Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/49
(VOL. 3)

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10000/142/49
(VOL. 3)

LEGAL OPINIONS (MISCELLANEOUS)
OCT. 1944 – JAN. 1947
(1 OF 2)

10. After inquiry we have been unable to discover that there is any special procedure for submitting such claims to the Italian Govt.

11. The question to be decided is a simple one: should this claim be forwarded by us in our liaison capacity on behalf of MTOUSA, or should the claim be forwarded as having the express or implied approval of the Supreme Allied Commander and the Allied Commission?

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

2.

Chief Commissioner;

As this is an American matter I think you should see these papers.

I think you need only read Col. Weber's Memo. and the Report at 2A.

You appear to have seen the rest of these papers before Vide 6A

451

I consider that the papers should be returned to MTOUSA, with such comments as you consider the Commission should make, respecting that, if it is the intention that the claim be presented to the Italian [illegible]

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Chief Commissioner;

As this is an American matter I think you should see these papers.

I think you need only read Col. Peters Memo. and the Report at 2A.

You appear to have seen some of these papers before vide 16/7 45.

I consider that the papers should be returned to MTOUSA, with such comments as you consider the Commission should make, requesting that, if it is the intention that the claim be presented to the Italian Govt. for settlement, the matter should be put up through G.5 - A.F.H.Q.

The incident occurred on the 27th May 1944 and it seems rather late in the day to establish a precedent to be applied in similar cases.

M Van Ryadens
E.C.

19/1/47

3.

E.C. I concur in your recommendation

Pius C.C.

20/1/47

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Exec. Comm.

1. The Legal Division would be grateful for your instructions on the following matter.

2. A carabiniere, guarding a jeep outside the Message Centre, in breach of his duty allowed an American soldier to drive away the jeep which was never returned.

2A — 3. An American Board of Survey held that the Italian Govt. was responsible for the loss and should be called upon to pay the value of the stolen jeep.

14A — 4. The Minister of War replied that the Italian Govt. was not in any way liable for the loss, as the carabiniere was serving under the American HQ and the damage should be treated as having been caused by one of their own men.

11A — 5. The question was submitted to this Division which advised that the Italian Govt. were not liable to pay the value of the stolen jeep. The reasons for this opinion are not relevant to the question under consideration.

15A — 6. The file was sent to HQ, MTOUSA, "for review and opinion so as to establish a precedent which will be applied in all cases of loss or damage to U.S. Govt. property due to the fault or neglect of Italian military personnel employed by U.S. military formations."

7. The Theatre Judge Advocate, MTOUSA, was of

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stolen jeep.

14A — 4. The Minister of War replied that the Italian Govt. was not in any way liable for the loss, as the carabiniere was serving under the American HQ and the damage should be treated as having been caused by one of their own men.

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7. The Theatre Judge Advocate, MTOUSA, was of opinion "that the carabiniere responsible for the loss in question was, under the circumstances an agent of the Italian Govt., and that under the circumstances the claim should be again presented to the appropriate Italian Government agency for settlement."

23A — 8. The file then came to this office with an unsigned and undated minute in red pencil that the loss was not a claim that could be properly made against the Italian Government and therefore should not be presented.

9. We see no objection, as a mere transmitting agency, to put forward the present claim on behalf of one of the Allies. If, however, it is desired that the claim be transmitted on behalf of the Supreme Allied Commander, we wish to point out that we have no directions from him in his capacity as such.

./.

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Chief Commissioner

Note by C.L.A. at F this 2. is submitted.

11/12/46

M Connelly
E. C.

~~E.C.~~ C.L.A

Pls draft a letter to the Minister which does not exceed the questions raised by the Minister

DEC 11 1946

Pls
CL

12/XII

E. C.

Enclosed is proposed draft in answer to Minister's letter. Does CC wish to sign it himself or shall it be merely a legal letter or a legal point signed by one of us?

G. S. Hammond
Asst

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Thos
CC

12/XII

E.C.

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G.S. Hammond
Hall

20/12
Legal opinion

10

Legal Div.
C.L.A to oblgn.
21/12.

M Carey
EC

11

CLA.

1) I am not quite clear as to who is to decide whether it is appropriate to bring a case before Italian Courts or not?

2) The Minister's letter will appear to mean unless AM's have ceased to operate.

G. G. Hammond
14/12

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6

Note for the Chief Legal Advisor.

As the whole matter is not only legal, but a question of policy, Brig. Carr has asked me to pass this file to you in order that you may discuss it with the Chief Commissioner.

You remember no doubt our talks on the points raised by the Minister of Justice.

I should like to add the following comments on the Chief Commissioner's remarks.

1. The file was altered in so far as (a) the word "only" was deleted twice, (b) para "g" dictated by you added, and (c) the Minister's letter enclosed.

2. The question asked by the Minister is not so much whether Mrs.Marshall's contract is valid or invalid, but rather who has jurisdiction now to declare it valid or invalid.

3. This contract may very well be considered as a divisible one, valid under AMG, invalid now, but who can legally say so? We or the Italians?

4. I do not know of any other branch competent to assess claims against AMG Officers and damages in consequence thereof, than Claims Dept. (USA) and Claims and Hirings (Brit). Such branches however, are not dealing with the legal aspect of the claims and cannot decide whether a contract is valid or not.

5. Furthermore no damages are claimed in Mrs.Marshall's case, only the nullity on the contract as from the date

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5. Furthermore no damages are claimed in Mrs.Marshall's case, only the nullity on the contract as from the date AMG ceased to function.

6. Mrs.Marshall's case is not important in itself and I don't think the Ministry is interested in it more than we are ourselves, but it raises a question of principle and policy and will be a precedent in similar cases which are bound to crop up after AMG.

G.G. HANNAFORD,
Lt.Colonel,
D/ Chief Legal Advisor.

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4

Executive Commissioner

4

CC's Comments.

1. There is no break of legal continuity when the occupied territories are restored to Italian administration. Occupation law remains in force unless abolished by the last act of the occupant or until the returning Sovereign does so. Acts done under the provisions of Occupation law also remain in force until the returning Sovereign alters or supersedes their effect; which he is at liberty to do unless specifically prevented by the terms of restoration.

The Italian Government has already interpreted in that sense the period of validity of Allied Proclamations and Orders and acts done under their provisions. For instance :

DLL 571 of 31 August 1945 - appointments to public offices by AMG Art. 1 : As far as Italian law is concerned, all appointments to public offices made by AMG in territory under their jurisdiction are to be considered as temporary appointments.

