control. As such she has the full rights of an occupying power under international law, both to retain war booty captured in battle and to seize certain public property.

2. It is understood that, in spite of the armistice, Yugoslavia claims that she is still at war with Italy and was entitled to capture booty from the Italian Government. So far as concerns AMI territory, AFHQ has so far, on the representations of the Chief Commissioner, refused to recognize this claim and holds that Italian Government property can only be seized as booty if it had previously been taken under the control of the German or Fascist Republican authorities. So far as concerns Yugoslav controlled territory the allies cannot influence the Yugoslav conduct at the present time.

3. Apart however from the question of booty captured in battle Yugoslavia is undoubtedly entitled to seize, under Art. 53 of the Hague Convention, the public property of the occupied state which are of such a nature that they "may be used for the operation of war". This undoubtedly includes oil and the various equipments and stores of a public company connected with oil refinement. The Italian Government goes out of its way to stress the public ownership in this case, and thereby in my opinion destroys any possible argument for objecting to the seizure by the Yugoslavs.

4. It is perfectly true that in Italy we have not seized the public assets of the Italian Government, but we had (and in AMI territory still have) the right to do so; for obvious reasons we have preferred not to exercise this right. That policy however cannot affect the Yugoslavs.

5. Incidentally I imagine the letter from the Minister of Foreign Affairs is only sent to us for "onward transmission" to the Yugoslavs as there is no diplomatic contact between Italy and Yugoslavia.

1203

Copy to :
AC/4005/L.

W. B. BEHRENS,
Colonel,
Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rip.
30 July 1945.

AC/4005/L.

SUBJECT : Emanuele Martinez.

TO : Chief Commissioner (THRU: VP CA Sec).

1. I am of opinion that the arguments put forward by the Italian Minister for Foreign Affairs in his letter of 23 July 1945 are well founded. I think that the French Military Command in Italy has no jurisdiction to request the questura of Rome to arrest or deport to France Sig. Martinez or his wife.

2. It may be open to doubt whether an occupying power has the right, under international law, to deport for trial in the home country of the occupant a subject of the occupied country who is alleged to have committed a crime against the occupying power in the home country of that occupying power. Insofar as it may be desirable to express an opinion upon this point, my present opinion is that the occupying power has no such right. The question however does not seem to me to arise in this case since:-

a. The right, if it exists, can clearly only be exercised during such time as the proposed deportee remains in fact within territory subject to the control and administration of the occupying power. In this case, the proposed deportee is no longer in AMG Territory. It is irrelevant to say that he may have been released from custody on condition that he returned to France, since the rights of military government cease when, for whatever reason, they can in fact no longer be exercised.

b. The right, if it exists, was not exercised by the occupying power (AMG) but by the French military police acting in an entirely arbitrary and illegal manner.

3. Whatever the position in AMG Territory, there can in my opinion be no possible doubt that there is no obligation on the Italian authorities to extradite a person in Italian Government Territory save in accordance with existing treaties or extradition agreements or general principles of international law. The Italian Government exercises sovereignty in such territory, subject only to the various Restoration Agreements; there is nothing in any of those agreements which would justify the suggestion that the Italian Government can be required to extradite its nationals for trial outside Italian Government Territory.

4. I may add that I have already considered the Allied question of whether the Italian Government can be compelled to "extradite" into AMG Territory an Italian who committed an offence in that territory and escaped before trial. I advised that strictly no such "extradition" was compellable against the will of the Italian Government. A fortiori no extradition

is compellable to France.

5. I should further add that Lt. Col. Henneford is well acquainted with Sig. Martinez and has expressed the view on the information available that he is a rogue, that he denounced French patriots to the Germans and that if possible he should be punished.

W. E. BEHRENS,
Colonel,
Chief Legal Advisor.

MINISTRE DES AFFAIRES ETRANGERES

COPY

SUMMARY

1. The French Military Command in Italy have requested the Rome Gestapo to arrest the Italian citizens Signor MARTINEZ and his wife and to transfer them to Nice where, according to the French note, they "are claimed by the French police as agents of the Gestapo. Martinez has been condemned in default, on this charge, to 20 years hard labour by the Nice Tribunal".

The Ministry of Interior have asked for the Public Safety Sub-Commission's opinion on this request with note 500/75373 of 20th inst.

2. Signor Emanuele Martinez has resided at Genoa since 1902 up to 1944 and has acquired a prominent position there as an hotel-keeper.

For your personal knowledge I may add that we have very favourable information as regards Signor Martinez' conduct in France before and during the German occupation. By the former Italian consulate at Nice he is stated to have been always adverse to all political activities and to have always favoured all persons persecuted on racial and political grounds. It is only natural, on the other hand, that the exceptional position acquired by him, may have given rise to many enmities and personal envious.

About a month ago, he was arrested at Milan by the French police who detained him for three days without giving him any reason for such action. They subsequently released him, insisting that he should immediately return to France. Signor Martinez came instead to Rome, where he reported to the Ministry of Interior and contacted the French Consulate.

3. It should be furthermore pointed out that the French request envisages the extradition of an Italian subject charged with having committed in France, in former times, a political crime. I am sure you will agree with me that to such a request, submitted in such a peculiar fashion, the Italian Government cannot but give a negative answer. This attitude is based on fundamental principles of international law nor does there appear to be in the Convention of Armistice any clause which authorizes such a request on the part of the French Authorities nor the treatment meted out to Signor Martinez' person and property in Milan.

Our point of view is that Signor Martinez' case should be handled through the normal diplomatic channels, all the more so as this Ministry has already interested in the question the French Embassy.

Rome, July 21st 1945.

E C DIST-27 JULY 45

ACTION: C A SEC (2)

INFO: CHIEF BUREAU

EX-CHIEF

(983)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

65A

AG/4005/L.

WEB/lc.
29 July 1945.

SUBJECT : Undertaking to be given by the Italian Government.
TO : CA Sec.

1. Herewith is forwarded a suggested draft which the Italian Government may be asked to sign.

2. Will you please inform Brig. Anderson that I have not been able to make contact with Col. Green of the American Embassy and that therefore, like Grimes, this is all my own work.

3. If the draft is approved for submission to the Italian Government I suggest that the accompanying letter should state that the United States and United Kingdom Governments are prepared to enter into an agreement for the release of information provided that the Italian Government signs this undertaking.

W. E. BEHRENS,
Colonel,
Chief Legal Advisor.

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65B

REPORT

UNDERSTANDING TO BE GIVEN BY THE ITALIAN GOVERNMENT

WHEREAS, it is the desire of the American Rubber Reserve Company (hereinafter called the company) and of the Government of the Kingdom of Italy (hereinafter called the Italian Government) that an agreement should be concluded between them for the release by the company to the Italian Government of the materials required for and the technical information concerning the manufacturing, vulcanization, use and properties of commercial and experimental synthetic rubbers, the methods of testing commercial and experimental rubbers and the result of tests conducted on commercial and experimental rubbers and,

WHEREAS, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Governments of the United States of America and of the United Kingdom, and

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vulcanization, use and properties of commercial and experimental synthetic rubbers, the methods of testing commercial and experimental rubbers and the results of tests conducted on commercial and experimental rubbers and,

WHEREAS, pending the conclusion of such agreement it is proposed that as an interim measure a temporary agreement should be made between the Italian Government and the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Italian Government has requested that immediately and before the making of the said temporary agreement, the technical information should be released to the Italian Government by the Governments of the United States of America and of the United Kingdom, and

WHEREAS, the Governments of the United States of America and of the United Kingdom have agreed that for a period of fifty days after the 3rd of August 1945 or such longer period as may be hereafter agreed (hereinafter called the period) such technical information within the possession of the United States of America or of the United Kingdom will be released to the Italian Government upon condition that the Italian Government gives and observes the undertakings hereinafter mentioned.

= 2 =

NOW, THEREAFTER, the Italian Government after the consideration by the Council of Ministers hereby undertakes as follows:-

1. Upon receipt by the Italian Government of technical information concerning the compounding, vulcanization, use and properties of general and experimental rubbers, the methods of testing commercial and experimental rubbers and the results of tests conducted on commercial and experimental rubbers, the Italian Government will supply to the Government of the United Kingdom and by means of the Government of the United Kingdom to the company, all technical information which now is in or during the period may come into the possession of the Italian Government relating to synthetic rubber in general and in particular, but without prejudice to such generality, relating to the manufacture, compounding, vulcanization and use thereof.
2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy save and except only those persons, firms or companies in Italy whose integrity and loyalty have been established to the satisfaction of the Italian Government.
3. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as

United Kingdom to the contrary, all technical information which now is in or during the period may come into the possession of the Italian Government relating to synthetic rubber in general and in particular, but without prejudice to such generality, relating to the manufacture, compounding, vulcanization and use thereof.

2. The Italian Government will not disclose any technical information received as aforesaid to any person, firm or company in or outside Italy now and except only those persons, firms or companies in Italy whose integrity and loyalty have been established to the satisfaction of the Italian Government.

3. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to maintain secret all such information.

4. The Italian Government will obtain and enforce from all persons, firms and companies to whom such technical information is disclosed as aforesaid a covenant to supply to the Italian Government for communication to the Government of the United Kingdom and to the company all technical information within the possession of such persons, firms and companies relating to synthetic rubber in general and in particular, but without prejudice to such generality relating to manufacture, compounding and vulcanization and use thereof.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

23 July 1945.

AG/4005/L.

SUBJECT : Official Date of Cessation of State of War in Italy.
TO : Regional Commissioner (Attn: Regional Legal Officer),
LIGURIA Region.

1. Reference your L19/leg/18 of 19 July 45.
2. According to Italian law the official date of the cessation of the State of War must be determined by Decree (Royal or Luogotenenziale).
3. This decree has not yet been promulgated.

By command of Rear Admiral STONE:

G. C. HANNAPORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

413

HEADQUARTERS
LIGURIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

LEGAL

(63A)

Lig/Leg/18

WGE/sf
19 July 1945

SUBJECT : Official Date of Cessation of State of
War in Italy.

TO : Headquarters, Allied Commission - APO 394.
(Attn: Chief Legal Advisor)

1. It would be appreciated if an answer could be
obtained to the question raised in PC's letter of 18 July 45,
copy attached.

For the Regional Commissioner:

W.G. Elder
W.G. ELDER,
Lt. Col. Cdn. Prov. C.,
Regional Legal Officer.

Encl.

1. Reference your Lig/Leg/18 of 19 July 45

2. *according to Italian Law*
The official date
of the cessation of the
State of War must
be determined by
Decree (Royal or Imperial)

3. This decree has not ^{yet} been
promulgated.

LEGAL OFFICERS	
CLO	
BCLO	
Chief Counsel	
CIO	
Legal Section	AL
CL RKS	

112

44

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
GENOA PROVINCE

WAM/mb

63B

A. P. O. 394

Genoa, 18th July 1945

Subject: Cessation of State of War

To : Regional Legal Officer

Through Regional Commissioner

1. Could we be informed as to the official date of the cessation of state of war in Italy. This is requested by the Prefect as it affects :
 - a) R.D.L. 12/3/41 N.142 Art. "Furthermore, except in cases of nonfulfillment of contract or of justifiable needs of the lessor or his relatives within the 3rd degree of relationship, or of new lease dating prior to 30/7/40, the lessee has a right to an extension, for the duration of present war, of the lease in effect at the date of this decree...."
 - b) R.D.L. 2/3/43 N.100 - R.D.L. 12/3/42 N.200, 13/6/42 N.859, R.D.L. 29/8/42 N.1189 and 14/11/41 N.1231 as well as 8/7/41 N.645 are applicable until 6 months after the cessation of the present State of War.

For the Provincial Commissioner

111

W. A. Malkin
W.A. MALKIN
Capt. C.A.C.
Executive Officer

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

62A

AC/4187/3/L.

GGH/lc.
15 July 1945.

SUBJECT : Reacquisition of Italian Citizenship.

TO : VP CA. Sec.

At Colonel Cripps's request I enclose a translation of the various provisions in respect of the above.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

Copy to : Political Adviser
Local Govt. S/C.

410

62B

PROVISIONS AS TO REACQUISITION OF ITALIAN CITIZENSHIP

Article IX of Law No. 555 of 13 June 1912 reads as follows:

a) "Whoever has lost his citizenship under Articles 7 and 8 of the present law may reacquire it

1. If the person concerned serves in the Armed Forces of the Kingdom or becomes a State Official.

2. Declares to renounce to the citizenship of the State to which (he or she) belongs or proves to have renounced to fulfil official or military duties abroad taken up in spite of the objection of the Italian Government and in each case have established, within a year of the renunciation, their proper residence in the Kingdom.

3. Resides two years in the Kingdom of the loss of citizenship was due to the acquisition of a foreign nationality.

However, the Government has the faculty to forbid such reacquisition of citizenship under sub-para 2 and 3. Such faculty may be exercised by the Government for serious reasons, in conformity with the opinion of the Council of State, within three months of the fulfilment of the conditions set out under para 2 and 3, if the foreign citizenship is that of an European State and of six months if not.

Reacquisition of citizenship may also be obtained without the obligation to establish a residence in the Kingdom for those who have transferred their residence for over two years from the foreign State the nationality of which they had acquired to another foreign State, but without acquiring a new nationality. In such cases however the sanction of the Government must be obtained beforehand.

b) Articles 7 and 8 and 9 of RD No. 949 of 2 Aug 1912 sets out the procedure to be followed whenever it is desired to reacquire Italian nationality under Law 555 of 13 June 1912.

c) Para 2 of art. 9 of Law 555 has been partly abrogated by the fascist legislation of 16 June 1927, No. 1170, which makes it a criminal offence for any Italian citizen to accept public functions in a foreign State without the authorization of the Foreign Office or refuses to resign his post when ordered to do so by the Italian Government.

Whoever is sentenced for such offence loses automatically its Italian citizenship and cannot reacquire it under art. 9 of the Law in point.

- 2 -

d) Decisions of the Supreme Court of Cassation have established a constant jurisprudence on the interpretation of Par. 3 of art. 9 of Law 555. It is held that the residence of two years in the Kingdom of Italy which is requisite to reacquire Italian Nationality is sufficient in itself to establish the right of the person to such reacquisition.

Evidence as to the intention of reacquiring Italian citizenship is not necessary. It has even been held that citizenship may be reacquired through to the sole residence and against the express will of the person concerned.

Residence being considered as implying formal "animo manendi". (C.C. 29.5.1931 from C.A. Napoli - C.C. 13.12.1935 from C.A. Trento).

This is however contested by independent jurists.

108

61A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

APN/lc.
10 July 1945.

AC/4005/L.

SUBJECT : MAFFIOLI Giuseppe S.A.

TO : Chief Prop. Control Div. Finance Sub-Commission.

1. Reference your letter 6 July 1945 A.C/NAT/36.13F/CP.
2. From a legal standpoint there is no objection to your Div. requesting Public Safety Sub-Commission to take steps to recover property of MAFFIOLI Giuseppe.S.A., referred to in letter attached to your communication.

ANTHONY P. NUGENT,
Major,
Chief Counsel.

107

ECX/IN/02

60A

HEADQUARTERS ALLIED COMMISSION
APO 394
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

AC/NAT 36.13P/CP

5 July 1945

Subject: NAPPIOLI Giuseppe.S.A.

To : Legal Sub-Commission AC.

1. Inclosed is copy of communication Re RXII/PC
NAT/36.13.F -RXII/PC/52, dated 3 July 1945.

2. From a legal point of view is there any objection
to Property Control requesting Public Safety Sub-Commission
to take steps to recover the property referred to in the
a/m letter.

Edward C King
EDWARD C. KING
Lt. Col., Spec. Res.
Chief, Property Control Division
Finance Sub-Commission.

1 incl.

LEGAL SUB COMMISSION	
CIO	
CIO	
→ CIO	OK
CIO	
CIO	
CIO	
CIO	
CIO	

106

COPY

EBE/bg

608

HEADQUARTERS
VENEZIA REGION
Allied Military Government
Apo 394

TO : Property Control Division
Finance Sub-Commission, Hq., AC.

3 July 45

SUBJECT : MAFFIOLI Giuseppe, S.A.

FILE NO : RXII/PC/FAT/35/13/T
RXII/PC/52

1. Merchandise belonging to the subject company at Venice was stolen by the Blackshirt Brigade on 17 and 18 April during the absence of the manager.

2. Some of the merchandise has been recovered and some has been located at an artistic glass works at Murano island. The manager of the glass works at Murano produced a receipt signed by a member of the Blackshirt Brigade acknowledging payment of a sum in excess of one million lire for the glass in question.

3. In such cases as this where it must have been obvious to the purchaser that the goods were obtained by the vendor by illegal means, is it possible to effect recovery through the police. If so, may Public Safety Sub-Commission be asked to instruct P.S. Officers to facilitate such recoveries on behalf of Allied National owners.

4. The problem is put to you as it probably will be encountered in all regions.

E.B. EVANS
Major, F.G.H.
A/R.P.C.O.

105

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/rlp.
10 July 1945.

SUBJECT : Contracts of Mezzadria.
TO : Office of the Chief Commissioner.

1. The legal position concerning "mezzadria" contracts is as follows:-

a. They have existed for a very long period of time in Italy and also in France.

b. Originally they were voluntary contracts and the basis of division of products could be freely agreed between owner and tenant. Local custom generally established a 50-50 basis and now by Art. 2141 of the Civil Code of 1942 this basis has been officially accepted. The obligations of landlord under this contract are substantially those set out in Mr. Mallaby's letter, although his enumeration is not complete. The law is contained in Art. 2141 to 2169 of the Code.

c. In spite of this it is still legal to agree to a different distribution of products. Such contracts, termed "mezzadria impropria" are common in south Italy; the landlord provides the bare land without other capital or equipment, and receives a smaller proportion of the fruits.

d. Mezzadria contracts are yearly unless otherwise specified.

e. The only Italian legislation which has been recently enacted on these contracts is:

RDL 146 of 3 June 1944 which extended mezzadria contracts for one year after 31 Dec 1945.

DLL 311 of 19 Oct 1944 which established commissions to settle disputes, including division of products; but this only applies to mezzadria impropria colonia parziaria e com-partecipazione. It does not apply to the normal, regular contracts.