DLL 162 of 20 July 1944 - Juridical regime of territories restored to Italian administration, Art.1: "With the cessation of AMG, all Proclamations and Orders promulgated by the Military Governor of the Allied Forces or his Delegates will cease to be operative in Italian territories formerly under Allied Administration.

45

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DLL 415 of 30 July 1945 - cancelling the provisions of Proclamation N° 3 and specifying that yellow seal dollars and B.A pounds will cease to be legal currency in territories restored to Italian administration.

2. It is agreed that the word only is redundant.

3. Acts done by Allied Officers under the provisions of Proclamations and Orders affecting private interests are valid, in any case, until the end of AMG administration and continue to be valid until one or more of the parties concerned decide to amend or cancel their effects either by mutual agreement or through a judicial or administrative decision. Jurisdiction to render a decision affecting persons or interests situated in restored territory must obviously be vested in the local Italian Courts.

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4. The Tribunal of Milan for instance has declared null and void a sentence of epuration pronounced under the provisions of G.O. 46, because the decision of the Committee of epuration was rendered when two members only were sitting and not three as provided for in the G.O. above mentioned. The sentence was obviously null "ab initio" but it is not contested that it falls now within the jurisdiction of the Italian Court to adjudicate whether a decision of a Committee set up under an Allied Order is valid or not.

5. On the other hand sentences of epuration passed under G.O. 46 have been confirmed by Italian authorities as valid. Prefects in Nothern Italy have kept in force rates of telephone and electricity increased by Provincial Orders.

6. Whether the contract entered into by the P.O. Officer in Catania on behalf of Mrs.Marshall is valid or not is immaterial. If Mrs.Marshall is not satisfied with it she must bring her case before the local Court. If the Tribunal of Catania decline jurisdiction on grounds which are not known to this Division she must go to a higher Court. But it is not up to the Allied authorities now to give an opinion as to the validity of the contract.

22 Nov 46
Legal Division

Para 5.

E.C.L. If the contract is invalid now it must have been invalid during AMG. Against whom would damages under AMG be assessed? If valid during AMG, how can it be invalid now?

2. I should be grateful if this file were not altered.

1.

Executive Commissioner

Please read and let this Division have your comments on the draft letter opposite. I have discussed the opinion with Col. Weber who approves it, subject to some slight modifications and the inclusion of Sub-para g), hereunder.

already included in draft MC)

g) To sum up Italian Courts (Courts of the returning Sovereign) have, under international law the same right to adjudicate principles of international law applicable in a case before them as have the Courts of any jurisdiction. Therefore it is within their jurisdiction to decide that an act done under occupational law, which is bottomed on international law, is valid or invalid.

Legal Div.
15 Nov 46

G. G. Hammond
Lt Col

2.

Chief Commissioner

Col. Weber agrees with the opinion. I also concur. Have you any comment please?

19/XI

M. Carney
E. C.

4:8

3.

E.C.

Please let me see a copy of

Declassified E.O. 12356 Section 3.3/NND No. 785016

2.

Chief Commissioner

Col. Weber agrees with IA. I also concur.
Have you any comment please?

19/XI

M Carl Bey
E.C.

4/8

3.

E.C.

Please let me see a copy of one of the restoration orders. And para. 44c, if our proclamations & orders were the same as though issued by the Stat. Govt., where is the break in continuity when the Territory was restored? (continuing - the use of "only" in (a) & (c) seems laboured. Finally, [illegible] can an RMG act be contrary to Stat. law (see 4c) if it were in accord with an RMG order or proclamation?

19/XI

Elis cc

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1822

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

AC/4005/L

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

GGH/pa.
4 Nov 1946.

SUBJECT : Accommodation M.M.I.A.

TO : Land Forces Sub-Commission (MMIA).

Reference your 290 of 1st Nov 1946.

1. The State of War between Italy and ex enemy countries has ceased to exist on 15 April 1946. The Italian Government has issued a decree to that effect on 8 Feb 1946 (G.U.No.54 of this year).

2. In consequence powers of requisition vested into the Italian Military Authorities, the Prefects and other Italian authorities have "ipso facto" come to an end.

3. It is therefore impossible for any Italian authority to proceed to any form of requisition under Italian law. It is however possible that the Ministry of War through the Prefects may be able to justify requisition in favour of the Allies under the existing Armistice Terms and at the request of the Allied Military Authorities.

4. It is therefore recommended that you approach the Ministry of War requesting them to proceed through usual channels to the necessary requisitions under Article 1 of the Restoration Terms.

5. Furthermore the attention of the Ministry of War should be drawn to Article 7 of Administrative Law of 20 March 1865 which gives to the Government general power to effect requisition and occupy private property in time of peace. (Allegato E) This law is supported by numerous legislation issued at later dates. This Division is of opinion that this legislation may apply to the present case.

6. Should the Ministry of War however feel that it is not within its powers to proceed to such requisition without being covered by Superior Authority, it is suggested that the matter

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be taken up by the Chief Commissioner with the Presidence of the Council.

Ref.: 1.Legge del 20 Marzo 1865, Articolo 7, Allegato E
2.Testo Unico del 31 gennaio 1926, n.452
3.Legge del 12 gennaio 1928, n.93
etc. etc.

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

Incl#.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
212A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

GGH/pa.
1st Nov 1946.

AC/4005/L.

SUBJECT : S.A. NAFTA, SIAP, SEB and Vacuum Prodotti Petroliferi.

TO : CIVIL AFFAIRS BRANCH
G.H.Q., M.E.L.F.

1. Reference your No.11260/534/CA of 22 August 1946.

2. We have pleasure in enclosing opinion on the above question obtained from Studio Vasselli, Italian legal advisers to this Commission.

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

Incl.

4

4005

SUBJECT:- S.A. Nafta
Societa Emulsioni Bitumi
SIAP
S.A. Vaccum Prodotti Petroliferi

211P

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	

No.11260/584/CA.

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

Tel. ME "George" Ext. 22

22nd August, 1946.

H.Q., Allied Commission,
Legal Sub-Commission,
A.P.O. 794,
C.M.F.

I am directed to ask if you would be so good as to supply me with information on the points mentioned below. It is thought that such information could be obtained from the Registered Offices of Nafta, Colas and Vaccum at Genova, and of SIAP at Trieste :-

(1) What is the Italian legal interpretation of the Ministerial Decree of 30th July 1942 ?