DLL 157 of 5 April 1945 extended mezzadria contracts for one year after cessation of hostilities.

f. AMG has issued no order relating to these contracts so far as is known.

2. It will be seen from this position that the contracts are freely negotiated. It is illegal for bodies like Feder Terra or the Camere di Lavoro to attempt to interfere with them. The Prefect of Florence has no authority to interfere as he has done. His powers under the Legge Provinciale e Comunale is restricted to emergency action.

3. If it is necessary for the sake of law and order that the terms of the contract should be varied, this could be done as an extraordinary and temporary measure by government decree in accordance with the action taken in 1920. It appears doubtful, however, whether there is any justice in the demands for a modification of the basis of distribution; from information reaching this sub-commission (perhaps not impartial) the demands appear to be largely inspired by political motives.

W. E. BAHRENS,
Colonel,
Chief Legal Advisor.

10003

MEMO ON MR. MALLABY'S LETTER TO THE
CHIEF COMMISSIONER

1. Personally I agree with most of the views expressed in Mr. Mallaby's letter, which are identical to those of Count Antonio Spalletti, a large landowner in Emilia where his family and himself have made "mezzadria" contracts with the same families of peasants since the XVII Century. These families of peasants are now, if they were not before, very well to do. Some of their sons have received university education and the daughters, on getting married, have been well provided for.
2. The mezzadria, which is also practiced in France (metayers) has been the most successful method of cultivation of large estates where the landowner was not himself an agriculturist. "Mezzadria" cannot be suppressed without eliminating the landlord altogether and dividing the land among the peasants.
3. There exist many forms of "mezzadria" and they vary according to the regions of Italy. In early days the mezzadria contract was (or is still) voluntary, the division of products could be freely agreed by both parties. On the other hand, local custom generally prevailed and the proportion of 50-50 indicated in Mr. Mallaby's letter was usually the rule. This has been legalized finally by the Civil Code of 1942 (Art. 2141) which however sets out also that products can be divided in other proportions and that such agreements are legal. These contracts where the products are not divided 50-50 are called "mezzadrie improprie." They prevail in some Southern Regions of Italy (Puglia) where the landlord does not provide either capital, cattle, farm equipment or fertilizers, but just the bare land. The complaints which the peasants of Puglia may raise cannot be justified in Toscana, where all capital expenses and stock outlay and upkeep are borne by the landlord under the obligations of "mezzadria" proper.
4. Mezzadria is a yearly contract unless otherwise specified. The obligations of landlords and "mezzadria" are correctly set out in Mr. Mallaby's letter, his enumeration is however not complete (Art. 2141 to 2169 of Codice Civile refer).
5. The fact that the "Camere di Lavoro" and "Feder Terra" are demanding that the agreed proportion should be based on a 65-35 basis in order to eliminate big land owners, is merely political propaganda. There exists, at the present time, no decree amending the articles of the Code above referred to. Therefore any attempt by the "mezzadria" to withhold these products, under the agreement, they should surrender is a definite breach of contract which cannot be justified at the moment by any legal text.

6. AME did not issue any specific order with regard to mezzadria, but have implemented the Italian decrees promulgated from time to time by the Italian Government. The Agriculture S/C informs that the following legislation only has been passed which affects directly or indirectly the mezzadria system existing previous to Allied occupation.

1) RDL 146 of 3 June 44 - Extending "mezzadria" contract for one year after 31 Dec 45.

2) DIL 311 of 19 Oct 44 - Which affects only mezzadria impropria colonia perziaria e compartecipazione, not mezzadria proper.

*Sottile Com. K for perziaria
After Dec 45*

3) DIL 157 of 5 April 45 - Extending mezzadria contracts for one year after cessation of hostilities.

7. The decision of the Prefect of Florence appears to have been to say the least "ultra vires", as his only powers to act in such a way under the "Legge provinciale and comunale" derives from a state of emergency that cannot be justified in the case in point.

8. Furthermore, it must be again pointed out that DIL No. 311 of 19 Oct 44, deals exclusively with "mezzadria impropria", ~~that~~ all the powers given to certain commissions "circondarie and regionali" under this decree, with a view to arriving to the settlement of disputes between "landlords and mezzadria" do not apply to Tuscany or Emilia where the "mezzadria impropria" is unknown.

4005 ✓
ALLIED COMMISSION
LIAISON OFFICE
BARI

58A
Tel.: 14152

June 26; 1945

Subject: Sale of Methyl Alcohol.

Ref.: IB/6109/7

To: H.Q. Allied Commission
(for Legal Sub-Commission
ref. letter No. AC/4005/L
of 1 June '45).

1. The attached letter No. APM/22/V/N° 143 dated 21 June '45 shows the action taken by H.Q. 54 Area on your letter under reference.
2. A request for similar action to operate in the Provinces of Taranto, Brindisi, Lecce and Potenza has been made by H.Q. 52 Area and steps to that end are being taken.

S.W. Miller

S.W. Miller, Col.
Allied Commission
Liaison Officer

100

SUBJECT: Methyl Alcohol.

TO: Deputy Provost Marshal
HQ 3 District

58B
HQ 54 Area CDEP
APM22/1/No. 143
Tel. 14121
21 Jun 45

1. Reference your Pro 453 of 7 Jun 45 and 453 Pro 16 of 21st May, attached please find copies of correspondence received from A.C. Liaison Officer and also your original correspondence which is returned.

2. This matter is receiving further attention and on 6 Jun a conference was held in this office between APM, Italian L.O. and Refolo Tecnico delle Imposte di Fabbricazione, Spiriti and Alcohol, who is responsible for the production of all raw spirit in Bari, Foggia, Potenza, Lecce, Brindisi and Taranto Provinces.

3. It was agreed to deal with this problem in the following way:-

- (a) The Director to supply this office with a list of firms who will only manufacture spirit according to British standards i.e. containing 9.05% methyl alcohol or less.
- (b) The Director also to supply a list of manufacturers of alcoholic drinks whom he will instruct to purchase raw materials from firms in para (a).
- (c) This office to place in bonds approx 20-30 cafes who would only be allowed to purchase from firms in para (b). All other cafe's to be placed out of bonds.

R.L. Allen Major
Assistant Provost Marshal
(R.C. APM)

representatives of the British and Toronto Prov.
Potenza, Lecce, Brindisi and Toronto Prov.

3. following way:-

It was agreed to deal with this problem in the

- (a) The Director to supply this office with a list of firms who will only manufacture spirit according to British standards i.e. containing 0.05% methyl alcohol or less.
- (b) The Director also to supply a list of manufacturers of alcoholic drinks whom he will instruct to purchase raw materials from firms in para (a).
- (c) This office to place in bounties approx 20-30 cafes who would only be allowed to purchase from firms in para (b). All other cafes to be placed out of bounties.

R. L. Allen Major
Assistant Provost Marshal
(R. G. ALLEN)

99

TH

Copy to: A.C. I.O. (2)

APM 22 DEC 11

TO : LOCAL GOVERNMENT SUB-COMMISSION

1. I am asked to advise whether the power of the Minister of Interior to issue decrees under Art. 24 of Ministerial Decree of 24 Oct 1944 may be exercised by AMG officers in AMG territory.

2. For the purposes of current administration AMG exercises all the functions of the sovereign Government, to the exclusion of that Government. Where therefore Italian law requires action by one Italian Government department, such action can, for normal administrative purposes, be taken by AMG officers without reference to the Italian Government.

3. It is to be observed, however, that an occupying power has no sovereignty over occupied territory and any order made by the occupying power is ultra vires if that order is concerned essentially with a matter of sovereignty as opposed to administration.

4. The constitution of the national government or the Local Government and the method of elections therefore are essentially matters of sovereignty, in which an occupying power has prima facie no authority to intervene. It would, for example, be wholly illegal to impose, against the wish of the Italian Government, a new electoral system upon AMG territory.

5. In this particular case, however, the decrees of the Minister of the Interior is purely administrative. It is the duty of the occupying power to maintain current administration, and since it can fairly be argued that in present conditions the maintenance of public order requires the holding of elections and the taking of all necessary action therefore, there are good grounds for the view that an order of this nature can legitimately be passed by AMG.

6. I feel therefore that such an order, if made, could not be validly challenged during the existence of AMG. It is probable that the elections will not be held nor will the electoral lists be challenged (if at all) until after the termination of AMG. In such case any order is further protected by the hand-over terms, which (if similar to previous terms) will provide for the ratification of such AMG orders.

7. There can be no doubt however that the safer and more prudent course is to invite the Minister to pass the necessary decree in all cases which are approved by the Regional Commissioner. The Provincial Commissioners might interview all Prefects on 24 July and forward their recommendations, if approved, through your Sub-Commission. If the necessary decree it can be implemented forthwith, and

4. The constitution of the national government or the Local Government and the method of elections therefor are essentially matters of sovereignty, in which an occupying power has prime facie no authority to intervene. It would, for example, be wholly illegal to impose, against the wish of the Italian Government, a new electoral system upon AMG territory.

5. In this particular case, however, the decree of the Minister of the Interior is purely administrative. It is the duty of the occupying power to maintain current administration, and since it can fairly be argued that in present conditions the maintenance of public order requiring the holding of elections and the taking of all necessary action therefor, there are good grounds for the view that an order of this nature can legitimately be passed by AMG.

6. I feel therefore that such an order, if made, could not be validly challenged during the existence of AMG. It is probable that the elections will not be held nor will the electoral lists be challenged (if at all) until after the termination of AMG. In such case any order is further protected by the hand-over terms, which (if similar to previous terms) will provide for the ratification of such AMG orders.

7. There can be no doubt however that the safer and more prudent course is to invite the Minister to pass the necessary decree in all cases which are approved by the Regional Commissioner. The Provincial Commissioners might interview all Prefects on 24 July and forward their recommendations, if approved, through your Sub-Commission. If the Minister passes the necessary decree it can be implemented forthwith, and recourse need only be had to an AMG Regional Order (with possible future argument) if the Minister refuses to take action as requested.

Lord
W. E. BARRETT,
Colonel,
Chief Legal Advisor.

LEGAL SUB-COMMISSION
28 June 45.

HEADQUARTERS ALLIED COMMISSION
AFD 394
LIVORNO SUB-COMMISSION

AD/4005/L.

/rtp.
18 June 1945.

SUBJECT : Lazzi Bros.

TO : Regional Commissioner (Attn: Regional Legal Officer), LIGURIA Region.
Zone Commissioner (Attn: Provincial Legal Officer), LIVORNO Comune.

1. Lazzi Bros. are the owners of an automobile transport business with head office in Pistoia and branches in Genoa, Apuania, Lucca and Firenze.

2. It is alleged that this firm has made a large profit out of fascist activities. This allegation is denied by the firm. No opinion on the merits of this question has been formed by this sub-commission, nor is any such opinion to be inferred from this letter.

3. In January 1945 an application was made by the Intendente di Finanze, Pistoia, to the Tribunale Pistoia for a sequestration order against Lazzi Bros. under RLL No. 159. This application was granted and the order was made.

4. The firm appealed to the High Commissioner for Sanctions against Fascism who decided that there was no evidence to support the original application and accordingly directed the Intendente di Finanze to apply for a revocation of the sequestration order. On such application the Tribunale of Pistoia revoked the sequestration order by order dated 8 February 1945.

5. For some reason, which is not clear to this sub-commission, the Provincial Delegate for Pistoia so far exceeded his duties as to persuade the Provincial Commissioner Pistoia AS to order the President of the Tribunale to suspend this revocation order. For some reason the Provincial Commissioner made this order on 12 February 1945 and the Tribunale accordingly on 13 February 1945 suspended the operation of the revocation pending further order.

6. This sub-commission has expressed the opinion that such order was illegal. The time factor did not prevent this opinion being put into writing, but R.O. Toscana Region was notified by telephone on 16 June 1945 and he agreed to advise the PC, Pistoia to serve a further notice on the Tribunale of Pistoia removing his previous order of suspension. It is presumed that necessary action has been taken by the PC concerned and it will probably follow that the revocation of the sequestration order will come into immediate effect.

7. Between February and June, however, the sequesterator in Pistoia, the Banca di Monte dei Paschi di Siena, has apparently permitted a large proportion of the assets of the firm to be requisitioned by the Prefects of Pistoia, Lucca, and Pisa, with the approval of ASF authorities, and handed over to a cooperative society, SACA, which is a newly formed organization apparently designed to obtain the assets and goodwill of the Lazzi Bros.

8. It is to be observed that, even if the sequesterator remains in office it is his duty to manage the business on behalf of the ultimate beneficiary. Such ultimate beneficiary should be the Italian State, if Lazzi Bros. are found guilty, or Lazzi Bros., if they are absolved. It should not, in any circumstances, be SACA.

9. It is further to be observed that part of the assets of Lazzi Bros. consist of the concession granted by the Ministry of Transport to maintain their bus service. Such concession, under Italian law is a monopoly and, unless such concern is forfeited by the Ministry of Transport, no further concession can be granted to another firm. It is true that in ASF Territory ASF has the right to forfeit such a concession, but in a case of this kind, it is obviously proper that the concession should be maintained and the business operated by the sequesterator on behalf of the ultimate beneficiary.

10. In these circumstances, it is considered that the action of ASF in approving the requisition by the Prefects of the assets of Lazzi Bros. and their transfer to SACA, was irregular and that action should be taken to ensure that the assets are returned to Lazzi Bros., if the sequestration order is effectively revoked, or to the sequesterator, if it is not, and that in this latter case the assets should be managed by the sequesterator and not by SACA.

By command of Rear Admiral STONE:

W. E. HARRIS
W. E. HARRIS,
Colonel,
Chief Legal Advisor.

Copy to: ~~SECRET~~
NO (Attn: HLO), Toscana Region. (with papers)

96

*Transferred
to AC/4175/5/4*

54A

file

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/400/L

/rm.
8 June 1945.

SUBJECT : Purchase of Allied Money Orders.

TO : O.C., C.I.D.,
A.S.S., South District
AC 702

With reference to the recent visit of Agents LIPINAT and DEANER to discuss the legality under Italian Law of the purchase by civilians of Allied money orders, I enclose a copy of an opinion obtained by this Sub-Commission together with copies of the relevant decrees, other than that contained in the Gazzetta No. 168 of 1943.

Prun

W.A. DEANER,
Colonel,
Chief Legal Advisor.

Copy to : C Naples Command
for SIO
AC/400/1/L

... 95

HEADQUARTERS ALLIED COMMISSION
APO 396
LEGAL SUB-COMMISSION

MEMO

To : Chief Legal Advisor.

1. The transaction, whereby Italian citizens acquire from American soldiers money orders bought by the latter at military post offices and payable in dollars in the U.S. of America is illegal.

(a) Art. 1 of Ministerial Decree dated May 26, 1934 (published in G.U. n. 124 of May 26, 1934) provides that no transaction in foreign exchange can take place, unless it is proved that foreign currency is needed for industrial or commercial purposes or for travels abroad.

(b) Art. 9 of Ministerial Decree dated December 8, 1934 (published in G.U. n. 288 of December 8, 1934) provides that only the Istituto Nazionale per i Cambi e lo Stero is authorized to buy and sell foreign currency and any other instrument (bonds, securities, promissory notes, bills of exchange and the like) that may be used for payments abroad.

2. Violations to the above mentioned Ministerial Decrees are punishable under Law n. 1097 of July 26, 1939. Art. 1 of this law sets out the penalties, which in the most serious cases is imprisonment up to 24 years and a fine.

3. In case possessors of money orders acquired in the circumstances mentioned above put up a defense that the Allied soldier gave them "cum animo cemandi", then Art. 1 and 3 of R.D.L. n. 1942 of December 8, 1934 and Art. 1 of Ministerial Decree dated July 14, 1943 (published in G.U. n. 153 of July 22, 1943) apply.

These laws provide that all credits towards foreign debtors and all foreign currency (however acquired, even legally) must be turned over to the Istituto Nazionale per i Cambi e lo Stero.

Violations of said laws are punishable under Law n. 1097 of July 26, 1939; R.D.L. n. 774 of May 12, 1938, made into law n. 388, of January 9, 1939; and R.D.L. n. 1923, of December 3, 1938, made into law n. 139, of June 2, 1939.

540

D.M. 26 Maggio 1934

NORMA CHE REGOLARÀ LE OPERAZIONI DI CAMBI E DIVISE.

Art. 1 - Nessuna operazione in cambi o divise potrà essere eseguita se non risponda a reali necessità dell'industria e del commercio ed ai bisogni di chi viaggia all'estero.

Tali necessità dovranno risultare da documentazione originale. Potranno essere eseguite operazioni rispondenti a bisogni di persone residenti all'estero che hanno i loro beni nel regno, nelle colonie e nei possedimenti.

Art. 2 - È vietato alla data di pubblicazione del presente decreto a banche, banchieri, cambiavalute, società, ditte, enti e cittadini italiani residenti o domiciliati nel regno, nelle colonie e nei possedimenti, di eseguire per conto proprio o di altri l'acquisto sul mercato estero di titoli e valori, sia esteri che italiani emessi all'estero.

Per i titoli, anche se materialmente depositati all'estero, già posseduti come sopra, la prova del possesso anteriore alla data di pubblicazione del presente decreto consisterà nel bollo o nella ricevuta della tassa di bollo ai sensi del R. D. L. 26 maggio 1934 n. 304.

93

L. 23 luglio 1937 n. 1077.

Law amended by D.L. 4.460 of 31.12.45

G.U. n. 101

9/23/45

DISPOSIZIONI PENALI IN MATERIA DI SCAMBI E VALUTE E DI COMMERCIO

UNILATINO.

Art. 1 - Chiunque, con mezzi fraudolenti, con scia, sottrae od occulta, in danno dell'economia nazionale, mezzi di pagamento all'estero, ovvero agisce in modo da deprimere la corsa della valuta nazionale, e' punito con la reclusione fino a dieci anni e con la multa fino al quintuplo del valore della cosa che ha formato oggetto del reato.

e'
La pena ^{e'} della reclusione fino a ventiquattro anni, oltre la multa:

1. - quando il colpevole vive attualmente, anche solo in parte, dei proventi del delitto anzidetto;
2. - quando il delitto e' commesso da tre o piu' persone associate allo scopo di compiere piu' delitti indicati nel precedente comma;
3. - quando, o per le qualita' sociali e personali del colpevole, o per l'ufficio rivestito, o per la grave nocevolezza che ne sarebbe potuto derivare all'economia nazionale, il fatto assume carattere di notevole rilevanza.

D.M. 8 Dicembre 1934

LIBERTAZIONE DELLA CEDOLA DEI MEZZI DI PAGAMENTI DERIVANTI
DA IMPORTAZIONE E NORME PER IL COMMERCIO DI OGNI MEZZO CHE POSSA
SERVIRE A PAGAMENTI ALL'ESTERO.

Art. 9 - E' riservato al solo istituto nazionale per i cambi
con l'estero il commercio di ogni mezzo che possa servire a pagamenti
fuori d'Italia.

L'acquisto delle divise, delle tratte all'estero,
dei biglietti di stato e di banca esteri, la utilizzazione di ogni
altro mezzo che possa servire a pagamenti fuori d'Italia, la realizza-
zione all'estero dei titoli stranieri ed italiani emessi all'estero
e l'incasso delle cedole relative spettano esclusivamente al medesimo
istituto.

L'esportazione di titoli esteri o italiani emessi
all'estero non può essere effettuata senza il benestare dell'istituto
nazionale per i cambi con l'estero.

Quando concorrono due o più delle circostanze previste nel comma precedente, la reclusione non può essere inferiore a quindici anni.

Se risulta che il colpevole ha comunque agito in seguito a intelligenza con lo straniero o a fine di recare un grave pregiudizio alla economia nazionale, si applica la pena di morte.

In ogni caso, nel caso previsto dal comma precedente, importa sempre la confisca dei beni.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4005/L.

/lrh.
1 June 1945.

SUBJECT : Sale of Methyl Alcohol.

TO : Allied Commission Liaison Officer, c/o HQ 54 Area,
C.M.F.

1. You will appreciate that the real question raised by your LB/6109/1 of 26 May 1945 is whether or not the Order of the Prefect in Bari is valid in Italian Law. This is a question which must be decided by Italian Law and, if the point arises in practice, by the Italian Courts.

2. I have consequently taken the advice of my Italian Legal Advisers.

3. They are of opinion that the Order of the Prefect is legal, and that it is within his discretionary power to limit the amount of methyl alcohol in liquor exposed for sale in this province below the standard permitted under the General Law.

4. The correspondence is returned herewith.

By command of Rear Admiral STONE:

1 Incl:
Correspondence

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Adviser.

ALLIED COMMISSION
LIAISON OF ICE
BARI

Tel.: 14152

52A

26 May 1945

Subject : Sale of Methyl Alcohol.

Ref : LB/6109/1

To : C.L.A. Legal Sub-Commission, HQ AC.

1. The attached original correspondence relating to the sale of Methyl Alcohol is forwarded to you for advice please.
2. Will you kindly return the correspondence with your reply.

LEGAL SUBCOMMISSION

CLO

DCLO

Chief Counsel

CLO

S.W. Miller
S.W. MILLER, Colonel
Allied Commission
Liaison Officer

Copies to A.P.M. 54 Area - CMF

CL RKS Ref. letter APM/22/1/N°143 dated 25 May 45.

HEAD-QUARTERS ALLIED COMMISSION
APO 374
LEGAL SUBCOMMISSION

/rip.
29 May 1945.

AG/4005/L.

SUBJECT : Purchase of real property in Italy.
TO : Chief Commissioner.

1. I submit to you herewith my opinion on the question raised by Lt. Lennin's letter of the 28th May 1945. Before writing this opinion I was informed that the officer concerned is in fact American, so I only deal with the position as affecting an officer of that nationality.

2. There is no law of the United States which prohibits purchases of real property in Italy by officers stationed outside the United States. The terms of the American Trading with the Enemy Act do not affect such purchases, and I am advised by Major Nugent that there is no other American statute relevant to this question.

3. I have also enquired whether there is any military provision or regulation prohibiting members of the Armed Forces from engaging in such transactions, as distinct from ordinary citizens of the United States. I am advised by the Staff Judge Advocate, Rome Allied Area Command that no such regulation exists.

4. I am accordingly of opinion that real property may legally be purchased in Italy by American officers. On the other hand, Treasury Regulations exist which prohibit the export of funds from America to Italy except under certain conditions or with the necessary permit. These conditions do not apply to this case and I am advised that no permit will be granted, so that the purchase could not legally be effected unless the officer concerned already has in Italy the necessary funds for that purpose. It should be observed that any contract made by him for payment in the future would be a violation of the regulation. 87

5. I understand that the property in question has already been confiscated. In such case the Italian Government can only sell by auction, unless the proposed purchase price is less than 100,000 Lire. If the buyer desires to investigate the possibilities of the purchase, he should write to the Intendenza di Finanze of the province in which the property is situated and should state that he wishes to buy the property. The Intendenza should inform him either of the date of the auction or, if the purchase price is less than 100,000 Lire, the amount of such price.

W. E. DUFFUS,
Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION

Office of the Chief Commissioner

APO 394

JL/hjp

50A

28 May 1945

SUBJECT: Purchase of Property in Italy

TO : Economic Section (For: Finance Sub-Commission)
Civil Affairs Section (For: Legal Sub-Commission)

1. This office has received a request from an Allied officer for the procedure in acquiring real property in Italy.
2. It is our understanding that at the present time such purchases are prohibited.
3. The real property in question is that of Dino Grandi and it is understood that it might be subject to confiscation.
4. May I have your advice on which to base a reply of what can be done or what your best judgment is of the future possibilities of purchasing this property.

J. Lannin

J. LANNIN
Lieut, USNR
Flag Lieut to
Admiral Stone

86

28 MAY 1945

File

HEADQUARTERS ALLIED COMMISSION
AFO 394
LEGAL SUB-COMMISSION

49A

AC/4005/L.

/pa.
15 May 45.

SUBJECT : Generoso DE BIASI.

TO : Finance Sub-Commission, Property Control Division.

1. Reference attached letter submitted under cover of your AC/303/CP dated 12 May 1945 this is hardly a matter which can be dealt with by AC.

2. The writer in substance desires that AC should intervene on his behalf to have the Italian Government speed up a certain piece of legislation to remedy an unfavourable position in which he finds himself in common with other property owners in Italy. It is true that certain legislation is contemplated but it is unlikely that it will be retroactive, and Mr. DE BIASI's best course is to engage good Italian Counsel to protect his interests.

3. Avellino is in Italian Government territory where there are no Regional Legal Officers or other legal officers.

See

A. R. THACKERAY,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

85

Incls.: 1 letter.

ECK/ev

47A

HEADQUARTERS ALLIED COMMISSION
APO 394
FINANCE SUB-COMMISSION
Property Control Division
Tel. 471387

AC/303/CP

12 May 1945

Subject: Generoso De Biasi.

To : Legal Sub-Commission, A.C.
Attn: Lt.Col. Thackrah.

1. Attached hereto for your attention is a letter which seems to come within your jurisdiction rather than ours.

2. Perhaps your P.L.O. could obtain a continuance of the case pending passage of the decree if such procedure seem called for.



EDWARD C. KING
Lt.Col., Spec. Res.
Chief, Property Control Division
Finance Sub-Commission

Enclosure.

*Review
is under Major
Admiral's attention. Consider
Refer to Major's command
for further action.*

LEGAL SUB-COMMISSION	
CLO	
DCLO	
Chief Counsel	
CJA	
CLERK	
CLERK	
13 MAY 1945	

85

SECRETHEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSIONWERY/at.
14 May 1945.

13/1005/L.

SUBJECT : Gold in N. Italy.

TO : Finance Sub-Commission.

1. I understand from your 13012/Z of 11 May 1945 that you wish to be advised:

- (a) Whether the United Nations have the right to take possession of the gold found at Fortezza;
- (b) Whether they have the right to restore it to the Italian Government;
- (c) Whether the decision must be referred to C.I.S.

2. Several questions of fact and law are involved, the answers to which are not free from doubt. My own views thereon are set out in the attached memorandum.

3. On the basis of that memorandum, my answers substantially are:
- (a) If it is State property, yes. If it is private property, no.
 - (b) The United Nations can only claim the gold on the ground that it is State property. It would, in such case, have been equally claimable if in the hands of the Banca d'Italia. If any authority exists for waiving the claims of the United Nations, that event, it covers the present situation.
 - (c) It would be safer to refer the matter to C.I.S., but if my advice agrees with that of the legal adviser at AWH, you may be prepared to act upon it.

T. E. SMITH,
Colonel,
Deputy Chief Legal Adviser.

SECRET

SECRETMEMORANDUM

If the United Nations are entitled to retain possession of the gold found at Fortezze, their right to do so must be based on one or more of the following grounds:-

- (a) By virtue of appropriation as booty;
- (b) By right of seizure under Art. 53 of the Laws and Customs of War;
- (c) By requisition;
- (d) By virtue of the Armistice Terms, with Italy.

Consideration of the factors which are relevant to this problem involves the prior determination of the question whether the gold was State or private property at the time when it was originally transferred from the Banca d'Italia before June 1944. This question is a question of fact, upon which no information is available to this sub-commission, but there are certain legal principles involved.

The gold may have been the property of private individuals, and deposited with the bank for safe custody or in such other circumstances that no title thereto passed to the bank. In this case the gold is clearly private property.

The gold may have been the property of the Italian State and deposited with the bank as part of the State reserves, or for safe custody or in such other circumstances as to make it clear that the gold remained Italian State property. In this case the gold is clearly Italian State property.

The gold may have been the property of the Banca d'Italia, acquired in the course of normal banking transactions and held by the bank for the purpose of such transactions. In this case the matter is one of considerable doubt, but for the reasons expressed below, it is my opinion that the gold should be regarded as private property.

During the Franco-Prussian War, 1870, and during the first European War, 1914-1919, the status of funds owned by the Banks of France and Belgium was under consideration. In 1870 the Germans issued an order (which was observed) that the Bank of France was a private institution, whose funds could be neither seized nor confiscated. The main reasons which influenced the making of this order were that the bank was a special legal entity, that it paid dividends to shareholders and that apart from issuing banknotes, it engaged in regular banking transactions. In 1914 the Germans adopted a similar attitude in relation to the Bank of Belgium.

SECRET

It is, however, true that the public functions of central banks have considerably increased in the last 25 years, and that now, particularly in time of war, central banks are in many respects a tool in the national policy rather than in any sense an independent commercial concern. There would, therefore, be more justification in present conditions for regarding the funds of state banks as national property. Nevertheless, it remains both in accordance with international law precedent and in compliance with the usages of war that if the ownership of the bank, including the right to share in its profits, is vested in private persons, the assets of the bank should be considered as private property.

Upon this question generally see Feilchenfeld's International Economic Law of Belligerent Occupation, pp 38, 59-61, 96-104.

I understand that, in fact, the shares in the Banca d'Italia are held by the Banco di Roma, Banco di Napoli, Banco di Sicilia, Banco Commerciale, Credito Italiano and other banking concerns, and I am informed that some of the shares in these banks are held by private persons and that the profits of these banks are distributed and do not accrue to the State. I am further informed that the Banca d'Italia does carry on the normal functions of a private bank. It is also relevant to observe that the terms of the surrender of Italy distinguish in Clause 33 between the Italian State and the Bank of Italy, and while this is not conclusive, it is reasonable to assume that the distinction was intended to provide for the severance between the two. On these facts, therefore, I am of opinion that the assets of the bank, should be regarded as private and not Italian State property.

In the light of the foregoing observations it is now possible to examine the various grounds upon which possession of the gold might be claimed by the United Nations. 81

(a) Booty. Appropriation of booty is restricted to State property seized on the battlefield. The distinction between property seized on the battlefield and that seized by an army of occupation appears to be that the former is taken by an army into battle for the purposes of the battle, while the latter exists in the country for general administration. Gold can clearly come within the first class, if for example it forms part of the ready cash which is carried by the army for immediate use. It is, however, clear in my opinion that in this case the gold was not taken into battle, so that even if it is regarded as State property it does not come within the class of booty taken on the battlefield.

(b) If the gold was originally the private property of the (private) Banca d'Italia, it can not be legally seized (Arts. 46 and 47 of the Laws and Customs of War). If, however, it was originally State property it can be seized by the United Nations under Art. 53. For this purpose

it is immaterial whether the gold is regarded as

- (i) having been previously legally seized by the German Army of occupation, since on abandonment the property reverts to the Italian State;
- (ii) having been previously legally seized by the belligerent Republican Fascist Government, since it was similarly abandoned;
- (iii) having been previously illegally seized by the (unrecognized) Republican Fascist Government, since the title always remained in the Italian State; or
- (iv) having been moved (as Azzolini claimed) on behalf of the Italian Government, since the title similarly remained in the Italian State.

It should be added that if the gold was originally private property, any seizure by the German or Fascist Republican Government was illegal so that title remained in the original private owner. It could have been requisitioned by the Fascist Republican Government under the Italian Government law of 1940 in which case title might pass to the Fascist Republican Government. There is however no evidence of any such requisition and in any event the private owner could claim to invalidate the requisition under D.L. No. 249 of 5 Oct 1944.

As stated therefore, my opinion is that the gold can be seized if, but only if, it was State property before removal from Rome.

(c) If the gold was private property it can be requisitioned. Whatever the practical merits of obtaining physical possession of the gold by this means, it is of no economic value since a corresponding payment must be made in exchange for it.

(d) The Armistice Terms do not in fact give to the United Nations any wider rights than they already possess under international law. It may be relevant however to draw attention to the fact that clause 20 expressly conferred upon the United Nations the rights of an occupying power over certain territories (which in this instance include ~~FORLIM~~) and clauses 23 and 33 imposed certain financial obligations. Should the Italian Government seek to allege that any of these obligations are modified either by reason of the conclusion of hostilities in Europe or of their co-belligerent status, it should be observed that not only are the terms still legally in full force and effect, but also on the 10th May 1945 the Italian Government signed an agreement officially recognizing their continued validity even in territory restored to Italian administration.

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

Legal Sub-Commission
14 May 1945
WEB/rlp

SECRET.

HEADQUARTERS ALLIED COMMISSION
APO 394.
FINANCE SUB-COMMISSION.

13012/F.

11 May 1945.

SUBJECT: Gold found in North Italy.

TO : Director, Legal Sub- Commission. ✓

1. It is reported from 5th Army and 15th Army Group that gold in bars and coin, to the value of about \$ 10 million, has been found by Allied forces at Fortezza near Bolzano. From the 5th Army report it appears, following the German model, that the gold was discovered in a salt mine. 5th Army were advised to send the gold under guard to Florence where it would be held under custody of the Allied Financial Agency, pending decision as to its disposal.

2. G-5 A.F.H.Q., informs me that P.W.B. wish to make a statement on the discovery of the gold but desire information as to its ownership. From careful inquiry at the Banca d'Italia there seems little doubt that the gold represents that part of their reserve taken by the Fascist Republican government from Rome prior to the Allies entry in June, 1944.

3. I think that it is fair to say that if the gold had been found in the vaults of the Banca d'Italia in, let us say, Milan the question of whether the gold was booty would not have arisen. But if it were discovered in the salt mine by Allied forces it may presumably be claimed as booty under the laws of war. The recent discovery of gold under similar circumstances in Germany lends strength to this view.

4. My own feeling, shared by the Financial Advisor G-5, A.F.H.Q. is that, provided the gold is proved to be Banca d'Italia property, it should be handed back to that institution. Financial assistance has already been given to this country by the US and UK and further assistance will probably have to be made available. It would, therefore, be shortsighted to make a point of seizing this gold and refusing to hand it over.

/2....

- 2 -

5. I should be happy to learn whether you think this view is correct and if the decision will have to be referred to the C.C.S. I understand that G-5 are similarly consulting with their Legal Advisor.

A.P. Grabster Smith

Brigadier,
Joint Director,
FINANCE SUB-COMMISSION

YES	NO
CLO	
DCLO	
Chief Counsel	<i>AM</i>
CJO	
Italion Section	
CL RKS	
11 MAY 1945	

78

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

45A

/st.
5 May 1945.

AC/4005/L.

SUBJECT : Release of confiscated medications.

TO : Liaison Officer, Allied Commission, Eastern Sicily.

In reply to your IG/347/10 of 30 Apr 45 will you please inform the
Procuratore Generale in Messina that the medications may be released.

By command of Rear Admiral STUBBS:

W. R. BROWN,
Colonel,
Deputy Chief Legal Advisor.

77

Sir,

I have seen Major Matthews AM regarding the attached letter. He states that the Messina Court can be informed that the medicaments can be released.

The firm were entitled to possession of the medicaments which were confiscated by mistake, and Major Matthews informed the Messina Court that we had no legal right to prevent the firm taking possession. However, Col. MacDonald (Public Health) at Sicily Region was anxious that the medicaments should not go into the black market, and told Major Matthews to ask him the release of the goods until he had obtained his reactions from HQ AF. Later Col. MacDonald informed Major Matthews that he had been notified that the goods could be released, but as he was still anxious that they should not be used in the black market, he would see the representatives of the firm to investigate whether or not the firm was a reputable one. ~~XXXXXXXXXX~~ Major Matthews thereupon referred the representatives of the firm to Col. MacDonald. Major Matthews however, waiting for a report from Col. MacDonald, failed to notify the Messina Court that the medicaments could be released before Sicily Region closed.

Col. MacDonald is now in North Italy. Major Matthews states we have no legal right to prohibit release of the medicaments and the Messina Court can be notified accordingly.

AL/4208/L

4 MAY 1945

SUBJECT: Release of confiscated medicaments.

TO:

Incision Officer, Allied Commission, Eastern Italy

4208In reply to your LO/CA/1001 ^{30 Apr 45} with you please inform theProsecution General in Messina that the medicaments ⁷⁶

may be released

By command of Rear Admiral STONE.

N.E.P.

4005 ✓
LIAISON OFFICER.
EASTERN SICILY.