(2) Is it necessary in Italian law for the decree of 30th July to have been published in Libya in order that it (the decree) may have legal effect in Libya ?

(3) Was the Decree of 30th July in fact put into effect in Libya ?

(4) Are the Companies above-mentioned still legally in existence ?

(5) Is there anything in law to prevent the 4 Companies from being granted possession of their

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(2) Is it necessary in Italian law for the decree of 30th July to have been published in Libya in order that it (the decree) may have legal effect in Libya ?

(3) Was the Decree of 30th July in fact put into effect in Libya ? 4 : :

(4) Are the Companies above-mentioned still legally in existence ?

(5) Is there anything in law to prevent the 4 Companies from being granted possession of their assets in Libya ?

(6) Is there Italian legislation subsequent to the Decree of 30th July affecting the above named Companies in relation to AGIP or Petrolibia in Libya ?

(7) Has any de-sequestration decree been published in respect of any of the above named Companies ?

J.H.G. McDOUGALL)
for CHIEF SECRETARY.

CPC/AA.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

Subject:- Accommodation M.M.I.A.

Land Forces Sub Comm. A.C.
(M.M.I.A.)
R O M E
Q.290

1 Nov 46.

To :- Legal Sub Comm.
H.Q. A.C.

Ref conversation Col PIDSLEY - Lt.Col. HANNAFORD.

1. Attached herewith is copy of a signal received from GHQ.

2. You are requested to forward your views on this matter and comments from a legal point of view.

E.F. BYATT, Major,
for Major General,
M.M.I.A.

ETB/ab

Declassified E.O. 12356 Section 3.3/NND No. 785016

COPY

FROM Q GHQ CMF 291000A

TO M.M.I.A.

INFO 2 CLAIMS & HEDINGS ROME
BT
QG1128 . UNCLASS FROM Q GHQ CMF.

CONSIDER THAT ALL PROPERTY OCCUPIED BY UNITS OF PERSONNEL OF
M M I A SHOULD BE HELD ON REQUISITION BY ITALIAN ARMY AND
NOT BY BRITISH REQUISITION. PROPOSE ISSUING INSTRUCTIONS
TO DISTRICTS AND AREAS THAT WHERE NECESSARY AND PROPERTY OCCUPIED
BY MMIA WILL BE REREQUISITIONED FORTHWITH AND ITALIAN ARMY
AUTHORITIES WILL BE REQUESTED TO RE-REQUISITION. REQUEST YOUR
COMMENTS ON ABOVE

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910A

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AG/1042/2 GGH/ms
1 November 1946

Ref p. 231A

SUBJECT : Jurisdiction over Merchant Seamen.

TO : Navy Sub-Commission.

Herewith the opinion of this Division on the question raised in Mr. Trouttman's letter of 25 September 46. (at p. 216A)

1. In territory restored to Italian administration, Italian authorities have full power to seize and arrest any Allied national committing an offence against Italian Law, provided the said national is not a member of the Allied Forces or a camp follower or is not protected by a covenant whereby the Italian State has agreed to abandon jurisdiction.

2. The Italian authorities are not concerned with American or British or any other Allied legislation covering offences of Allied merchant seamen. If such seamen do not belong to any of the categories specified in para 1, they are common offenders under the law and are triable by the local Courts, just as much as a British merchant seaman is triable by American Courts for any offence committed on American soil.

This is a matter of sovereignty and wherever the sovereignty of the Italian State has been restored there can be no restrictions to its scope unless under an agreement to which the Italian State must be a party. 4.1

3. The answer to 3 is Yes.

4. The answer to 4 is Yes, provided the ship is a trader and not a warship or a vessel carrying Allied war material.

G.G. HAMBRO,
Lt.Colonel,
Deputy Chief Legal Advisor.

Copy to : File 4005

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FILE

209A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AG/4305/L

HT/nm
29 October 1946

SUBJECT : Registration in Zara of a decree of adoption made by the Court of Appeal, Trieste.

TO : Dr. Slaven Smodlaka
Acting Representative of Jugoslavia
Advisory Council for Italy,
ROME.

I send herewith a letter from the Registrar of the Court of Appeal in Trieste enclosing a Decree of Adoption made by the Court in respect of GIACCHI Pompilina. In accordance with the terms of the Civil Code such decree requires to be registered in the Commune of Zara.

This Division would be much obliged if you would kindly forward the enclosed letter and Decree to Zara in order that it may be duly entered in the Civil Records of the Commune of Zara.

For HUBERT THOMAS. 440
Italian Branch,
For Chief Legal Advisor.

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640

495

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
~~13 CORPS~~
V e n e z i a —— G i u l i a

LEGAL DIVISION

20PA

Date, 5 October 1946

Reference : AMG/LD/20[illegible]/3026

Subject : Ciccosi Pasquelina.

TO : Allied Commission Headquarters

A.P.O. 394

(Att. Legal Sub-Commission)

Attached herewith the records concerning the a/m for your consideration and action.

For the Senior Civil Affairs Officer.

LEGAL SUB-COMMISSION
[illegible]
[illegible]
[illegible]
[illegible]
OCT 14 1946

CHARLES M. MUELLER
Lt. Colonel
Chief Legal Officer

Encl. 1

429

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COFIA

Trieste, 11 1946

CORTE D'APPELLO

Per la Venezia Giulia

Al COMANDO MILITARE ALLEATO
per la Venezia Giulia
(Divisione Legale)

Trieste

Prot. li. 5/1946 Reg. Ad.
28/1946 R.C.C.

Oggetto : Annotazione di decreto di adozione da parte dell'Ufficiale dello Stato Civile di Zara.

L'unito decreto di adozione, pronunciato da questa Corte d'Appello, dovrebbe essere annotato, ai sensi dell'art. 314 Cod. Civ., dall'ufficiale dello Stato Civile del Comune di Zara in margine all'atto di nascita dell'adottata Giacosi Pasqualina d'ignoti, nata a Zara il 29 marzo 1939.

Poichè il territorio di Zara è occupato dall'Esercito jugoslavo, si trasmette il decreto di cui sopra, con la relativa richiesta d'annotazione, a codesto C.M.A. perchè provveda, se sia il caso, ad inviarlo alla competente autorità jugoslava.

IL CANCELLIERE CAPO

F.to LELLI

4 B

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

Subject : Registration of adoption decree, due by Civil Registration Officer of Zara.