To:- Legal Sub Commission,
Allied Commission H.Q.
A.P.C. 394.

44B
LC/CAT/10.
30 Apr. 45.

Subject:- Release of confiscated medicaments.

Instructions have been requested by Procura Generale del Regno, Messina, on the following matter:-

In August 44, a quantity of medicaments imported from the mainland by the Firm Abate & Bellamacina were irregularly confiscated by the Prefect of Messina, owing to an incorrect interpretation of a proclamation regarding the importation of coal and timber to Sicily, issued by ACC on the 5th of May 44.

After reference to A.C., it was pointed out by Maj. E.K. MATTHEWS, Regional Legal Officer, Sicily Region, that, as far as he knew, there were no instructions issued by A.C. on this matter. Therefore, if the Firm had not offended any provision of Italian Law, the medicaments would have been given back to the Firm (see letter No. 013.28/ENM from Legal Office, PALERMO). However, after a few days, Maj. Matthews sent a telegram to Procura Generale del Regno, Messina, ordering them not to release the medicaments, pending further instructions.

According to statements by Procura Generale and by the owner, it appears that Maj. Matthews sent the above telegram, as he doubted whether Abate & Bellamacina was a recognised Firm or not. In fact, dr. Abate, together with his lawyer, went to Palermo and spoke to Maj. Matthews, explaining that he was representing a Firm recognised and authorised to trade in medicaments,

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After reference to A.C., it was pointed out by Maj. E.K. MATTHEWS, Regional Legal Officer, Sicily Region, that, as far as he knew, there were no instructions issued by A.C. on this matter. Therefore, if the Firm had not offended any provision of Italian law, the medicaments would have been given back to the Firm (see letter No. CI3.28/EKM from Legal Office, PALERMO). However, after a few days, Maj. Matthews sent a telegram to Procura Generale del Regno, Messina, ordering them not to release the medicaments, pending further instructions.

According to statements by Procura Generale and by the owner, it appears that Maj. Matthews sent the above telegram, as he doubted whether Abate & Bellamacina was a recognized Firm or not. In fact, dr. Abate, together with his lawyer, went to 75 Palermo and spoke to Maj. Matthews, explaining that he was representing a Firm recognised and authorised to trade in medicaments, and that the only reason owing to which the medicaments had been confiscated was an incorrect interpretation of a proclamation. He states that Maj. Matthews assured him that there was NO objection from A.C. to the release of medicaments. However, this was not confirmed to Procura Generale del Regno, owing to the closing down of A.C. Regional Offices in Sicily.

Will you please be kind enough to let me know your ruling on this subject as soon as possible, as the medicaments are urgently needed by the population and if the date of warranty expires, they will not be fit for issue.

A prompt reply will be therefore very much appreciated.

HE/AB.

H. Bentley Major,
Liaison Officer, A.C.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4006/L.

2 May 1945.

SUBJECT : Legal Opinions.

TO : V. P., G. A. Sec.

1. Reference the attached letter to Sir John Serrao, this Sub-Commission is of course always prepared to place its legal resources at your disposal, but we must place on record that we do not believe it to be our duty to advise individual British (or American) subjects upon their rights under Italian law, still less to advise the official legal advisor to the British Embassy.

2. Upon the specific point raised, however, the position is I think clear. A lease does not come to an end automatically on the outbreak of war, and rent continues to accrue thereunder. See Oppenheim pp 267-9 and Halsey v Löwenfeld (1916) 2 K.B.707.

3. It is not true that British subjects have been "deprived of its use" in consequence of Italy's declaration of war, since several British subjects have continued to reside in Italy and occupy leased houses. Furthermore, even if it were it would be quite irrelevant.

4. On the further point you raised, the landlord should have reported the existence of the lease with an enemy alien tenant. See Arts. 309 and 347 of R.D. No. 1415 of 8 July 1938 - Legge di Guerra. This, however, has only a blackmail value.

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

WEB/wew.

4085

HEADQUARTERS ALLIED COMMISSION
APO 391
ECONOMIC SECTION

5 TOM 4211

ROUTING AND WORK SHEET

Each note must be numbered and each space completely filled in. THIS WORK SHEET MUST NOT BE REMOVED FROM THE CORRESPONDENCE TO WHICH ATTACHED UNTIL ACTION IS COMPLETED AND THEN FILED WITH FILE COPIES OF COMMUNICATION TO WHICH IT PERTAINS. A line will be drawn the full width of the page under each note.

SUBJECT: ATTACHED SIGNAL FROM AFHQ TO AFLRS

No	Date	To	REMARKS	From
1	4/28/45	Econ. Sec.	Reference attached signal which has been passed to Commerce. This relates to the question of private or state ownership of various undertakings in Italy in relation to the terms of Admin. Memo 21 - "Payment for goods and services". It is thought that Legal Sub-Commission and Finance Sub-Commission are the two most interested in this subject. It is believed that Legal have already been contacted on this matter by AFLRS.	E.R. GREEN Major <i>[Signature]</i>
2	28/4/45	<i>Civil Affairs Sect. For</i> Legal S/C	CC. Industry S/C for information. 1. For your information - see Minute #1	<i>Lt. Morgan</i> Econ Sect. 73
See 41A				

✓ 4005

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Originator's Reference: TX 66052

Message Centre No: D/3761

Date/Time of Origin: APR 26 1515Z

Date Time Rec'd: APR 26 1815Z

Precedence: ROUTINE

FROM: AFHQ SIGNED SACRED CITE FHCAO

TO: AFIRS PAAC INFO ALCON

RESTRICTED

RESTRICTED

Ref your IRS 603/2 state owned enterprises 24 April copy to AC.
Rulings of ALCON as to ownership will be accepted. Your para 4 agreed.

INFO - ACTION

Dist

Info-Action - Info-Act 2

Info - A/President

Chief Commissioner

Exec Comm

Econ Sec

File 2

Float

WEB

72

73

RESTRICTED



✓ 4008 y file
ALLIED FORCE LOCAL RESOURCES SECTION
A.F.H.R.

471A

LRG/603/2

Postal Address:
AFHQ Rome Area Allied Command
C. M. P.

Telephone: ROMA 66962

SUBJECT : State Owned Enterprises.

TO : A/040 AFHQ.

24 April 1945.

1. Inquiries are being received by this Section from procuring services as to the precise definition of "state owned enterprises" in para 9 (a) of AFHQ Adm Memo No 24 of 1945. This Adm Memo was published by G-4 and concurred in by Fiscal Director and PA (Br) inter alia.

2. A ruling is requested as to whether the undermentioned enterprises are to be treated as state-owned for the purpose of Adm Memo 24:

- (a) the State monopolies (e.g. salt and tobacco).
- (b) the Consorzio Agrario organization.
- (c) the Ufficio Provinciale Statistico Economico dell'Agricoltura.

An urgent decision with regard to (b) above is requested to enable OM and S & T to conclude contracts with the Consorzio Agrario for a potato planting programme at AVERSA.

3. In the opinion of the ALCON Legal Sub-Commission the State monopolies should be regarded as state-owned whereas the Consorzio Agrario and Ufficio Provinciale Statistico Economico dell'Agricoltura are not state-owned within the strict legal meaning of the terms used in Adm Memo 24, though they are for many purposes under the control or supervision of the State or local authorities and receive grants therefrom.

4. With regard to local enterprises, as opposed to national or centrally controlled enterprises, it is suggested that, in the absence of evidence to the contrary, services should accept as prima facie authority the rulings given by the Italian prefect of a compartment on the ownership of undertakings operating solely within his compartment.

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Final Information System by Dr. Antonio F. on request of AFHQ LRS
24 April 1945

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- (b) the Consorzio Agrario organization;
- (c) the Ufficio Provinciale Statistico Economico dell'Agricoltura.

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3. In the opinion of HQ ALCOM Legal Sub-Commission the State monopolies should be regarded as state-owned whereas the Consorzio Agrario and Ufficio Provinciale Statistico Economico dell'Agricoltura are not state-owned within the strict legal meaning of the terms used in Adm Memo 21, though they are for many purposes under the control or supervision of the State or local authorities and receive grants therefrom.

4. With regard to local enterprises, as opposed to national or centrally controlled enterprises, it is suggested that, in the absence of evidence to the contrary, services should accept as prima facie authority the rulings given by the Italian prefect of a compartment on the ownership of undertakings operating solely within his compartment.

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One copy given to Mr. B. S. Sheldon on request of C.L.R.S. on 24 Apr 45

L. A. S. Huddy

Thos R. Gibson

THOMAS R. GIBSON, Colonel, AUS,
Chief of Section (US),
A.F.L.R.S.

W. B. S. SHELDON, Colonel,
Chief of Section (UK),
A.F.L.R.S.

GPH/REF

Copy to : HQ ALCOM Legal Sub-Commission.
(Italian Branch)

W.B.

DCLO	Chief of Section
CJO	
Isiten	Isiten
CL RKS	

25 May 1945

LLA

FROM : LIEUTENANT-COLONEL G. G. HANNAFORD LEGAL SUB-COMMISSION.
HEADQUARTERS,
ALLIED COMMISSION,
A.P.O. 394.
24 March 1945.

AC/4005/L.

Dear

As mentioned in my letter of 21 March 1945 enclosed
herewith is the opinion of Prof. Vassalli requested in your letter.

To avoid any delay I am sending the Italian original in
advance of the English translation which will follow in a day or two.

Yours sincerely,

Colonel P. A. Macrory,
Civil Affairs Branch,
C. H. Q.,
M. E. F.

30

39A

FROM: LIEUTENANT-COLONEL G. G. HANNAFORD

LEGAL SUB-COMMISSION

Ref. AC/4005/L. *file*

HEADQUARTERS,

ARMED COMMISSION,

A.P.O. 394

21 March 1945.

Dear

I have pleasure in forwarding you under separate cover Professor VASSALLI's opinion as requested in your letter of 2 March received at this HQ^{on} the 16th.

As you will see the matter is delicate and there is no doubt that a gap exists in the present insurance legislation.

However Professor VASSALLI's opinion appears to cover the points raised by you.

Should you need any further advice on the subject he will be glad to oblige.

He has agreed to accept a fee of 20 guineas.

Yours sincerely

*P.S. Usual remittance through field Cadica
appears most suitable. Many Thanks.*

Colonel P. A. HATTON,
Civil Affairs Branch,
G.H.Q., I.B.F.

39B
No. 11597/A/85/CA.

CIVIL AFFAIRS BRANCH,
G.H.Q., M.E.F.

Tel. M.E. "George"
Ext. 22.

2nd March, 1945.

✓ 4005
Dear Hannaford

1. You were good enough to submit on our behalf to Professor Vassali, Dean of the Law Faculty at Rome, a question of Italian law in connection with the estate of one Evangelos Papadakis, deceased (your letter AC/4005/L of 14th December 1944 refers). I would appreciate it if you would again approach this gentleman on a point which has arisen in connection with the Italian law of Tripolitania relating to foreign i.e. non-Italian insurance companies and upon which local Italian lawyers have not been able to throw any light.

2. I enclose case for the opinion of counsel and I shall be glad if you will put it before Professor Vassali. Payment of advocates fees will be credited to you in the same manner as were the fees in respect of the Papadakis opinion. I have been authorized by our Finance people to pay a fee not exceeding 30 guineas but if the Professor will take a lower fee, it will be all to the good.

Yours sincerely

P. A. Harvey
Colonel,
CHIEF LEGAL ADVISER.

Lt.Col. G.G. Hannaford,
Officer i/c Italian Branch,
Legal Sub Commission,
H.Q. Allied Commission,
A.P.O. 394.

LW/EB.

16 MAR 1945

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/s/ J.P.
19 March 1945.

AG/4005/L.

MEMORANDUM

SUBJECT : Nationality.

TO : Property Control Division, Finance Sub-Commission
(Attn: Maj. Cavanaugh).

1. I refer to your oral request for some convenient means of determining a person's nationality having particular reference to the cases of women of Italian nationality married to citizens of (a) the United States, (b) Great Britain, (c) France, and (d) Brazil.

2. The problem is an extremely vexatious one, depending for its solution on the statutes of the countries involved and on the circumstances of each particular case. The most recent statutes are not available to us. An analysis of the source material at hand dealing with this subject, would serve no useful purpose nor would it be justifiable to discuss at length the various principles involved.

The status of a married woman under international law has been sometimes that of having no country of citizenship (heimatics or stateless). It has sometimes involved dual nationality, i.e., the citizenship of two countries simultaneously.

3. An Italian woman married to a foreigner does not, under Italian law, lose her citizenship automatically, but is deemed to have lost it when she acquires her foreign citizenship. If, however, her acquisition of foreign citizenship is automatic upon her marriage, then her loss of Italian citizenship becomes, in that event, automatic. An alien woman in marrying an Italian citizen is deemed, under Italian law, to have acquired Italian citizenship automatically.

4. An Italian woman who acquires foreign citizenship can nevertheless be deemed to have reverted to her nationality of origin if she has:

a. Resided for a number of years in Italy after the death of her husband and has not manifested any intention of acquiring domicile in

the country of her husband.

b. Committed any act of a treasonable nature, or against the interests of the country of acquired nationality, as for instance, participation in the war. The writing or delivery of radio speeches against the interests of the country whose citizenship is claimed could be considered such an act.

5. Service in the Armed Forces of one country in time of war, is generally considered to be inconsistent with citizenship in another country, particularly if the citizenship claimed is that of the opposing belligerent.

6. You are entitled to use your discretion in determining whether a particular individual is entitled to the protection of the countries whose interests you represent. In reaching this determination, you should consider the following as general guides for decision:

a. A passport is generally a good indication of the citizenship of the holder.

b. A birth or baptismal certificate generally establishes a person's country of origin and in most cases, his citizenship.

c. A prolonged residence away from the country whose citizenship is claimed may spell out a reversion of nationality and care should be taken to consider the circumstances surrounding such foreign residence, and particularly whether during such time any act has been committed inconsistent with the citizenship claimed.

E. L. Palmieri

E. L. PALMIERI,

Major, Spec-Res.

Acting Chief Counsel.

For Chief Legal Advisor.

37A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

PC/pe.
7 Mar 45.

SUBJECT : Commercial Agreements.

TO : Mr. Livingood, Counsellor for Economic Affairs
American Embassy.

1. With reference to Miss Fogarty's enquiries on your behalf please find hereunder the particulars you requested on the question of publicity of commercial agreements under existing Italian law :

- (i) At present all foreign commerce is controlled by the Government. Private transactions and agreements affecting international commerce are not operative at present; they may, however, be concluded freely on condition that they will become operative only when - and if - governmental control will cease.
- (ii) In general, these agreements need not be disclosed publicly. Articles 2602 and followings of the Civil Code deal with agreements entered into by several manufacturers in order to coordinate their activities through a common agency. Such agreements must be made in writing, but are not subject to any registration or disclosure. Only if they affect the general market must such agreements be approved by the Government (Art. 2618, C.C.).

C. G. HARRISON,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

Copy to : AC/4005/L.

HEADQUARTERS ALLIED COMMISSION
APO 324
LEGAL SUB-COMMISSION

GCH/pa.
5 Mar 45.

AC/1405/L.

SUBJECT : Waldesian Church.
TO : Political Section.

1. No concrete evidence of discrimination against Waldesians in the Public Administration has been indicated by the Moderator.
2. He has been requested to make further investigations. However it is not expected that these will throw any further light on the position as many of the alleged cases took place in Northern Italy.
3. As soon as the Moderator's answer is received it shall be forwarded to you.

C. G. HARRIMANFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ARMED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4005/L.

ART/pa.
1 Mar 45.

SUBJECT : War Damage Claims.

TO : Consular Section, British Embassy. (Attn: Mr. Henderson)
Piazza di Spagna, Rome.

7A
1. Further to yesterday's telephone conversation (Mr. Henderson-Lt. Col. Thackerah) on the subject of the procedure for recording evidence as to war damage, the following information is in amplification of the indications contained in para 3 of this Sub-Commission's letter, Ref AG/4005/L, dated 11 Nov 44.

2. There would appear to be four ways in which such evidence may be recorded under Italian law :-

- a) Assumption of proof for purposes of future action in accordance with Articles 692 and 696 of the Civil Code.
This procedure for recording evidence takes place before the President of a Tribunal, a Pretore or a Conciliation Judge according to the jurisdiction applicable in each particular case.
- b) By a Notarial Act with 4 witnesses (including the expert). This may be done before a Notary or a Pretore.
- c) Statement drawn up privately under the hand of an expert and then sworn before a Pretore.
- d) Declaration sworn before a Notary. (Not all notaries will accept to undertake this business).

3. An expert survey made by a municipal engineer or surveyor, in his capacity as a public official, would have the character of a public document. The signature of such a person could be legalized by a Notary and an official copy made for deposit with the British Consular Authority.

ccfp
A. R. THACKRAH,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4076/L.

/rlp.
1 March 1945.

SUBJECT : Prisoners of War.

TO : VP, CA Sec.

You have requested the opinion of this sub-commission as to the circumstances in which an organized body of troops surrendering in the field is entitled to be treated as prisoners of war. The opinion of this sub-commission is submitted.

1. The Geneva Prisoners of War Convention, 1929 applies to "all persons (of a certain category) who are captured by the enemy." All persons of that category can therefore claim to have been made prisoners of war and to be entitled to the benefits of the convention provided only that they have been captured by the enemy.

2. No definition is contained either in this Convention or in The Hague Convention 1907 of the acts, circumstances or conditions required to constitute such capture. Whether or not a state of capture exists is a question of fact in such case. The underlying consideration is whether the person captured is in the power and control of the capturing force. This is implicit in the statement in the Geneva Convention that prisoners of war are in the power of the hostile government but not of the individual or formations which captured them.

3. Clearly, if a body of troops surrenders, and this surrender is accepted and thereafter the troops are physically confined in a camp of whatever size, in which they are entirely dependent on the control and supervision of the opposing belligerent, a state of capture exists and the troops must be treated as prisoners of war.

4. It is not necessary that the area of confinement should be enclosed by any fence or other detaining obstacle.

5. On the other hand if there is a temporary armistice between opposing forces during which the troops of an army agree to remain under their own commander in a particular area during the armistice, but with the intention that at the conclusion of the armistice hostilities will be resumed,

they obviously do not come under the control of the opposing army and do not require a status of prisoners of war.

6. If, however, the armistice is likely to be indefinitely prolonged, and the surrendering troops, although remaining under their own commander are in fact under the control of the opposing army and depend for their normal maintenance upon arrangements made or permitted by the opposing army, then it is the opinion of this sub-commission that these surrendering troops are under the control of the opposing army and acquire prisoner of war status.

W. E. REMPEL,
Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
 APO 394
 LEGAL SUB-COMMISSION

4005
 AC/1/14/4/1.

/rlp.
 24 February 1945.

SUBJECT : proposed contract for rehabilitation of war salvage trucks.

TO : Transportation S/C.

1. The proposed agreement transmitted with your memorandum of 21 Feb 45 refers to "war damaged vehicles." On page 5, par. 13, there appears a reference to "war Department vehicle." We assume this latter reference to be a typographical error. If we are mistaken, may we point out that in our memorandum addressed to you under date of 2 Feb 45 we stated that there was a fundamental impediment which prevented our approving the contract since the Allied Commission possesses no contractual capacity to deal with war Department vehicles. If, in fact, you propose to deal with such vehicles, this objection would, of course, remain valid, notwithstanding their being described as "war damaged vehicles" or in any other way.

2. Assuming, however, that you are free to deal with the vehicles and that what we have said in the preceding paragraph does not apply, then we have the following comments to make:

a. We should prefer the first "whereas" clause on page 1 to read as follows:

"Whereas the LEGAL OWNER herein is declared to be the holder of the legal title to ..."

b. Paragraph 6 (page 3), might be improved by the inclusion of a provision dealing with the disposition of accumulated operating income, over and above the cost of reconditioning. This would be useful in the event that the subsequent agreement referred to in the last sentence is not entered into.

c. Paragraph 9 (page 4) contains the phrase "as may be laid down". If the intention is to secure a uniform and precise method of accounting, then we suggest that it be not optional. We suggest that the second sentence of par. 9 be reworded as follows:

"All records, established and maintained for the purposes hereof, shall conform to accounting methods and practices which will be laid down by the LEGAL OWNER. These methods and practices will conform generally to the standard accounting usage prevailing in the United States and in the United Kingdom and will discuss fully the details of every transaction wherever financial obligations are to be incurred and imposed."

d. We should prefer par. 11 (page 5) to be reworded and modified as follows:

"It is expressly understood between the parties hereto that the option to purchase is subject to the approval of the appropriate military authorities and that the LEGAL OWNER will undertake to secure this approval. Subsequent to the execution of this agreement and for a period of one year thereafter, subject to the approval as aforesaid, the REGISTERED OWNER shall have the right and option to purchase any, or all of the vehicles described herein, provided that this agreement, or modifications thereof, or further agreements entered into pursuant to paragraph 6 hereof, are still in force and effect."

We have adopted your own time period for the exercise of the option. You will understand, of course, that extending the option for one year may leave you in difficulties in the event Allied Commission personnel leave the country before the year has expired.

e. It is suggested that an additional paragraph be inserted following par. 6 which makes the REGISTERED OWNER'S responsibility in respect to insurance more certain. We suggest the following:

"The REGISTERED OWNER agrees to secure insurance against fire, theft, damage and accident and will cover the interest of the LEGAL OWNER as well as his own. The insurance coverage must be in a form approved by the LEGAL OWNER and must be secured immediately upon the execution of this contract, and before the operation of any vehicle which is the subject hereof. In any event, the REGISTERED OWNER agrees to indemnify the LEGAL OWNER and to hold him harmless against all claims which may arise during the operation of this contract."

W. E. Behrens
6, 225
W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

32.A

AC/4005/L.

IGHC/wp.
31 January 1945.

SUBJECT : Forfeiture in Travel Cases.

TO : Regional Commissioner, EMILIA Region
(for Regional Legal Officer).

Reference your RIX/LE/674/421 of 27 Jan 45.

1. In a suitable case after a conviction under Proclamation 1, Part II (46) the court may order confiscation of the accused's means of conveyance. It is difficult to generalize as to what would be a suitable case: the power is discretionary and each case must be considered individually: it is, however, easy to say that "suitable cases" are few and far between. In cases in which the court wishes to impose imprisonment, it can do so; in cases in which it wishes to impose a financial penalty, it should normally do so by means of a fine. To forfeit an article is an indirect way of imposing a financial penalty with the great disadvantage that the court does not know the value of the article (car, cart, mule or donkey) forfeited or the indirect damage to the business of the accused which the forfeiture may cause. The power of forfeiture should be used very sparingly.

2. General Order No. 24 expressly provides that on a conviction thereunder, the court may forfeit the means of conveyance. This power is permissive: the right is discretionary and the remarks made above in reference to Proclamation 1, Part II (46) apply equally to this General Order.

By command of Rear Admiral STONE:

58

W. E. BEHRENS, Colonel
Deputy Chief Legal Advisor.

Copy to: AC/4074/7/L.

P.S. In my opinion it is not an overstatement to say that, except in arms and black market cases, orders of confiscation made by AMG Courts should, in 90% of the cases, not have been made.

31A

HEADQUARTERS EMILIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

WHL/jpd
27 January 1945

REF : RIX/LE/674/421.
SUBJECT : Forfeiture in Travel Cases.
TO : Deputy Chief Legal Adviser, Legal Sub-Commission,
Headquarters Allied Commission.

1. Your opinion is requested as to whether in a prosecution under Sec. 46 (travel more than 10 kms.), the court may order the forfeiture of the accused's means of conveyance.

2. It is my opinion that in such a case the wrongful use is merely incidental to the charge (Consol. Insts. Art. 27, para. 3) and that forfeiture is not authorized. It is realized, of course, that where G.O. No. 24 has been posted and the prosecution brought thereunder, that forfeiture is authorized.

For the Regional Commissioner.

W. H. Levitt

WILLIAM H. LEVITT
Lt. Col., J.A.G.D.
Regional Legal Officer.

LEGAL SUB-COMMISSION

CLO

ASST

Chief Counsel

CJO

Italian Section

CLERKS

Sgt Papps

*He produced a copy of
G.O. No. 24*

30 JAN 1945

~~File~~
HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

30A

AC/4005/L.

/ap.
27 January 1945.

SUBJECT : Title to motor vehicle.

TO : Regional Commissioner, TOSCANA Region
(Attn: Regional Legal Officer).

1. Your RVIII/19/3008 of 23 Jan 45 raises the question of the civil rights of Società Trasporti Automobilistici in Rome and the Comune of Abbadia S. Salvatore in the vehicle license No. 50.638/Rome.

2. In the first place there is dispute about the facts. It is not clear whether the truck was taken by the Germans and, if so, whether it was taken by theft or by requisition.

3. In the second place there is a dispute about the law.

4. It is quite clear that this case must be decided between the parties under Italian civil law. *Italian*
Courts. Pending such decision there is no ground for any interference by AC/AMG in the present disposition of the truck.

By command of Rear Admiral STONE:

W. E. BEHRENS, Colonel,
Deputy Chief Legal Advisor.

Enclosures returned.

Copy to : RC for RLO, Lazio-Umbria Region
(Ref MT 2178/20 of 16 Dec 44).

Facts

1. - The car is alleged to be the property of an Italian private company (STA).
2. - The car is ⁱⁿ possession of the Commandant of Alessandria S. Salvatore, which claims to have found it at the bottom of a precipice, and to have repaired it at its costs.
3. - It does not appear that the car was repaired by the Germans during their military occupation; it seems that it has not been repaired by the Allies.
4. - The Società Trasporti Automobilistici (STA), alleging that they are the owner of the car, are asking for the restitution of the same by the Commandant of Alessandria S. Salvatore.

Opinion (based on the facts as I had them)

In my opinion:

- (a) the car cannot be considered abandoned enemy property **55**
- (b) since the car was not requisitioned by the Allies - and unless such a claim can be effected - the restitution of the car to the claimants does not seem to me to be a controversy between the regions;
- (c) the question whether the STA have a good title, and have the right to the restitution of the vehicle by reimbursing the Commandant of Alessandria S. Salvatore for the expenses incurred by the latter is a question

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

ACC/4010/L.

10 Aug 44.

MEMORANDUM

SUBJECT : Gazzetta Ufficiale No.44 of 8 Aug 1944.

TO : See distribution list.

This issue of Gazzetta Ufficiale contains the following:

(a) Proclamation of the President of the Council of Ministers to the Italian people issued on the occasion of the restoration of additional territory to the Italian Government.

(b) Ministerial Decree 31 May 1944.

Rates for transport of goods by motor vehicles.

NOTE: NO returns by Sub-Commissions are required in respect of this issue. The Transportation Sub-Commission has approved in advance the implementation of the only decree contained in G.U. No.44 .

Richard H. Wilmer
RICHARD H. WILMER,
Colonel, C.A.C.,
Acting Chief Legal Officer.

to be decided according to Halban Court - I suggest, therefore,
that it be referred to the Halban Court.

26. 1. 45

Thurman

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
AFO 394

/ccr

REC/4010/L

7 Aug 44

MEMORANDUM

SUBJECT : Gazzetta Ufficiale No. 43 of 5 Aug 44

TO : See Distribution List

22

This issue of Gazzetta Ufficiale contains the following law : -

- (a) Legislative Decree of the Lieutenant General of the Kingdom,
3 Aug 1944, No. 165.

repeal of benefits of pensions and other allowances granted to members of the dissolved Voluntary Militia for National Safety (M.V.S.N.) and its specialist branches and to citizens with fascist merits.

NOTE: NO returns by sub-commissions are required in respect of this issue of Gazzetta Ufficiale. At the advance request of the Finance Sub-Commission the only decree contained in GU No 43 will be implemented in GU No 44.

Richard H. Wilmer
RICHARD H. WILMER,
Colonel, C.I.C.
Acting Chief Legal Officer.

HEADQUARTERS
TOSCANA REGION
ALLIED MILITARY GOVERNMENT

308

File Ref:

RVMI/19/3008

Date: 23 January 1945

SUBJECT: Title to motor vehicle

TO : LEGAL SUB-COMMISSION, HEADQUARTERS AC. (Attn: Chief Legal Advisor). ✓

1. There is enclosed herewith a file of correspondence which has been submitted to this office with the query whether the vehicle in question should be retained by the Province of Siena or returned to Lazio Umbria Region.

2. A controversy exists between two regions. The vehicle in question is not of military origin, but apparently is quasi-state property. The issue is founded on the conflicting claims of the quasi-state agency on the one hand and a commune on the other; seemingly no claim is asserted by an individual in his private capacity.

3. Because the controversy exists between two regions based on conflicting claims of governmental or quasi governmental agencies, may we have the benefit of your suggestions herein?



[Signature]
JOHN K. WEBER,
Colonel, Infantry
Regional Legal Officer.

LEGAL SUB-COMMISSION	
CEO	
DELO	
Chief Clerk	
CLERKS	
26 JAN 1945	

53

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
26 January 1945.

MEMORANDUM

SUBJECT : Call-up for Military Service.

TO : VP, C A Sec.

1. Power to call up classes for military service in Italy is based upon three consolidated laws. These laws are:

T.U. of 28 July 1932 No. 1365 (Navy)
T.U. of 27 April 1936 No. 119 (Air Force)
T.U. of 24 February 1938 No. 329 (Army)

Under these laws the ministers of Marine, Air and War are respectively authorized to call up the yearly classes in time of peace or war. When necessary in time of war or for emergency service, extraordinary classes can be called up by a Royal Decree.

2. In either case the normal method of call-up is by publication of ordinary "bandi." These "bandi" are posted in each comune by the mayor of that comune upon receipt of instructions from the Distretto Militare concerned.

3. In AMG Territory it is clear in my opinion that the mayor can derive no authority from the appropriate Distretto Militare without the approval of the AMG. It is not necessary that the granting of this approval should be expressly stated on the posters, but unless the approval is in fact given, the mayor would have no right to issue the posters.

4. It should be observed that these Royal Decrees are not published in the Gazzetta Ufficiale and therefore no question can arise of their having been implemented in AMG Territory.

W. E. BEHRNS,
Colonel,
Deputy Chief Legal Advisor.

5152

See file 483/

28A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

GCH/pa.
19 Jan 45.

AC/4605/L.

SUBJECT : Diplomatic Privilege.

TO : Regional Commissioner, TOSCANA Region.
(Attn: Regional Legal Officer for P.L.O. Siena Province).

1. This Sub-Commission has not issued any directive on the subject of diplomatic privilege. However, before the occupation of Rome some advice was given to the Political Section and general instructions on the matter may at the time have been issued by its Directors.

2. The case of Sen/for Francesco CIOCE has been notified to the Allied Commission by the Argentine Ambassador through the Italian Ministry of Foreign Affairs. The Ambassador does not claim diplomatic privilege on behalf of Sen/for CIOCE but only considerate treatment.

3. It is understood that Italian authorities are notifying all foreign diplomats at the Vatican and the Quirinale of the restrictions on travelling and possession of arms existing in AMG territory and Army Zones in order to prevent the recurrence of similar incidents.

4. You will appreciate from the above that there is no objection to the trial of Sen/for CIOCE, but discretion should be exercised in assessing the punishment.

by command of Rear Admiral Stone:

CSH

W. E. SMITHING,
Colonel,
Deputy Chief Legal Advisor.

51

4005

R/m/19/2011

1st Ind.

27A

Headquarters, Toscana Region, 16 January 1945.
 TO: HEADQUARTERS, AC. Attn: Chief Legal Advisor.

1. May we have the benefit of your advice on the question asked in the basic communication? We have no knowledge of the directive referred to therein.

For the Regional Commissioner:

[Signature]
 JOHN K. WEBER
 Colonel, Infantry
 Regional Legal Officer

LEGAL SUBCOMMISSION	
CLO	
DELO	
Chief Counsel	
CHO	
Italian Section	
19 JAN 1945	

SU

ALLIED MILITARY GOVERNMENT
PROVINCE of SIENA

Ref: 61/6/74

Date 11. Jan. 1945.

Subject: Diplomatic Privilege

To: H.E.O. TOSCANA REGION.

A man arrested by the CMH here for (1) travelling without a proper permit, (2) being in possession of a pistol, has claimed that he is "Cancelliere of the Argentine Embassy to the Vatican".

His claim is being investigated. In the meantime, I should be grateful if you could advise me on the scope of Diplomatic Privilege, whether this extends to all members of an Embassy staff and to what extent if any it confers immunity on persons who would otherwise be chargeable with breaches of our proclamation.

I understand that there is a Directive on the subject, but I have not seen it.

I should add that the man admitted that he was making money by transporting cloth and other articles from Florence to Rome.

M. J. P.

PROVINCIAL LEGAL OFFICER.



RVIII/19/2011/2016

To: Headquarters,
Allied Commission.
Legal Sub Commission.
A.P.C. 394, C.M.F.

C.7A.

The attached cheque for 4,924 Lira is in respect of an amount transferred from M.E.F. on behalf of G.A.E., G.H.Q., M.E.F. (A/C/4005/L of 14 Dec refers).

Kindly acknowledge receipt.

No. 8 Command Pay Office.

12th January, 1945.


Lt. Col.
Assistant Command Paymaster.
Central Mediterranean Force.

*Cheque retained by Lt Col Kingford 48
and receipt given by him*

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/r/p.

14 January 1945.

AC/4005/L.

SUBJECT : Requisition of Forests in Free Italy.

TO : Economic Sec.

1. Ref yours 10.02/ES dated 12 Jan 45.
2. It is impossible to give a considered opinion on the basis of the documents submitted. The Minister of Agriculture has stated that the property was requisitioned upon request of the Allied Commission, whereas Agriculture S/C concludes (par. 3 of letter 10 Jan 45, ACR/401.1) that "the transaction is not a requisition in the true sense." Moreover, Agriculture S/C is silent as to the extent of the participation, if any, of the Allied Commission.
3. Manifestly, no opinion can be expressed in the light of the above conflict and in the absence of the material facts.
4. It should be pointed out that requisition in Italian Government Territory (through the Italian authorities) is justified and authorized only for reasons of genuine military necessity. If the property was in fact requisitioned by the Italian authorities for and on behalf of the Allied Forces, we should be informed as to the circumstances which are claimed to constitute "genuine military necessity." In this connection your attention is directed to the fact that the Minister of Agriculture states that the property was requisitioned in favor of the firm of Zoccoli.
5. We are not clear as to the materiality of the factor of "controlled prices" as your question is propounded. Are you intending to raise the question of the right to control prices, aside from the question of the right of requisition? If so, we would require full details to the extent to which the price of timber affects the general economy.
6. It is suggested that after the full facts are collected, a conference be arranged with this sub-commission.
7. Returned herewith is letter of Lt Col Fuller, Agriculture S/C dated 10 Jan 45, ACR/401.1, translation of the letter from Min of Agriculture, and Circ letter Hq AAI (Adm Ech), DME 2157/42 of 7 Apr 44.

MARK J. BROESMAN,
Lt. Col., Spec-Res,
Chief Counsel,
for Chief Legal Advisor.

3 Incls.

- Incl 1 - Letter, Lt Col Fuller, 10 Jan 45
Incl 2 - Translation of letter from Min of Agric.
Incl 3 - Circ letter Hq AAI, dated 7 Apr 44.

13 JAN 1945

(24A)

Tel: 558

HEADQUARTERS ALLIED COMMISSION
APO 394
ECONOMIC SECTION

CJM/hs

10.02/ES

12 January 1945

SUBJECT: Requisition of Forests in Free Italy.

TO : Civil Affairs Section

1. Letter AGR.401.1 and enclosures are submitted to Legal Sub-Commission for an opinion.

2. The Ministry of Agriculture and Forests are enquiring whether the A.C. is empowered to direct the requisition of forests in Free Italy at the controlled price and, if not, can the Royal Forest Corps carry out the requisition.

3. It is believed that Lt. Col. Grossman has been approached by Lt. Col. Fuller in this matter, and may the enclosed correspondence be returned when the decision is forwarded.