The enclosed adoption decree, passed by this Court of Appeal, should be entered, in accordance with Art.314 of Civil Code, on the Civil Records of the Commune of Zara, under the birth certificate of the adopted Giaconi Pasquline, born at Zara by unknown parents on March 29.3.1939.

As the Area of Zara is at present occupied by Jugoslav Forces, we submit to you the mentioned decree of adoption, and the request for its registration, in order that A.M.G., if considering the case being adequate, forward the same to competent Jugoslav Authorities.

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file 5
4005

(GAD)(AHCSWG ALLIED COMMISSION
APO 794
LEGAL DIVISION

20717

GT/ns

AG/[illegible]/L 29 October 1946

SUBJECT : Extradition to Zone "B":
Trial by Italian Courts in Zone "A"
of an offence committed in Zone "B".

TO : S.C.A.O.
A.M.G., VENEZIA GIULIA.

1. Reference your letter 130/AMG/G/SG/2859 of 24 September 1946 addressed to AMG.

2. The question submitted for opinion is whether the Italian Civil Courts in Trieste have jurisdiction to try an offence committed in Zone "B" occupied by the Jugoslav Military Forces.

3. Under Italian law existing in Capodistria and Trieste prior to the occupation of Zones "A" and "B" by the Allied Forces and the Jugoslav Forces respectively the offence in question would be triable by the Civil Courts of Trieste.

4. Under international law the Civil Courts sitting in an occupied territory can always administer municipal law unless prevented by the occupying power.

5. In preventing the Civil Courts in occupied territory from so doing the occupant may have several reasons e.g. its own policy, or obligations arising out of international treaties with foreign powers. In the case under examination it must be assumed that there are no particular reasons on the part of the occupying power itself for preventing the Courts from exercising their normal jurisdictions; indeed, it appears from the documents that the occupant

4.1.

LACAB
See Legal Opinions File
Ltr to AMG, Venezia Giulia dtd 11 March '47

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is quite willing that the municipal Courts in Trieste should exercise jurisdiction in this particular case.

6. We also understand that there is no international treaty which makes it compulsory for the Allied Military Government in Zone "A" to prevent the civil courts from trying cases concerning offences committed in Zone "B", which under the municipal law are triable by the said Courts.

7. For the reasons given above this Division is of opinion that the Civil Courts in Trieste have jurisdiction to try the offence in question.

By command of Rear Admiral STONE:

[illegible] THO Lt.,
Italian Branch,
for Chief Legal Advisor.

Copy to AFHQ:G-5 reference their letter G-5:334.51 A
of 7 October 1946.

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400-05

2064

PERSONAL

CC 851

28 October 1946.

Dear Arch:

In accordance with your oral request, I enclose herewith a memorandum by Colonel Weber on AMG Venezia Giulia General Order No. 70, having to do with confiscation of Fascist profits.

The enclosed is forwarded for such action, if any, as you deem appropriate.

Sincerely,

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Colonel A. L. Hamblen, U.S. Army,
Assistant Chief of Staff, G-5,
Allied Force Headquarters,
APO 512 - U.S. Army.

43

4005

MEMORANDUM ON VENEZIA GIULIA ALLIED MILITARY GOVERNMENT
GENERAL ORDER TO

1. This Order carries signs of having been prepared and published under pressure. It was not submitted to the Legal Division Allied Commission before publication but, following the Chief Commissioner's attention being drawn to it by adverse Italian newspaper comment, has been carefully scrutinised by that Division. It does not appear that the newspaper criticism was justified.

2. The English version of Allied Military Government proclamations and Orders prevails. The English of this Order, however, leaves much to be desired. It is substantially a not very good translation of the provisions of an Italian Decree of the Lieutenant General - No 134 of 1946. The lack of precision in the English of the Order is a serious defect. Parts of the Order are incomprehensible and parts are wide-open to misinterpretation. An Order which leaves those administering it to decide interpretation according to individual taste, and which would embarrass any Court into constructive legislation to interpret it, is a bad one. There are a number of misprints in the Order : two at least are really serious "section" where the word intended is "mention" and "formally" where the word intended is "formerly". Two expressions are frequently used in the Order and are not interpreted - "Public Treasury" in whose favour the profits etc. are expropriated and property confiscated and "Finance Administration" which has various duties under the Order. It is left doubtful who is to collect the profits which are expropriated and the property, or proceeds of it, that is confiscated. This point is [illegible] by a definition of Public Treasury in one

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2. The English version of Allied Military Government Proclamations and Orders prevails. The English of this Order, however, leaves much to be desired. It is substantially a not very good translation of the provisions of an Italian Decree of the Lieutenant General - No 134 of 1946. The lack of precision in the English of the Order is a serious defect. Parts of the Order are incomprehensible and parts are wide-open to misinterpretation. An Order which leaves those administering it to decide interpretation according to individual taste, and which would embarrass any Court into constructive legislation to interpret it, is a bad one. There are a number of misprints in the Order : two at least are really serious "setion" where the word intended is "unction" and"formally" where the word intended is "formerly". Two expressions are frequently used in the Order and are not interpreted - "Public Treasury" in whose favour the profits etc. are expropriated and property confiscated and "Finance Administration" which has powers given under the Order. It is left doubtful who is to retain the profits which are expropriated and the property, or proceeds of it, that is confiscated. This doubt is accentuated by a definition of Public Treasury in one Article of the Order as "Public Treasury (Tesoreria provinciale)" as the authority to whom payment of fascist regime profits may be ordered. The identification of "Public Treasury" in this Article as the "Tesoreria provinciale" raises the assumption that wherever the expression is used elsewhere in the Order it has a different meaning.

The various time limits in the Order are not satisfactory, and one of which expires 30 days from 23rd September 1946 gives the position some mirth.

3. It is the recommendation of the Legal Division Allied Commission

(a) that all action under the Order be suspended forthwith (without any announcement)

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Declassified E.O. 12356 Section 3.3/NND No. 785016

(b) that the Order be substantially re-written and re-printed in its entirety.

4. In view of the recommendation (b) above, and indeed in obtaining the information to prepare this Memorandum, this Division has prepared lengthy notes on the Order, Article by Article. If the recommendation (b) is accepted a copy of these notes could be made and forwarded to Allied Military Government Venezia Giulia in supplement to the generalized comments of this Memorandum.