Macnamara
C. J. MACNAMARA, Capt. & P.C.
S.O. 3, Economic Section

LEGAL SUB-COMMISSION	
CLO	☒
DCLO	☒
Chief Counsel	☒
CIO	☒
Italian Section	
CL RKS	☒
13 JAN 1945	

Info.
Action

46

23A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/1002/L.

MS/pa.
13 Jan 45.

SUBJECT : Disparity in salaries of male and female employees.
TO : Education Sub-Commission.

1. You have requested an opinion as to whether or not there is any Italian legislation setting up the disparity in salaries of male and female employees.

2. There is no legislative provision of general character establishing any such disparity in respect of public or private employees.

3. The salaries of public employees are fixed by "organici" and by the tables of the individual departments. As a rule the male and female employees performing the same duties in identical categories receive equal remunerations. The law No. 1176 of 17 July 1919 on juridical status of women whilst establishing with certain limitations the equality of men and women in respect of the admissibility to public employment, does not directly affect the question of remunerations.

4. As for private employees in pre-fascist days the salaries of women were usually inferior to those of men. This disparity has been maintained to a certain extent in collective contracts concluded during the fascist regime and can be said to prevail even at the present time; it is estimated to amount to 10 to 15%. Certain companies have established special categories for women (typists and telephonists) in which the remuneration is inferior to that paid in other categories. A woman, however, may be employed in higher categories and in such case receives a salary equal to that paid to male employees of the category.

G. G. HANNAFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

SALARIES OF EMPLOYEES:

Non esistono norme legislative che stabiliscono un trattamento economico inferiore per le donne impiegate rispetto a quello degli impiegati maschi. Però già prima che entrassero in vigore i contratti collettivi di lavoro, gli stipendi delle donne erano inferiori a quelli degli uomini che coprivano posti analoghi con analoghe funzioni. I contratti collettivi mantengono il differenziale a vantaggio delle donne. Per le donne ci sono tabelle ^{paghe} separate e diverse da quelle per gli uomini. Naturalmente, poiché le tabelle fissano la paga base minima, non è escluso che una donna o per la famiglia (famiglia ecc.) o per capacità e meriti abbia un trattamento globale anche migliore di quello goduto da un impiegato maschio della stessa categoria. Anche ora i datori di lavoro devono regolarli secondo i precedenti contratti di lavoro, relativi organici e tabelle compensi. In media, "grosso modo", lo scarto emolumenti a vantaggio delle donne si aggira sul 10-15%.

Per analogia, va notato che il D.L. 2.11.1944, n. 303 (Gazz. n. 81) nel disciplinare l'"indennità di carenza" (che però non è considerata alcun effetto come facente parte del salario o dello stipendio) fa differenza, in quanto all'ammontare dell'indennità, fra uomini e donne (che non siano capo-famiglia). P. es. l'art. 1 fissa - a parità di limiti di stipendio - l'indennità di carenza nella misura di L. 10 per gli uomini e per le donne capo-famiglia e di L. 20 per le donne non capo-famiglia.

La situazione, tuttavia, varia a seconda dell'organico delle società impiegate.

P. es. le compagnie di navigazione avevano tre categorie d'impiegati ("A", "B" e "C") in cui non c'era differenza di trattamento fra uomo e donna e una quarta categoria (dattilografe e telefoniste), composta esclusivamente di donne. E' ovvio che in questi casi non si può parlare di uno "scarto" di emolumenti.

Per i dipendenti dei uffici professionali (di avvocati, commercialisti, ingegneri, geometri, ecc.) il contratto collettivo stabilisce parità di trattamento economico fra uomo e donna.

22A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/rlp.
12 January 1945.

SUBJECT : Status of American Red Cross Clothing.

TO : Regional Commissioner (attn: Regional Legal Officer),
TOSCARA Region.

1. Reference yours NVIII/19/2000 of 9 Jan 45.
2. American Red Cross clothing is not property of the Allied Forces within the meaning of Article IV, Section 11 or 27 of Proclamation No. 1.
3. It is pointed out however that wrongful possession of such property might well constitute, in appropriate circumstances, an offence under Section 45. It therefore follows that where the facts justify, resort need not be had to Italian law.

By command of Rear Admiral STONE:

MAJOR J. GROSSMAN,
Lt. Col., Spec-Res,
Chief Counsel,
for Chief Legal Advisor.

43

HEADQUARTERS
TOSCANA REGION
ALLIED MILITARY GOVERNMENT

21A

File Ref: RVIII/19/2000

Date: 9 Jan. 45

SUBJECT: STATUS OF AMERICAN RED CROSS CLOTHING
TO : CHIEF LEGAL ADVISOR, HEADQUARTERS, AC. ✓

HEADQUARTERS
12 JAN 1945
A. C.

1. An opinion has been requested by the Provincial Legal Officer, Siena Province, as to whether American Red Cross clothing is to be deemed to be property of the Allied Forces within the provisions of Occupational Proclamations.

2. As the question is one of general policy, in obedience to Executive Memo No. 18 paragraph 10, the question is referred to you for determination.

John K. Weber
JOHN K. WEBER,
Colonel, Infantry
Regional Legal Officer.

LEGAL SUB COMMISSION	
CLO	✓
DCLO	
Chief Counsel	
CJO	
Italian Section	
CL RKS	
12 JAN 1945	

42

21 B

ALLIED MILITARY GOVERNMENT
PROVINCE of SIENA

Subject:

To: A.M.G. Courts
Regional Legal Office
Toscana Region.

Ref: 8/16/53.

Date Dec. 27, 1944.

Ref. recent telephone conversation, may a ruling be obtained as to whether American Red Cross clothing is to be deemed to be property of the Allied Forces.

I am not aware of the American practice, but the British Red Cross is not an official body (though officially recognised) and depends on gifts and contributions from the public. These are collected and distributed through Red Cross agency, and I am doubtful if clothing purchased and donated by the public can be properly called the property of the Allied Forces.

The point is of importance, as if not Allied Military property any case of being in wrongful possession would be triable under Italian Law and not under the Proclamations.

M. Dreyfus

..... (Capt.)

B.E. DREYFUS
Provincial Legal Officer

Ref. recent telephone conversation, may a ruling be obtained as to whether American Red Cross clothing is to be deemed to be property of the Allied Forces?

I am not aware of the American practice, but the British Red Cross is not an official body (though officially recognised) and depends on gifts and contributions from the public. These are collected and distributed through Red Cross agency, and I am doubtful if clothing purchased and donated by the public can be properly called the property of the Allied Forces.

The point is of importance, as if not Allied military property any case of being in wrongful possession would be triable under Italian Law and not under the Proclamations.

M. Dreyfus

..... (Capt.)

B.E. DREYFUS

Provincial Legal Officer

R. M. / 19 / 2000 / 1022
BED/amb

file
HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

(20A)
/mt.
5 January 1945.

13/4005/L
SUBJECT : Court of Enquiry.
TO : G-1 (B) Hq. A.C.

1. Reference your G-1 B/77/73/A dated 3 January 45 and file of proceedings returned herewith.

2. In view of the findings of the court, namely that Attilio BORDI (a) "cannot be held responsible for the loss", and (b) "that the cost be borne by the public", this Sub-Commission does not see any grounds to justify the taking of action under para 10 (b) of "Instructions Regarding the Employment of Civilian Labour".

3. The findings are based upon the facts and no point of law appears to be involved.

alg
MARC J. GOSMAN,
Lt. Col.,
Chief Counsel,
For Chief Legal Advisor. 380

No. 785016

4005

MEDICATIONS

19A

3 January 1915

20 : Legal Sub Commission

NR034 : 9-18 H.L. A.G.

Will you please give advice as to what action if any should be taken against Attilio Sordi.

In this connection please see Instructions Regarding the employment of Civilian Labour, para 10(b).

FOR YOUR PRESIDENT, ESTABLISHMENT: SECTION

18

Alvaras Major
 to Sir J. E. T. RITCHIE (Bt)
 Major
 C-1(B)

31

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

18A

AC/4005/L.

21 December 1944.

SUBJECT : Transportation.

TO : Regional Commissioner, LAZIO-UMBRIA Region.
(Attn. Regional Legal Officer)

1. The Transportation Sub-Commission has handed to this Sub-Commission your L/1408, undated, on the above subject.

2. The views of the Legal Sub-Commission on this letter have been fully discussed with you and are presumably well known to you.

By command of Rear Admiral STONE.

WED/vow.

W. E. MURKINS.
Colonel,
Deputy Chief Legal Officer.

387

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

17A

AG/LC05/L.

/pa.
24-Dec 44.

SUBJECT : Arrest of Italian civilians by French Military Authorities.
TO : Political Section (Attn: Mr. W. E. Schoff).

1. In the opinion of the Legal Sub-Commission the action of the French Authorities in kidnapping the 4 Italians referred to in the aide-memoire of the 28th November 1944 is entirely illegal and a gross breach of international law.

W. E. BRIDGES,
Colonel,
Deputy Chief Legal Advisor.

37

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/mt.
14 December 1944.

SUBJECT : Evangelos PAPADAKIS, deceased.
TO : Civil Affairs Branch, GHQ, MEF
(Attn: Lt. Col. R. Thackrah).

1. Enclosed you will find Prof. VASSALLI's opinion on Italian Law requested by you in regard to the above mentioned estate.

2. Prof. VASSALLI, leading lawyer of Rome, is Dean of the Law Faculty.

3. The Finance Sub-Commission states that there exist no means of debiting or crediting your Command either at this HQ or at any other outfit in Italy.

4. It is therefore suggested that you should remit the agreed fees (LB 12) to the next officer proceeding from your HQ to Rome to be handed to this Branch or that you endeavour to persuade your local Pay Master to transfer the amount in question to his colleague here.

Please let us know how you propose to effect payment as soon as possible.

G. H. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Advisor.

38

All correspondence
on 4075/1.

file

15A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4005/L.

BS/mt.
9 December 1944.

SUBJECT : Legal Assistance Pvt Paul D'AMONTELLI.
TO : AFHQ, G-5.

With reference to your letter without ref. number dated
5 Dec. 1944 on the above subject please find below the names
and addresses of two notaries as requested:

- (a) Dott. PEDACE Pietro, notary, Reggio Calabria.
- (b) Dott. BATTAGLIA Vincenzo, notary, Reggio Calabria.

For the Chief Commissioner:

William H. L.
G. W. PARKINSON, Brigadier,
A/VP C A Sec.
Dep COS

35

✓
4005

Legal

14A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

AMB/mls

5 December 1944

SUBJECT: Legal Assistance Pvt Paul Paviglianti.
TO : Headquarters, Allied Commission, APO 394.

13A

1. Your letter of 28 November 1944 (AC/4005/L) on the above subject is at hand. The recommendation that a local notary in the area of Gumeno be consulted has been referred to the Theatre Judge Advocate, who is primarily concerned in this matter. The Theatre Judge Advocate has requested that the Allied Commission indicate the name of a notary with whom the matter may be taken up, as that office has no means of knowing of such person.

For the Acting Asst. Chief of Staff, G-5:

A. M. Bullowa
A. M. BULLOWA,
1st Lt. A.U.S.



LEGAL SUB. COMMISSION	
CIO	
CCLO	
Chief Counsel	
CIO	
Legal Section	
CL BKS	
7 DEC 1944	

*Guy - please reply -
a notary should be selected,
if possible within 2 kms
of Gumeno - province of
Reggio Calabria*

36

~~SECRET~~ (Scanned) (Refused return)HEADQUARTERS ALLIED COMMISSION
A.O. 394
ITALIAN SUB-COMMISSION

(13A)

AC/1005/L.

WEP/pa.
28 Nov 44.

SUBJECT : Legal Assistance - Pvt Paul PAVIGIANI.

TO : AMM 6-5.

1. Reference your 6-5 013 of 14 Oct 1944. It is regretted that it has not been possible to give an earlier reply.

2. Efforts have been made to obtain the necessary legal advice from Italian lawyers, but the facts stated in the basic communications are not sufficient to make a useful opinion to be given, and the enquiries made by our own legal officers in the area of Reggio Calabria have not yet established the fundamental problem.

3. The documents are returned herewith and it is suggested that they be referred to a local notary in the area of CUNEO - Province of Reggio Calabria with instructions to ascertain

- a. whether the property is encumbered
- b. if so what steps are necessary to free it
- c. what action is necessary by Pvt. PAVIGIANI
- d. how this action can best be performed
- e. whether there is any other useful advice he can give in the light of the conditions existing locally.

For the Chief Commissioner:

W. E. WERNES,
Colonel,
Deputy Chief Legal Advisor.

See folio 159A
160A

Vol I~~SECRET~~

33

4005
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

AME/iase

Legal-CC 1134
(12A)

G-5: 013

25 November 1944.

SUBJECT: Legal Assistance to Pvt. Paul Paviglianti.

TO : Headquarters, Allied Commission, A.P.O. 394

1. Under date of 14 October 1944 the file in the above entitled matter was referred to your Headquarters for action.

2. This Section has received an enquiry respecting the present status of the matter, and it will be appreciated if you will advise us of the present position.

For the Asst. Chief of Staff, G-5:

A. M. Bullowa
A. M. BULLOWA,
1st Lt. A.U.S.

FOR SUB-COMMISE	
CLO	_____
DCLO	_____
Chief Counsel	_____
CJO	_____
Italian Section	_____
CLERKS	_____
27 NOV 1944	



HEADQUARTERS
SOUTHERN REGION, ALLIED COMMISSION
APO 394, U.S. Army

R/4300

24 November 1944

SUBJECT: Request for Information.

TO : Headquarters Allied Commission
(Attn: Legal Sub-Commission).

1. Reference your ACC/4005/L, above subject, dated 18 October 1944.
2. Signora Maddalena Gattuso is residing at Rosario Valanidi di Gallina with three sons. She is alive and in serious financial condition.

For the Regional Commissioner:

Joseph Elliott
JOSEPH ELLIOTT,
1st Lt., M.I.,
Asst Adjutant.

31

2. NOV 1944

File
ACTION

POA

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/rlp.
23 November 1944.

SUBJECT : Case of SEBASTO and others.

TO : CA Sec.

1. It is recommended that these cases be referred to the Italian Courts for trial.

2. The cases arise out of the sales to members of the Italian public of alcohol transportation permits issued by "ASB Region IV" during August-September 1944 and signed by Major Garrett.

3. The case has been fully investigated by Major Hildebrand in order to discover whether Major Garrett or any other Allied officer or soldier was involved in the sales and Major Hildebrand is satisfied that Major Garrett may have been negligent but was no party to any fraudulent dealing. There was no other member of the Allied Forces involved. There is no reason on this ground therefore why the case should not be referred to the Italian Courts.

4. There is no doubt that one accused, GOLDMARK, should be convicted in any court. On the evidence contained in the accompanying documents, the two other accused will probably be convicted in an Italian Court but are likely to be acquitted in an ASD Court.

5. FLC, Region LARIO-VALETTA agrees with the opinions and recommendations expressed above and the AC is satisfied for the case to be handled by the Italian Courts.

W. E. BARNES.
Colonel,
Deputy Chief Legal Adviser

SEE
File 4129/6

9A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4005/L.

/rlp.
20 November 1944.

SUBJECT : Control of Civil Movement.

TO : Public Safety S/C.

Reference your AC/14018/5/PS of 9 Nov 44 to Food S/C and accompanying correspondence which are returned herewith, please be advised: -

1. The transportation of foodstuffs is not illegal except insofar as it contravenes a Provincial order restricting the provincial import or export of food. The relevant Provincial Orders are not in possession of this sub-commission and should be obtained from the office of the Prefect concerned;

2. It is impossible without the full facts of the case to advise whether the owner of the foodstuffs has contravened the provisions of RMI No. 245 of 22 April 1943 or DMI No 153 of 4 July 1944.

W. E. PURDIE,
Colonel,
Deputy Chief Legal Advisor.

Copy to: Food S/C (your 80-1/55/Food of 16 Nov 44 refers).

23

4005

9B

INTER OFFICE MEMO

AJP/sl

16 November 1944

Tel: 515

Ref: 80-1/55/FOOD

SUBJECT: Control of Civilian Movement
(Attached papers (originals))

TO : Legal Sub-Commission, Hq. AC

FROM : Food Sub-Commission

1. With reference to attached letter from Public Safety Sub-Commission AC/14018/5/PS dated 9 November and related documents.

2. Information as at para 3 is desired. Perhaps you would advise Public Safety direct. A copy of your letter would be appreciated.

For the Chief Commissioner:

J. Imrie

J. IMRIE

Major, RASC

Acting Director, Food Sub-Commission

Incl.

28

LEGAL SUB-COMMISSION	
CLO	
→ DCLO	
Chief Clerk	
CLD	
Italian Section	
CL RKS	
17 NOV 1944	

HEADQUARTERS ALLIED COMMISSION
Public Safety Sub Commission
A.P.O. 394

9 November 1944

AC/ 14018/5/PS

Subject : Control of Civilian Movement

To : Food sub-Commission

1. I am transmitting herewith correspondence relating to two civilians who at NARMI on a journey from Pesaro to Rome by a W.D. motor vehicle were found in possession of.

1st Civilian

160 Kg. grain (horse)
150 Kg. potatoes.
150 Litres of Wine

2nd Civilian

215 Kg. flour
and a quantity of wine beans and potatoes
40 Kg. grain

2. The persons concerned had no authority to transport the food.
3. Will you please advise what regulations relating to the transport of food were infringed by these persons.
4. Questions relating to the unauthorized transport of goods and passengers in W.D. vehicles, and the irregular issue of Civilian movement passes will be taken up separately.
5. Return of the correspondence is requested, please.

JOHN W. CHAPMAN
Colonel J.A.G.D.
Director Public Safety
Sub-Commission

Enclosures.

Copy to: R.P.S.O. Lazio Umbria Region.
(your PS/LUR/3145/2 dated 4/11/44 refers)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AMT/rc.

AG/4005/L.

11 Nov. 1944.

SUBJECT : Station Refreshment Rooms.

TO : Transportation Sub-Commission.