JOHN K. WEBB,
Colonel, Infantry,
Chief Legal Advisor.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL DIVISION

2054

AC/4005/L

ET/ne
25 October 1946

SUBJECT : German Firms :
"Societa Italo-Tedesca Tabacchi".
Rome.

TO : S.C.A.O.
A.M.G., VENEZIA GIULIA.

1. I enclose herewith letter (with translation) dated 10th October from the Treasury to the Allied Financial Agency, Rome, regarding the liquidation of property in Trieste of the above-named Company.

2. This Division would be glad to know whether the A.M.G., Venezia Giulia, is ready to accede to the Treasury's requests contained in paras 5,6, and 7 of their letter.

3. Please return the 3 enclosed documents with your reply.

By command of Rear Admiral STOKES:

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

401

Encls.

See pp. 282-3 A, 285

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4005

HEADQUARTERS ALLIED COMMISSION
APO 394
Office of the Executive Commissioner

FILE

8 October 1946.

Chief Legal Adviser.

The CC considers that Italian magistrates should be admitted to the bench and directs that you should prepare a letter to G-5, AFHQ enclosing copy of attached and recommending as above.

I believe that all the papers concerning arrangements for the trial are with Public Safety and that the matter is being handled by GHQ, CMF and not by G-5, AFHQ.

So far as I am aware the admission of Italian magistrates to the bench would be an entirely new departure.

There is a file with CA Section in which a GHQ letter lays down as a matter of policy that the Italians can try war criminals and traitors but that all trials in connection with the terror campaign waged by the Germans against the Italian population will all be tried by the Allied authorities.

We should send a copy of our letter to G-5 to GHQ, CMF. As there is no head of the CA Section at the moment pending reorganization would you please coordinate this matter.

M. CARR,
Brigadier.
Executive Commissioner.

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

MINISTRY OF FOREIGN AFFAIRS

33140/77

Rome, 4 October 1946.

Dear Admiral,

In the meeting which took place the 25th instant at M.M.I.A. in order to consider the question of trials against the Nazis who have committed crimes against the civilian population in Italy, the Allied representatives announced that the trial for the mass execution at the Ardeatine Caves would open at the end of October or the beginning of November.

The same representatives have pointed out that the eventual participation of Italian magistrates in the Tribunal who will have to judge the principal German criminals in said trial is a matter not pertaining to their competence and should be examined in more appropriate quarters. For this reason, following the instructions of the President of the Council, I address myself to you begging you kindly to take the necessary steps so that - in consideration of the quite particular nature of the crime in question and of the impression it made on the Italian, and especially Roman, population - the Italian Magistrates be admitted to participate in the judging college.

Very cordially yours

/s/ R. Prunas

Admiral Ellery W. Stone
Chief Commissioner
Allied Commission
ROME.

FILE DIVISION

4.3

Declassified E.O. 12356 Section 3.3/NND No. 785016

4097

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Originator's Reference: FX72795

Date/Time of Origin:

Message Centre No: H/7351

Date Time Rec'd: OCT 221815

Precedence: ROUTINE

FROM: AFHQ SIGNED SACMED CITE FHGEG

TO : SCAO VENEZIA GIULIA INFO ALCOM RCME

CONFIDENTIAL

CONFIDENTIAL

Subject is proposed ex-gratia payment to victims on Pola explosion ref VG/AG/FIN/D/7/NTB dated 11 Oct 46.

Para 1.Before giving ruling recommendation of Scao is required.

Para 2.Do you consider that need for such payment is sufficient to out weigh possibility of ex-gratia payment being constued as an admission of a weak legal position on the question of ultimate liaibility.

LEGAL SUB-COMMISSION
CJO-CLA
OCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd OCT 22 1946

AC DIST

INFO ACTION: LEGAL 2

INFO: CHIEF COMMISSIONER

EX COMMISSIONER

FILE

SKELETON

4.B

OCT 22 1946

CONFIDENTIAL

Declassified E.O. 12356 Section 3.3/NND No. 785016

4055

EX72795 CONFIDENTIAL H/7351

OOT 221815

ROUTINE

AFHQ SIGNED SACMED CITE FHGEG

SCAO VENEZIA GIULIA INFO ALCOM ROME

CONFIDENTIAL

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AC DIST

INFO ACTION: LEGAL 2

INFO: CHIEF COMMISSIONER

EX COMMISSIONER

FILE

SKELETON

427

LEGAL SUB-COMMISSION

SUB-COMMISSION

CHIEF COUNSEL

ITALIAN SECTION

Recd OCT 24 1946

OCT 22 1946

CONFIDENTIAL

Declassified E.O. 12356 Section 3.3/NND No. 785016

994

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

VENEZIA GIULIA

LEGAL DIVISION

CMC/zs
9 Oct. 46

FILE REF. : VG/AMG/LD/122/3061

SUBJECT : Pola Explosion

TO : A.F.H.Q.
Attention A003, G-5

1. I herewith enclose for your information a copy of the opinion I have rendered to S.C.A.C. on the Pola Explosion.

CHARLES M. MINNICKE
Lt.Colonel, Infantry
CHIEF LEGAL OFFICER

Copy to : CHIEF LEGAL ADVISOR
ALLIED COMMISSION

Incl.

LEGAL SECTION
ALLIED COMMISSION
VENEZIA GIULIA
RECEIVED

426

Declassified E.O. 12356 Section 3.3/NND No. 785016

C3r/9f

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

XXXXXXXXXXXX

VENEZIA GIULIA

7 October 1946

Reference No.: VG/AMG/LO/

From : Chief Legal Officer

Subject : Pola Explosion

To : S.C.A.O.

1. In response to your inquiry for an opinion on the liability of Allied Military Government for the damages sustained in the Pola explosion August 18, 1946, at which time 65 were killed and 25 were seriously injured, the following is submitted.

2. An analysis of the facts can best be presented by raising and answering 5 questions.

a.) What caused the death and injuries to those people?

b.) Were the mines in themselves dangerous?

c.) To whom did they belong?

d.) Was the explosion caused by neglect of any individual or group of individuals, connected with Allied Military Government or the Military Establishment?

e.) Was anyone responsible either directly or indirectly?

f.) Whose responsibility was it to guard the dump?

A) According to the official report, the explosion was caused by 15 or 20 Naval Depth charges of German and Italian make - 3 Torpedo warheads, TNT depth charges or C Mines, 5 smoke bombs.

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F

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

VENEZIA GIULIA

B) At the official investigation, experts testified that it would have been impossible for the bombs to have exploded unless they were armed with detonators or some similar devise man-made and man-operated; - That the TNT would not explose unless the heat reached 2,000 c/or 300 centograde; and that even if the TNT had caught fire or the smoke bombs had been set afire, still the C Mines would not have exploded without a detonator; - An extract of the testimony of various witnesses at the army hearing is set forth;

1.- 1st Witness Capt. RAIOLO Cosimo - Italien ex Naval Officer had previously examined amm at VERGAROLA and positive that depth charges, which he states were German, could only be exploded by a fuse detonation.

2.- 2nd Witness Lt. A. PERRONI - stetes no fuses in depth charges and confirmed Capt. RAIOLO inspected all amm at VERGAROLA and declared it safe.

3.- 3rd Witness Comd. KLOTOWSKI Allied Military Government - bomb disposal Officer inspected amm at VERGAROLA three times - last occasion 27 July. On this visit all amm in safe condition - would have to be detonated - considers explosion could only hate been caused intentionally.

C) The particular bombs, that exploded were claimed by the Jugo-slevs as War Booty, but were held by the Allied Forces pending a final settlement by the War Booty Commission, and were in charge of the Allied Military Govarnment and the British Garrison in Pola.- 4

In a communication dated 7 may 1946 - from Rear HQ 13 Corps CSM Branch to CSM Pola, it was stated:

1.- "The following items are subject to a War Booty claim by the Jugoslevs:

VERGAROLA	60 Depth Charges with Fuzes
FORTE FISELLA	3 Torpedoes
OFFICINA SILURI	15 Torpedo Heads
Arsenale 869859	

2.- Please ensure that none of the above mentioned are disposed pending claim settlement by the War Booty Commission."

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F

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS
XXXXXXXXXXXXXX

VENEZIA GIULIA

D) 1.- Capt. RAICLO Cosimo and Lt. A. PERONI, Italian Officers Liaison with H 2169 Inf. Bde and Commendente PLATOSKY Emanuele, Bomb disposal Officer for Allied Military Government, all testified that they had inspected the mines and believed they were safe.- They admitted that no signs were posted and that the place was not fenced.

E) The official finding of the Court recited that the explosions were caused by the willful acts of a person or persons unknown.

Paragraph 2 and 3 of the Bde. Commander's opinion is to be noted here:

2.- "All the above amm was examined by experts on several occasions, the most recent occasion being 27th July, and was certified to be safe. I do not consider therefore that it is possible for it to have exploded without being detonated.

3.- The amm was deliberately exploded by person or persons unknown. This is confirmed by the fact that a small preliminary explosion was heard and a fuse was seen burning."

F) The remaining question is as to the responsibility to guard and to post notices of the danger. There appears to be an unresolved question of fact as to whether the road and the responsibility for the guard was determined to be that of the Army Unit or of Allied Military Government.

3. A Governing Body has the responsibility to exercise reasonable precautions for the protection of its citizens, but does not occupy the status of an insurer. In this case, the citizens apparently sensed the danger some months ago. Allied Military Government and the Army authorities were also aware of it and took steps to have the bombs removed and, upon being unsuccessful along those lines because of the claim of the Booty, took steps to have them all rendered safe by the removal of the detonators. It is well to note here that the area where the bombs were stored was far removed from the center of population and in a rather barren area free from habitation.

4. Under principles of International Law cognizance of the law of the sovereign should be granted. The Italian law on the subject therefore should be analyzed.

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

XXXXXXXXXXX

VENEZIA GIULIA

The Court of Cassation held that the State was liable for damages and could be sued in a decision handed down on 31 July 1952,- where the Military Administration was careless in the use of explosives. This decision was based on a claim filed by individuals who were injured by an unexploded handgrenade left in the locality after Military Manoeuvres.

In this case the Court held:

"When, as a consequence of the finding of an unexploded handgrenade, abandoned in a locality where Military manoeuvres have taken place, damages have occurred to private individuals, civil action for indemnification against the Military Administration may be brought before the judicial authority.

The Military Administration, while exercising its functions, must comply with the specific provisions contained in laws and regulations as well as with the fundamental rules of diligence and carefulness in order to avoid damages to third persons. Therefore, the Military Administration must be considered responsible for the damages deriving from the explosion of abandoned ammunitions, which should have been removed."

On the other hand, the Italian Government denied liability in the explosions at Torre del Greco near Naples - whether the evidence there showed adequate provision for guards, I do not know.

5. It is my opinion that the facts of the instant case are not comparable to the handgrenade case cited. It is uncontroverted that the Government of Italy was entrusted to Military men who are presumed to appreciate the dangers of the munitions, and in that respect comparable, but their reliance on the examination of the experts as to the safety of the bombs is justifiable. In the field of tort law and proximate cause, there was here an effective independent agent intervening to render the bombs dangerous (i.e. the act of re-fusing the bombs and the detonation of the fuses). It is not reasonable to assume that such an act might be anticipated, the acute political unrest in the vicinity to the contrary notwithstanding. Such an intervening agency being the proximate cause of the injury would operate to absolve Allied Military Government of liability.

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

XXXXXXXXXXXX

5. The explosion and attendant injuries is in legal effect comparable to injuries arising from "Acts of God" for which it is normal for the Governments to provide some form of disaster relief independent of legal liability. In the instant case such disaster relief is worthy of consideration.

Charles M. [illegible]
Lt. Colonel.
Chief Legal Officer

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FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

L 03A

AC/1005/L

AP/ns
21 October 1946

OGGETTO : Norme per il Commercio Estero.

A : Istituto Nazionale per
il Commercio Estero.
ROMA, Via Torino 107

Quest'ufficio gradirebbe in omaggio copia delle norme per il commercio estero aggiornate al 31 luglio 1946.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

L 03A

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

2024

MT/na
21 October 1946

AG/1005/A

SUBJECT : Villa Narcisana, Capri :
Requisition by Allied Authorities.

TO : Administrative Officer,
Peninsula Base Section
APO 782.

1. I enclose a letter from a Mrs. Louis Becker asking information about Villa Narcisana in Capri which she believes was requisitioned for the use of American officers.

2. This Division would be obliged if you would transmit the letter to the proper U.S. authority in Capri which will be able to supply Mrs. Becker with the information she is asking for.

MURRAY THOMAS,
Italian Branch,
for Chief Legal Adviser.