1. Reference your AG/TN/96 dated 9 Nov. 44.

2. This Sub-Commission has no comment to offer regarding the papers returned herewith save that they appear to deal exclusively with matters primarily of a domestic nature within the Italian State Railway organization and also no doubt have some bearing on questions of civilian supply. However, should it be your intention to raise some specific problem of a legal nature, your further indications and explanations will enable due consideration to be given thereto.

Chief

A.R. THACKRAH,
Lt. Colonel,
Italian Branch,
for Chief Legal Advisor.

Enclose: File.

20

HEADQUARTERS ALLIED COMMISSION
APO 194
LEGAL SUB-COMMISSION

WEB/mt.
11 Nov., 1944.

AD/4005/L.

SUBJECT : War Damage Claims.

TO : D. Cameron Esq.
Consular Section, British Embassy

1. In reply to your letter 24/2 of 8th November 1944 there is at present no method under Italian law whereby British subjects not of Italian descent can claim compensation for war damage of the kind mentioned by you.

2. Claims against the Italian Government for war damage are regulated by R.D.L. No. 1543 of 26 Oct. 1940. In the absence of a treaty between Italy and a foreign country to provide for mutual recognition of the claims of foreign nationals. Art. 3 of the law restricts the right to claims for war damage to Italian subjects and foreign subjects of Italian descent. So far as is known there is no such treaty between Italy and Great Britain.

3. As this matter will almost certainly be covered by the Peace Treaty it is suggested that for the purpose of record claimants should be advised to collect the necessary evidence to support their claim and have it recorded in the registry of some public notary. Claimants should advise you of the amount and nature of their claim so that the necessary information may be available to the Foreign Office when or if it is required.

W. E. BERNARD,
Colonel,
Deputy Chief Legal Advisor.

25

24/2

Consular Section,
British Embassy,
Rome.

8th November, 1944

To: Legal Sub-Commission, Allied Commission, Rome.

I have been receiving a number of enquiries as to the procedure to be followed by British subjects wishing to place on record claims for damage to property or injury to interests occasioned in Italy as the result of the state of war between Great Britain and Italy.

These claims do not relate to damage to property sequestered by the Italian Fascist Government, for which means exist for placing them on record through the Property Control Sub-Commission.

By way of illustration, one of the claims about which we have been approached is, for instance, in respect of damage to the grave of a British subject.

I should greatly appreciate any advice you can give me on this subject.

LEGAL SUB-COMMISSIO.

CLO

DCLO

Chief Counsel

CJO

Italian Section

CLERKS

H.M. Consul

26

SJH/nb

(5A)

CONFIDENTIAL

HEADQUARTERS ALLIED COMMISSION
C.M.F.
PUBLIC SAFETY SUB COMMISSION
SECURITY DIVISION

LEGAL SUB COMMISSION	
CLO	
DCLO	☒
Chief Counsel	
CJO	
Italian Section	
CL RKS	

Ref : SD/375.04

31 October 1944

Subject : Petition of BARUCCI Gino and Bice, lessors of a hotel
in Aquila

To : Legal Sub Commission

1. With reference to the attached petition.
2. The document first went to Abruzzi - Marche Region who are "au fait" with the Security angle locally.
3. It is observed that Setta, the person complained of, is the legal Representative of the Company owner of the premises, and this petition is the culmination of a bitter feud between them.
4. The only Security question we have to consider is whether anyone is now a danger to Allied Military Security, and I can see nothing in this petition which leads me to think so.
5. I therefore suggest it be dealt with as a dispute between two antagonistic Italians over property occupied successively by the Germans and the Allies.

23

S. J. Harvey
JOHN W. CHAPMAN,
Colonel J.A.G.D.,
Director Public Safety,
Sub Commission.

CONFIDENTIAL

*PLO
already received
to look the case
for 11/1/45*

To the ALLIED MILITARY GOVERNMENT

Vth. Region

Aquila.

The undersigned, husband and wife, GINO and RICE

Barucci, desirous of being restored in their just and legal rights, have the honor to expose what follows:

Mrs. Barucci, by a regular contract of lease with the S A I M (Società Anonima Immobiliare) proprietor of the Grande Albergo dell'Aquila, was granted the operation of the said Albergo, of the annexed Café Bar, Albergo Diurno and all annexed and depending services. The said lease is still in force legally, as it extended for the period of nine years as of Sept. 1st, 1942. Not having been cancelled by any legal measure or act, and having Mrs. Barucci made remuneration to it in any form or manner, the said lease is de facto in full force and validity, so much so that all the licences for the operation and various services annexed are still in the name of Mrs. Barucci whose owner she is under every respect. All the furnishings, provisions, linen, porcelaines, glass ware, cutlery, kitchen implements and utensils and sundry other articles of use are the property of Mrs. Barucci who purchased and installed them in the

(5B)

Recd 19 Oct
2. Aquila
Socio to G. Barucci

Grande Albergo dell'Aquila, was granted the operation of the said Albergo, of the annexed Café Bar, Albergo Diurno and all annexed and depending services. The said lease is still in force legally, as it extended for the period of nine years as of Sept. 1st, 1942. Not having been cancelled by any legal measure or act, no having Mrs. Barucci made renunciation to it in any form or manner, the said lease is de facto in full force and validity, so much so that all the licences for the operation and various services annexed are still in the name of Mrs. Barucci whose owner she is under every respect. All the furnishings, provisions, linen, porcelaines, glass ware, cutlery, kitchen implements and utensils and sundry other articles of use are the property of Mrs. Barucci who purchased and installed them in the establishment.

In course of contract, certain divergences arose between Mrs. Barucci and Mr. Francesco Setta, who was and is the legal representative of the company owner of the premises, owing to unfounded pretensions advanced by the said Setta, and to claims in the part of Mrs. Barucci, the S A I M not having complied fully to the requirements of the lease. In Mr. Setta's side the matter consisted in his desire to cancel the contract on account of the changed general conditions

of costs and values. On such pretensions and grounds is pending a legal case before the civil tribunal of Aquila.

In order to arrive at his scope, Mr. Setta, whose shrewdness is well known, as well as his lack of scruples with parties having been in business intercourse with him, he resorted to all ways and means. In a particular manner Mr. Setta inaugurated a system of gaining the collaboration of the personnel of the establishment with alluring promises of positions and compensations advantageous to them, whenever he could succeed in getting read of the Barucci lease. However, not finding the way clear to reach his end, he resorted to the intervention of the Germans in a very diabolic manner. As a matter of fact, the porter of the hotel, whom Setta had gained to his side, a certain Umberto Boni, (who had been the first party in town to establish contacts with the Germans) was induced to denounce Mr. Barucci as an anti-Nazi. In consequence of such denunciation, on Sept. 18th, 1943, the said Boni reported to Lieutenant Kleuser, then in command, that Barucci had sheltered in the hotel British prisoners, and that he had been instrumental in causing the escape from the city of Major Careio and

positions and compensations advantageous to them, whenever he could succeed in getting word of the Barnucci losses. However, not finding the way clear to reach his end, he resorted to the intervention of the Germans in a very diabolic manner. As a matter of fact, the porter of the hotel, whom Setta had gained to his side, a certain Umberto Boni, (who had been the first party in town to establish contacts with the Germans) was induced to denounce Dr. Barnucci as an anti nazist. In consequence of such denunciation, on Sept. 10th, 1943, the said Boni reported to Lieutenant Klausner, then in command, that Barnucci had sheltered in the hotel British prisoners, and that he had been instrumental in causing the escape from the city of Major Curcio and Lieutenant Fontana of the Carabinieri whom the Germans intended to arrest together with General De Paris. Major Curcio in fact had hid in various localities, and Fontana reached Rome where, subsequently, was arrested and found his death in the massacre of the Fosse Ardeatine on March 24th, 1944. General De Paris was induced to present himself hoping to save his son who had been arrested as hostage, both the General and his son being afterwards brought to Poland.

On the evening of Sept. 10th, Dr. Barnucci was seized

and arrested in his hotel which had been surrounded by a considerable body of parashutists under Klausner's command, thence being taken to the barracks of the 10th Regiment Artillery. During the night the unlucky prisoner was twice told that he was going to be shot on a charge of high treason, and on the following days this news was spread in the city by the Germans themselves. Luckily, Mr Barucci owed, instead, his safety to the very criminal deeds of Lieutenant Klausner. Klausner not only ordered his men to pillage the provisions to be found in the hotel, which was punctually done by loading everything on trucks which cleared away, but, pistol on hand, the lieutenant obtained the keys of the safe from which he removed all valuables and moneys as well as cheque books. On the following days Klausner proceeded to the banks to withdraw the existing deposits of funds in the name of the Barucci couple, and while the Credito Italiano and the Banca Nazionale del Lavoro refused to adhere to the request, the Banco di Napoli, against a statement that Barucci had been executed and his belongings confiscated, honoured a cheque signed by Klausner for the entire deposit amounting to Lire 36,150.50.

Lieutenant Klausner evidently only took care in the ~~seen~~ moneys, apparently without reporting to any superior command,

Klausner not only ordered his men to pillage the provisions to be found in the hotel, which was functionally done by loading everything on trucks which cleared away, but, pistol on hand, the lieutenant obtained the keys of the safe from which he removed all valuables and moneys as well as cheque books. On the following days Klausner proceeded to the banks to withdraw the existing deposits of funds in the name of the Barucci couple, and while the Credito Italiano and the Banca Nazionale del Lavoro refused to adhere to the request, the Banco di Napoli, against a statement that Barucci had been executed and his belongings confiscated, honoured a cheque signed by Klausner for the entire deposit amounting to Lire 36,199.50.

Lieutenant Klausner evidently only took care in the moneys, apparently without reporting to any superior command, and only sought to conceal track of Barucci's status in order to avoid possible claims on his part. As a matter of fact, Mr. Barucci, ten days after his arrest, was carried to St. Oreste, on the Mount Soratte, where the German General headquarters were then stationed, and there he was delivered to the maresciallo of the Carabinieri with orders to guard him at the disposal of the German S.S. By the Carabinieri Mr. Barucci was transferred to the judiciary prison of

Civita Castellana, whence afterwards was liberated by the intervention of the local Prefect and the Podestà after due ascertainment that no denunciation of facts had been filed anywhere against him, as it was corroborated in the presence of the German Command upon his liberation.

The requisition of the Grande Albergo followed Bernucci's arrest, although the operation of the establishment continued under the forced supervision of Mrs. Bernucci for a brief period, until the lady too was ousted from it under pretext of lack of confidence in her, and the operation of the hotel was placed in the hands of a Mr. Romano De Johnson who was depicted as a persons grata, remaining, however, the operation on behalf of Mrs. Bernucci, who, naturally will reserve to herself the right of claims for mismanagement and consequent financial losses.

Not yet satisfied of the above results, Mr. Setta, did not desist from his work of corruption of the personnel, associating to himself the cooperation of the said De Johnson, so much so that at the instigation of those two gentlemen, and that of the porter Reni, Mrs. Bernucci was reportedly threatened of arrest by the Germans for presumed sabotage, having attempted to avoid the pillage of part of the hotel's furnishings and provisions. By the end of October

a brief period, until the lady too was ousted from it under pretext of lack of confidence in her, and the operation of the hotel was placed in the hands of a Mr. Romano de Johnson who was depicted as a person of great, remaining, however, the operation on behalf of Mrs. Karuoci, who, naturally will reserve to herself the right of claims for mismanagement and consequent financial losses.

Not yet satisfied of the above results, Mr. Sotta, did not desist from his work of corruption of the personnel, associating to himself the cooperation of the said de Johnson, so much so that at the instigation of these two gentlemen, and that of the porter Rossi, Mrs. Karuoci was repeatedly threatened of arrest by the Germans for pretended sabotage, having attempted to avoid the village of part of the hotel's furnishings and provisions. By the end of October the German Command ordered Mrs. Karuoci to leave entirely and ultimately the hotel premises, the whole being handed over to Mr. Sotta who thus saw fulfilled his desires. He therefore took possession of the establishment with all the furnishings and provisions belonging to Mrs. Karuoci without any form of indemnity to her and even depriving her of the possibility to make an accepted inventory of her belongings.

Mrs. Karuoci subsequently proceeded to home to rejoin her

5

husband, even to avoid persecutions by the Germans, and as soon as she has been able to obtain permit to return to Aquila she came to claim reintegration to her just right. With this object in mind, she now applies to the Allied Military Authorities asking to be assisted in the restoration of her rights covered by the machinations of the above mentioned individuals and perpetrated violently by the Germans. She asks reintegration and reinstatement in the operation of the Grande Albergo with all its annexes and dependencies and all all things existing thereto belonging to her as well as to be indemnified for what may be missing or damaged.

At the same time Mrs. Barucci claims that, after due verification of her status, all payments and dues to be made by the Allied Authorities for the period of their requisition of the Grande Albergo be made to her as the sole person entitled to such payments and dues, in accordance to her original contract of lease.

Mrs. Barucci further wishes to declare that she reserves all rights to propose claims ~~against~~ parties eventually responsible for losses and damages to her properties, without prejudice of the preexisting controversies which will follow the

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

4005/L

/rlo.
27 October 1944.

SUBJECT : Waldenian Church.

TO : Political Sec (THRU: VP, CA Sec).

1. The Legal S/C has examined the difficulties experienced by the Waldenian Church as requested by memorandum 104/A/44 of 21 October 1944. Professor Comba has been interviewed and has furnished a copy of the complaints submitted to the Bishop of Lignfield. This copy is attached hereto. No extra copy is retained by this s/c.

2. The complaints of the Waldenian Church fall within two heads: (a) that under the Lateran Treaty 1929, the Waldenian Church is in a position of inferiority to the Roman Catholic Church; and (b) that under the administration of RDL No. 1159 of 24 June 1929 certain specific acts of discrimination have been committed against the Waldenian Church.

3. In the opinion of this s/c no action can properly be taken under the Armistice Terms, or at all, to endeavor to force the Italian Government to infringe or put an end to the conditions of the Lateran Treaty. If the principle of a State religion be accepted, as it is in England, the Lateran Treaty does not discriminate against the Waldenian Church. Even if this principle is rejected, such discrimination as is thereby created, does not fall, in the opinion of this s/c, within the class contemplated by Article 31 of the Armistice Terms.

4. The complaints under RDL No. 1159 of 24 June 1929 are based on the allegation that this decree has been applied differently in the various provinces of Italy. The decree itself was passed in order to implement the terms of the Lateran Treaty and it is the opinion of the Legal S/C that the decree does not provide for any discrimination against the Waldenian Church.

5. The administration of these matters is in the hands of the Direzione di Culto, which is a department of the Ministry of Interior. It would seem that acts of discrimination which have taken place either were due to administrative action which had no basis in law or were the result of defective interpretation placed upon the decree by the Ministry of Interior or its local representatives.

6. It is felt that the attention of the Minister of the Interior could be drawn to the individual acts of discrimination complained of and he could

be required to take the necessary action to remove the difficulties created and to ensure that similar situations do not recur.

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

Incl.

3A
21 OCT 1944

4005-Box 1
L.F.
104/4/44
Mr. Caccia.

During his recent visit to Italy, the Bishop of Lichfield wrote to the Ambassador about the difficulties of the Waldensian Church in Italy. We passed on the Bishop's letter to the Foreign Office who have now replied in the following sense.

2. "Article 31 of the long armistice terms imposes on the Italian Government the obligation to rescind any legislation tending towards discrimination on grounds of creed. Consequently if the Waldensian Church or any other Protestant sects suffer under any legal disabilities, the Italian Government should now take steps to remove them."

3. I do not know to what extent the Control Commission has been able to look into these matters. The Foreign Office however would be grateful if the Commission would examine the position and present a report in due course showing to what extent, if any, the Italian Government have failed to carry out their obligations under Article 31 of the long armistice terms. It will then be for consideration what instructions should be given to the Italian Government before the armistice régime comes to an end.

4. As you are aware, the question is a tricky one in view of the Vatican interests involved, but there seems to be no objection to the Commission examining the problem in the manner desired by the Foreign Office.

British Embassy,
Rome.

Chief Counsel

28th October, 1944.

21 OCT 1944

Italian Section

2901

REPORT OF THE WALDESIAN CHURCH
ON LAW NO. 1159, OF JUNE 24, 1929, REGARDING WITH CULTS ADMITTED IN
THE STATE. (Synopsis).

(38)

1. INTRODUCTION.

The Waldesian Church does not support any particular political party: it is an Evangelical Church, which already existed some centuries before the Reformation.

The W.C., although not entertaining any political aim, cooperates to ensure the welfare of the State.

2. THE JURIDICAL POSITION OF RELIGION: HINDUISM IN ITALY

Throughout the Italian Risorgimento and afterwards "tolerated cults" (Art. 1 of the 1848 Constitution) had in fact become "accepted cults". The State had esoteric tendencies: freedom of religion and of worship. The recognized: all cults enjoyed a perfect equality of treatment; the State exercised a special control only over the Catholic cult; the State the religion of the great majority of Italian citizens.

During the last 20 years the situation is completely changed. After the Concordate, the Catholic Church was recognized as the State Church. Thus the Catholic cult has been given a preference, special privileges, and the expression "accepted cults" only denotes cults other than the State religion. The former are subject to controls stricter than the similar control exercised over the Catholic cult.

Thus, the Italian Government at the time of the Lateran Pacts baseding into effect passed the Law No. 1159 which aims at securing freedom of religion in Italy; but this law is in contrast with the fact the State has precluded as its own religion a religion which assumes to be the only judge of religious thought.

This contrast renders almost null the principle set out in Art. 4 of Law No. 1159, that all citizens are equal before the law, no matter of what religion they profess.

In practice, some of the essential principles which have inspired Law No. 1159 have been deliberated, especially after the "Direzione di Culto" was transferred from the Ministry of Justice to the Ministry of the Interior.

3. DEVIATIONS IN THE PRACTICAL APPLICATION OF LAW NO. 1159.

the religion of the great majority of Italian citizens.

During the last 20 years the situation is completely changed. After the Concordat¹, the Catholic Church was recognized as the State Church. Now the Catholic cult has been given a pre-eminence, special privileges, and the expression "accepted cult" only denotes cults other than the State religion. The former are subject to controls stricter than the similar controls exercised over the Catholic cult.

Thus, the Italian Government at the time of the Lateran Pact was brooding into effect passed the law n. 1159 which aims at securing freedom of religion in Italy; but this law is in contrast with the fact the State has proclaimed as its own religion a religion which assumes to be the only judge of religious thought.

This contrast renders almost null the principle set out in Art. 4 of Law No. 1159, that all citizens are equal before the law, no matter of what religion they profess.

In practice, some of the essential principles which have inspired Law No. 1159 have been culminated, especially after the "Decreto di Culto" was transferred from the Ministry of Justice to the Ministry of the Interior.

3. DEVIATIONS IN THE PRACTICAL APPLICATION OF LAW NO. 1159.

The law in question has been applied in a different manner in the various provinces of Italy. In some provinces accepted cults could benefit of all advantages given by the law, in other provinces such cults have been prohibited.

(a) Public Worship - Whereas Art. 1 of above mentioned law states that "worship, even public, in accepted cults shall be free", in some provinces (Compagnies) public worship have been prohibited; in others Waldensians were not allowed to use the Churches they had built.

(b) Private Worship - In spite of the legislative provisions, even private worship has been, where not prohibited, severely restricted.

(c) Schools - Waldensian schools at San Dem, Imperia, Novara Sabino, attended also by Catholics, have been closed by an administrative order and never allowed to reopen.

(d) Appointment of pastors - It has happened that pastors appointed by the Waldensian authorities have been deprived of the prescribed authorization without plausible reason.

(e) Although Art. 4 of Law No. 1157 states that "difference of religious creed shall not prejudice in any way the enjoyment of full political and civil rights and the free admission into civil and military services", in many instances military and civil personnel have been denied a promotion because they were Waldensian.

It should also be noted that, according to Art. 5 of the Concordate, Catholic priests who have organized from the Catholic religion cannot be authorized to be Evangelic pastors in Italy nor can they teach in public schools.

(f) Dispensation on religious matters. Art. 5 of Law No. 1157 states that "discussion on religious matters shall be free", but in fact Evangelic pastors have not been prevented from freely discussing religious questions.

4. POSITION OF THE WALDENIAN CHURCH

(a) The Waldensian Church does not have any privilege for itself; it only wishes to be independent.

(b) It demands, for itself and for all other Churches, the complete freedom of public and private worship, of speech and of press.

(c) It demands that in all laws, of whatever nature, the religion of the majority of the Italian people be in a parallel position as the religions of the majority.

(d) It demands a good and full observance of all legislative provisions.

2A

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

/rm.

ACC/4005/D.

24 Oct. 44.

SUBJECT :: Engineer CUOMO.

TO : Agriculture Sub-Commission.

1. Reference yours 12 October 1944 AGH/23.12.
2. It is an understanding that Mr. CUOMO was merely confirmed by Col. Bolatti in a position to which he had previously been appointed by the Italian Government.
3. Under these circumstances we are of the opinion that the consent of the Allied Military Government is not required with respect either to the disposition of the post or the occupant thereof.

Encls.

MARC J. GROSSMAN,
Lt. Colonel,
Chief Counsel,
for Chief Legal Advisor.

No. 785016

HEADLINE

ALLIED CONTROL COMMISSION
AGRICULTURE SUB-COMMISSION

410 394

C2A/C03

A

19 October 1944

701. 431 080

JGR/ES.22

SUBJECT: Request for Legal Opinion Regarding Dismissal of
Engineer Cuomo from C.N.C.

TO : Legal Sub-Commission

1. Reference is made to our recent discussion regarding the legal status of the dismissal of Engineer Cuomo as Commissioner of D.R.C. for Corruption.

2. Attached herewith are copies of our complete file regarding this matter.

3. It is our opinion that the central office of O.N.C. in Rome should have complete control and direction of all operations of Opera Nazionale Combattenti as long as they are not involved in any undesirable political action.

4. We would appreciate receiving an opinion on this matter from your Sub-Commission at the earliest possible date.

Ben Gutman

W. A. HARTMAN
Lt. Col.
Director

ENCLOSURES:

10/10/14
Ltr File 72 14/10/14

Ltr File 4607 14/10/44

Prov. Decrees N.15910, 1 & 2

Adm. Order No. 5, 6/6/44

Adm. Order No. 3, 5/27/44
Report by Legal Advisor, Agr. S/C
Proclamation

U	UNION
C	CASE
D	DATE
C	CASE
C	CASE
R	REASON
G	GROUP

FILE 73

Time 14/10/44

FROM : O.N.C. Volturmo Central Office

TO : Agriculture Sub-Commission

OBJECT: Delivery of the Central Office of Volturmo

Following my letter dated 10/10/44 (File 71) concerning the above mentioned object, I send to you a copy of the letter 14/10/44 No. 4607 of the Rome Central Office of O.N.C. concerning the same object.

Because in this letter it is communicated the end of the task entrusted to me for the running of Region III O.N.C. (see Decree of Col. Poletti 6/6/44). I beg you to send me, as soon as possible, a note of this ACC concerning the above mentioned object.

The delivery will start the 21st of this month.

Many regards

The Commissioner
of the Volturmo Central Office

CUOMO

(18)

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84
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FILE 4607
Rome 14/10/44

FROM : O.N.C. - Rome
TO : Ing. Alfonso Guomo,
O.N.C. Volturno Central Office, Naples

With letter, dated 6/10/44, the Presidency of Council of Ministers, communicated to this Central Office that the Command of ACC agreed that with the appointment of the O.N.C. Commissioner, the task entrusted to you, for the running of the Central Office of Volturno, is finished.

Consequently, I beg you to be in touch with the O.N.C. General Director for the delivery.

The Commissioner

MIRA

N. 15310

N. 2

THE PREFECT
OF THE PROVINCE OF NAPLES

BY VIRTUE OF: His own Decree, same number, dated 20/12/43, with which, a "Commissario Prefettizio" to the Central Office for Volturno of the O.N.C. was appointed:

WHEREAS, due to specify the powers concerning the above said Commissioner, with the claim to give to the same a full and legal exercise of his duties, for the protection of the interest of the Body;

BY VIRTUE OF Art. 19 of the Communal and Provincial Law, and according to the Prefect's powers in armistice's area;

HEREBY DECREES

To the "Commissario Prefettizio" of the Central Office for Volturno of the O.N.C. appointed by Decree No. 15310 dated 20/12/43, are conferred all the powers which, according to the R.D.I. 16/9/26 No. 1606, which approves the legislative Settlement for regulation and functions of O.N.C., belong to the President and the Administrative Council of the Body.

Naples, from the Palace of the Government, 2/2/4

p.c.c.
(Signed) The Secretary

(Signed) THE PREFECT
CAVALIERI

N. 1

N. 15310

THE PREFECT
OF THE PROVINCE OF NAPLES

WHEREAS it is deemed advisable, in relation with the changed political situation, to appoint a Commissioner to the Central Office for Volturno in S. Maria Capua Vetere, of the O.N.C. in substitution of the present chief of the same office.

BY VIRTUE OF the Art. 19 of the Communal and Provincial Law

HEREBY DECREES

The Ing. Alfonso Cuomo is appointed "Commissario Prefettizio" of the Central Office for Volturno in S. Maria Capua Vetere of O.N.C. in substitution of Ing. Carlo M. Crostarosa, except the provisions of O.N.C. competence regarding the position of Ing. Crostarosa as dependant of the same Office.

Naples, from the Palace of Government, 20/12/43

THE SECRETARY
D'ADAMO

THE PREFECT
(signed) CAVALIERI

HEADQUARTERS
REGION 3, ALLIED CONTROL COMMISSION
APO 394 U.S. Army

ADMINISTRATIVE ORDER)

NUMBER :
5)

6 June 1944

Considering that by a Decree of the Prefect of the Province of Naples, dated 20 December 1943, No. 15310, Cavaliere di Gran Croce Ing. Alfonso Cuomo was appointed Commissario Prefettizio to the Head Office for the Volturno of the Opera Nazionale per i Combattenti (therein referred to as the Opera "azionale dei Combattenti").

And considering that by a further Decree of the said Prefect, dated 2 February 1944, No. 15310, the said Commissario Prefettizio was vested with all powers which under the Royal Decree Law, 16 September 1926, No. 1606, which approved the legislative rules for the operation and functions of the Opera Nazionale per i Combattenti are vested in the President and the Council of the Administration thereof:

And considering that doubts have arisen as to the legal effect of the said Decrees of 20 December 1943 and 2 February 1944 and the powers of the said Commissario Prefettizio thereunder:

I, Charles Foletti, Colonel, Regional Commissioner, Region 3, by virtue of power vested in me, hereby

ORDINO:

Article I.

Confirmation of Appointment of Commissioner

The appointment of Cavaliere di Gran Croce Ingegnere Alfonso Cuomo as Commissario Prefettizio to the Head Office for the Volturno of the Opera Nazionale per i Combattenti is hereby confirmed.

Article II.

Definition of powers of Commissioner

February 1944, No. 15310, the said Commissario Prefettizio was vested with all powers which under the Royal Decree Law, 16 September 1926, No. 1606, which approved the legislative rules for the operation and functions of the Opera Nazionale per i Combattenti are vested in the President and the Council of the Administration thereof:

And considering that doubts have arisen as to the legal effect of the said Decrees of 20 December 1943 and 2 February 1944 and the powers of the said Commissario Prefettizio thereunder:

I, Charles Poletti, Colonel, Regional Commissioner, Region 3, by virtue of power vested in me, hereby

ORDINO:

Article I.

Confirmation of Appointment of Commissioner

The appointment of Cavaliere di Gran Croce Ingegnere Alfonso Cuomo as Commissario Prefettizio to the Head Office for the Volturno of the Opera Nazionale per i Combattenti is hereby confirmed.

Article II.

Definition of powers of Commissioner

For the removal of doubts it is hereby declared that the said Commissario Prefettizio has, and shall be deemed since 2 February 1944, to have had all the powers which under the said Royal Decree Law, 16 September 1926, No. 1606, are vested in the President and the Council of Administration of the said Opera Nazionale per i Combattenti but so far only as regards the properties of the said Opera Nazionale per i Combattenti within the provinces of Naples, Benevento, Avellino, or some or one of them, and as regards the management of such properties.

Article III.

Effective Date of Order

This Order shall be effective on, from and after 6 June 1944.

CHARLES POLETTI
Colonel
Reg. Commissioner

DISTRIBUTION
"E"

COPY

SUBJECT. Functions of the Opera Nazionale Combattenti Prefect Commissioner for Naples, Avellino and Benevento.

TO . The Director of the A.C.C. Agriculture Sub-Commission.

1. This is a report asked from me by Capt. Iulit.

2. Cav. GR. OR. Ing. Alfonso Cuomo, former President of the Superior Council of Public Works of the Kingdom, was appointed by the 20 Dec. 1943 and 2 Feb. 1944 decrees of the Prefect of Naples as C.M.C. Prefect Commissioner for the Central Office of Volturno area.

3. Subsequently, Col. Poletti by his order of June 6, 1944 confirmed the appointment of Mr. Cuomo and enlarged his powers to include the administration of all the estates of the C.M.C. in the Naples, Avellino and Benevento Provinces, conferring on him all the attributions that the Law-Decree n° 1605 of Sept. 16, 1926 gave to the C.M.C. President and Administrative Board.

4. After the liberation of Roma, prof. Mira was appointed by the Italian Government Extraordinary Commissioner of the whole C.M.C., and by his letter of July 26, 1944, he requested Mr. Cuomo to effect the delivery of the administration to the head office of the Ente. Mr. Mira's request is in accordance with provisions issued by His Excellency the President of the Ministers on July 13, 1944.

5. Mr. Cuomo assumed that when the Naples, Avellino and Benevento Provinces returned under the Italian Government, the latter promised, under n° 3 of its own proclamation of July 20, 1944, to recognize as "legal, valid and engaging" all the nominations to any office made by the A.M.C., Mr. Cuomo therefore thinks that, having himself being appointed by Col. Poletti, he could be neither totally nor partly deprived of his authority by the Italian Government.

6. Though I heard of Mr. Cuomo as a man of exceptional ability

(1F)

annual that law, but on the contrary to apply the same within the limits permitted at that time.

9. That law states that the C.N.C. is submitted to a central Office, which directs all the C.N.C. activities on a national plan. Under that law Mr. Cuomo was entitled to take actions, in the liberated Provinces, on behalf of the C.N.C., when its national life was impossible. According to the same law, the reorganization of the central Office after the liberation of Rome is quite legal, and Mr. Cuomo's powers may be reduced in accordance to the law, without any offence to the A.M.G. authority, which never intended, nor considered as its own interest, to modify the statutory law of the C.N.C. or to prevent its management on a national line.

10. The promise under n° 3 of the 20 July Italian proclamation, that is that the Italian government would recognize as "legal valid and engaging" any appointment made by the A.M.G., does not mean anything else but that this Government would recognize those appointments as legal valid and engaging as if they were made by the Government itself. After that, the restoration of the Italian Government authority necessarily implies the right of the latter to suppress any temporary office, inconsistent with national scopes, of any Body or Institute.

11. If the reason adduced by Mr. Cuomo were serious, the result would be an absurdity: that is, Mr. Cuomo could never more be removed by anyone (either by the Italian Government, which would have no powers to do so, or by the A.M.G., that ceased to rule over those Provinces) and the C.N.C. administration could never be brought back again under the unitarian management established by its statutory law.

Signed, OSCAR CARROCCI
Legal Adviser
Agriculture Sub-Commission

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Signed, OSCAR CAPOCCI
Legal Adviser
Agriculture Sub-Commission

TranslationPROCLAMATION

file 23,12

(19)

TO ITALIAN PEOPLE;

The United Nations have consented to the require of the Italian Government, that other territories besides those already given back, return under the Administration of the Italian Government from to-days date, according to the modalities and conditions necessary for the management of war.

The measure concerns the provinces of Poggia, Campobasso, Benevento, Avellino, Napoli (excluded the territory of the Comune of Naples.)

With decrees in course of publication, it is determined:

1. As the Allied Military Government has, from to-days date, put an end to the Military Government within the restored territories, are attributed, within the same and in comparison to their inhabitants, to the Italian Government all state and jurisdictional powers as well as the definitive administrative responsibility, exception made only for the rights reserved to the United Nations.
2. All the Proclamations and Ordinances up to now issued in the said territory by the Military Government, or, in his stead by his deputies, and in the named territory abrogated by the Military Government, in the act of restitution, are with the present recognized by the Italian Government, validly emanated for the time in which they have had execution, and having the same juridical effects as if they were emanated by the Italian Government following the italian law. As such, they will be recognized by all Tribunals and italian functionaries.
3. All actions fulfilled by any member of the Allied Forces in application of such Proclamations and Ordinances, as well as all the official dispositions of any kind adopted by the Allied Military Government, in application to those Proclamations or Ordinances, comprised the nominations and removal from any office, public or private may be, will be recognized by all the Tribunals and italian functionaries as legal, valid and engaging.

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4. All the sentences published by the Allied Military Courts are with the present recognized by the Italian Government valid and legal and having the same effects as if they were emanated by Italian Tribunals. As such will be recognized by all the Tribunals and Italian functionaries unless they are revoked or modified by the Allied Control Commission or with the consent of this one.

MEMORANDUM for Dr. Pironti

On the 6th October 1944, the Presidency of the Council of Ministers informed C.N.C. that the Command of ACC, interrogated on the return of Volturno's farm under the administration of the Central Office, had answered that with the appointment of the Commissioner of C.N.C. the task given by the Prefect to Ing. Alfonso Cuomo for the temporary management of the Volturno's office, has to be considered finished.

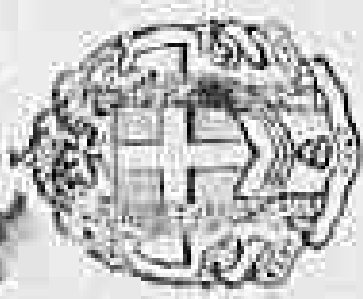
On the 14th of October the Commissioner of C.N.C. communicated the above mentioned news to Ing. Cuomo, and he beg him to be in touch with the General Director for the delivery.

The Presidency of the Council wanted also to know the intentions of C.N.C. about the possibility to give to Mr. Cuomo some other powers, if the decentralization of control was deemed advisable.

The Commissioner of C.N.C. answered to the Presidency of the Council that the normal functions of the Central Office and of the local Director, ~~independent of this office~~, make superfluous every delegation of powers to other persons.

Prof. MIRA

OPERA NAZIONALE PER I COMBATTENTI



N. _____ di Prot. _____
 Roma, 23 Ottobre 1944
 Risposta a N. _____
 del _____ 193

OGGETTO:

PROMEMORIA PEL DOTT. PIRONTI

In data 6 ottobre 1944 la Presidenza del Consiglio dei Ministri ha comunicato all'O.N.C. che il Comando della Commissione Alleata di Controllo, interessato per il ritorno dell'Azienda del Volturno sotto l'amministrazione della Sede Centrale, aveva risposto convenendo che con la nomina del Commissario dell'O.N.C. debba intendersi venuto meno l'incarico conferito dal Prefetto di Napoli all'Ing. Alfonso CUOMO per la gestione provvisoria dell'Ufficio Volturno.

In data 14 ottobre il Commissario dell'O.N.C. ha comunicato quanto sopra all'Ing. Cuomo e lo ha pregato di prendere accordi col Direttore Generale dell'O.N.C. per le consegne.

Il N. di protocollo e quello di posizione della sede centrale.

OGGETTO:

PROMEMORIA PEL DOTT. PIRONTI

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La Presidenza del Consiglio chiedeva inoltre di conoscere gli intendimenti dell'O.N.C. circa la possibile delega di qualche potere all'Ing. Cuomo ove fosse considerato utile il decentramento del controllo. Il Commissario dell'O.N.C. ha risposto alla Presidenza che le normali funzioni della Sede Centrale e del Direttore locale dipendente da questa rendono superflua ogni delegazione di poteri a terzi.

Fin

Z. P. - Nelle risposte indicare il N. di protocollo e quello di posizione della sede centrale.

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