Encl.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

AC/4005/L

2DIA

Declassified E.O. 12356 Section 3.3/NND No. 785016

preceding paragraph, however, the present problem is regarded as one for the Ministry's discretion.

John S. Cahill,
Colonel, Infantry,
Chief Legal Advisor.

Copy to: AG/4005/I.

TO: The Chief Commissioner

2 DOA

I have read with interest the report Ref. 130/AMG/FIN/D/I/NTB, 24 September 1946 of the C.F.O., AMG XIII Corps on the subject of Financing of Industry in Venezia Giulia. I must confess that I have experienced difficulty in following some of the premises therein set out.

There is a vast difference between a "State" on the one hand and "Government" on the other. A "State", as correctly said in the first three words of the U.S. Constitution, is "We, the people". "Government" on the other hand is but an agency or vehicle created by the "State" which is granted certain powers by the "State," usually embodied in a written constitution, as in the U.S., or an unwritten one, such as in the U.K. But "Government" has and has only such powers as the "State" permit it to have. Usually, as in the U.S. and U.K., such powers are carefully defined and definitely restricted. Hence, when "Government" acts beyond its powers, it does an unauthorized or unconstitutional act.

There is a "State" in Venezia Giulia. Whether the "State" in Venezia Giulia is Italy at the moment, and hereafter may be an independent state, the fact remains that such "State" is not the Allies, nor its agency, Allied Military Government, known as AMG XIII Corps. The latter is not, nor can it ever pretend to be the "State" of Venezia Giulia. It began and will end as "Government".

This is important. In Venezia Giulia, as elsewhere in occupied Italy, the acts of Allied Military Government must at all times be within the permitted limits authorized to "Government". Certainly it is ultra vires the power of "Government" to constitute itself as the "State", and to act as if it were "We, the people".

If, in the instant case, loans are made by "Government" to industry, the power to do so must be bottomed on some grant from the "State" and the mechanics thereof must adhere to those prescribed for observance by "Government". If and when "Government" seeks to act without regard to such powers and the mechanics prescribed in the exercise thereof, the pretended assertion of such powers is beyond the authority of occupational "Government" and fails not only to be a lawful act binding the "State", present or future, but is tortuous in character and may result not only in liability for the officers concerned but also for their national governments for whom they pretend to act.

It is my distinct impression that elsewhere than in Venezia Giulia, Allied

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is Italy at the moment, and hereafter may be an independent state, the fact remains that such "State" is not the Allies, nor its agency, Allied Military Government, known as AMG XIII Corps. The latter is not, nor can it ever pretend to be the "State" of Venezia Giulia. It began and will end as "Government".

This is important. In Venezia Giulia, as elsewhere in occupied Italy, the acts of Allied Military Government must at all times be within the permitted limits authorized to "Government". Certainly it is ultra vires the power of "Government" to constitute itself as the "State", and to act as if it were "We, the people".

If, in the instant case, loans are made by "Government" to industry, the power to do so must be bottomed on some grant from the "State" and the mechanics thereof must adhere to those prescribed for observance by "Government". If and when "Government" seeks to act without regard to such powers and the mechanics prescribed in the exercise thereof, the pretended assertion of such powers is beyond the authority of occupational "Government" and fails not only to be a lawful act binding the "State", present or future, but is tortuous in character and may result not only in liability for the officers concerned but also for their national governments for whom they pretend to act.

It is my distinct impression that elsewhere than in Venezia Giulia, Allied Military Government in Italy rigorously has at all times acted within its powers as "Government" and has carefully adhered to the mechanics prescribed for "Government" action. I do not understand that at any time it has acted as, if it were above and beyond such powers and mechanics, a field which belongs to the people" in their capacity as a "State". If it is seriously contended in the reference report that by some magic, Occupational "Government" in Venezia Giulia has been anointed with the powers of a "State" to make such rules and adopt such mechanics as it in its wisdom may ordain, then the laws of mankind have taken a twist with which I am not presently familiar.

As long as Venezia Giulia military "Government" acts as "Government" within permitted limits, its acts are binding and it becomes unnecessary to conjecture on what the future "State" of Venezia Giulia may be or do. Let that bridge be crossed when it is reached by those whose duty it will be to solve the problems of that day.

The position which "Government" in Venezia Giulia has assumed herein is obscure. From the reference report it might be concluded that in the financing of industry it has exercised sovereign powers of a "State" as distinguished from permitted powers to "Government". On the other hand, in seeking liens after the loans were made, it tacitly admits that its powers are not sovereign after all, but only "Governmental". If it admits the latter, it follows that it is not enough that it secure such liens, but that all the mechanics prescribed for observance by "Government" should be followed.

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Nothing I have said in any manner collides with the powers of the Allies to act in a given factual situation with regard to what they may feel politically or economically expedient even beyond their rights as an occupying power under Articles 18 to 20 of the "Long Terms" Armistice of September 29, 1943. But even in so exceeding their legal rights, this distinction is to be noted. The Allies do not pretend to act as the "State" of an Alien people nor to bind them. Quite to the contrary they act in their own behalf and on their own liability. While in so doing they may hope or expect to be reimbursed for liabilities incurred beyond their contractual rights to recover, the settlement, if any, is a result of a supplementary contractual agreement of the respective States after the liability is incurred, and is not predicated on prior pretended powers, actual or asserted.

12 October 1946

JOHN H. WEIR,
Colonel, Infantry,
Chief Legal Advisor

4:7

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FILE
OCT 6 1946

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AC/1005/L

dd/ns
12 October 1946

SUBJECT : Italian Courts, Zone "A" and "B".

TO : Chief Legal Officer,
VENEZIA GIULIA.

Copies of letters referred to in your letter directed to Lt.Col. Hannaford dated 27 September 1946, subject as above, are enclosed herewith as requested.

By command of Rear Admiral STOUT:

L.J. SUSSKIND,
Major, AGD,
Chief Counsel.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
OCT 14 1946

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

LEGAL DIVISION

CMM/zs

198A

27 Sept. 1946

TO:

Lt.Col. HANNAFORD -

Allied Commission

R O M E

Dear Colonel,

153A

In cheking the files we seem to have mislaid your answer to the attached letter from here - also the answer on the query as to transfer of Legal evidence. As a personal favour I wonder if you could supply me with a copy.

I wish to express my thanks to you for the many courtesies you extended to me during my short stay in Rome. I assure you it was most appreciated.

We are now pretty well settled on our "famous"? UNRRA cases.- I have Capt. Leaning up as a special Prosecutor and we have a large number of the cases set for the latter part of next week.

Still plenty of work for all in Legal.

Regards.

Charles Mammoliti

Lt.

1860

Declassified E.O. 12356 Section 3.3/NND No. 785016

4 July, 1946

Reference No.: 130/AMG/LD

SUBJECT : Enforcement in Zone "A" of Judgments and other process of Courts of Yugoslavia.

TO : A. F. H. Q. - APO 512 -

1.- This HQ has been requested by the First President of the Court of Appeal of Trieste for instructions regarding requests for implementation and enforcement of certain judicial determinations by the Civil Courts of Yugoslavia.

2.- The Civil Courts of Zone "A" have been requested:

a) to give effect to a sentence imposed by the Tribunals of the People of Pogarevac (Yugoslavia) against one Luigi Valentincig, by which the accused was sentenced for "crimes against the people" to 20 years imprisonment and confiscation of his property. The request states that the accused has property in the Area of Gorizia which the Tribunals of Gorizia is asked to confiscate in accordance with the sentence.

3.- This request presents a problem of law and policy. The legal position appears to be as follows:

a) Treaties regarding intercourse between the Courts of Italy and Yugoslavia existed prior to the War, and became part of the Law of Italy by R.D., 13 December, 1923, No. 3182. These treaties covered the extradition of persons accused of crime and the recognition and enforcement of civil judgments and other civil process.

b) The treaties did not include the recognition and enforcement of judgments in criminal cases. This was provided for generally as to all foreign countries by Articles 672 and 675 of the Code of Criminal Procedure. Briefly, these Articles provide for the recording of foreign criminal judgments upon application to the Court of Appeal. The applications are sent from the Ministry of Justice who in turn receives them through diplomatic channels.

c) Italy is still technically at War with the Yugoslavia and, so far as is known, diplomatic relations have not yet been resumed. Therefore, neither the treaties nor the provisions of the Code of Criminal Procedure referred to above can be applied under present circumstances, as a principal of law.

d) The confiscation of property as an additional penalty upon conviction of crime has never been recognised in Italy until recently and then only in connection with Fascist and German collaboration offenses. It is definitely contrary to the philosophy and policy of Italian Law. Therefore, even assuming that the above request

over/

Declassified E.O. 12356 Section 3.3/NND No. 785016

of the Yugoslav Court had been made while Italy and Yugoslavia were still at peace, it is perfectly possible that the Italian Courts would refuse to give recognition to the sentence.

I feel that recognition and enforcement might now be given if diplomatic relations existed between the two countries provided that the foreign conviction was for a crime analogous to the Fascist or German collaboration offenses as recognized by Italian Law and by Orders in Venezia Giulia.

e) It must be added, however, that such an arrangement, unless consented to by the Italian Government, would be of very doubtful legality since Italy under International Law is still the sovereign power in Zone "A".

4.- From a strictly legal point of view, the position seems to be that AMG on behalf of the Italian Government and with their approval can grant the request.

5.- It would therefore appear that a policy decision should be made for guidance in the instant and similiar cases, which decision is hereby requested of your Headquarters. In an attempt to clarify the issues, the following questions are suggested for your consideration:

1.- Shall the Courts of Zone "A" be directed to inform the Courts of Zone "B" that no consideration of the request can be granted during the period of Allied occupation?

2.- Shall an order of confiscation of the property in Gorizia be granted by the Civil Courts of Zone "A" solely on the decision of Zone "B" Courts, irrespective of Italian law as set forth?

3.- Shall, as a condition to granting the order of confiscation, the Courts of Zone "A" satisfy themselves that the case comes within the purview of the collaboration cases referred to in 3 (d)?

4.- If 3 above, shall the final decision require the approval of the Italian Government?

ALFRED C. BOWMAN
COLONEL J.A.G.D.
SENIOR CIVIL
AFFAIRS OFFICER

4

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
A.C.S. 794
LEGAL SUB COMMISSION

197A

AG/4005/L

MT/nn
4 October 1946

SUBJECT : Legal Jurisdiction.

TO : Assistant Chief of Staff,
G-5 : AFHQ.

1. Reference your G-5 : 333.II of 6th September 1946.

2. The question submitted for opinion is whether an Italian citizen who aids and abets a German prisoner of war, held by the U.S. Authorities, to escape commits an offence against Italian law for which he can be tried by an Italian Court. Upon consideration this Sub-Commission was of opinion that the acts in question did not constitute an offence in Italian law. The Procuratore Generale Militare of the Tribunale Supremo Militare was asked his opinion on the point and has replied that there is no criminal responsibility attaching to a person who assists a prisoner of war to escape. The Ministry of Justice was similarly consulted and has expressed the same view.

For the Chief Commissioner :

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

mc/

PROCURA GENERALE MILITARE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

4005/1964

N. 3367 P. G. 177A Roma, li 28 settembre 1946

Risposta al foglio del 16.9.1946 N.AG/4005/L Allegati N.

STAMPERIA REALE DI ROMA

Oggetto: Aiuto a prigioniero di guerra.-

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION
R O M A

^^^^^^^^^^

In relazione alla nota sopra distinta, si fa presente che secondo la legge penale italiana, la evasione del prigioniero di guerra non costituisce reato. Pertanto non può sorgere responsabilità penale per il cittadino che ha aiutato il prigioniero ad evadere, salvo che non si tratti di militare preposto alla custodia dei prigionieri.

Solo in tempo di guerra il fatto potrebbe essere esaminato sotto l'aspetto di un aiuto al nemico o, quanto meno, di una violazione di provvedimento dell'Autorità militare ai sensi dell'art. 93 cod.pen.mil.guerra.

411

IL PROCURATORE GENERALE MILITARE

Indicare sempre nella risposta la data e i numeri della presente.

LEGAL SUB-COMMISSION

Declassified E.O. 12356 Section 3.3/NND No. 785016

F I L E

APO 794
LEGAL SUB COMMISSION
R O M A

^^^^^^^^^^

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Solo in tempo di guerra il fatto potrebbe essere esaminato sotto l'aspetto di un aiuto al nemico o, quanto meno, di una violazione di provvedimento dell'Autorità militare ai sensi dell'art. 93 cod.pen.mil.guerra.

411

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

U. Borsari

Indicare sempre nella risposta la data e i numeri della presente.

LEGAL SUB-COMMISSION
CLO
CLO
Chief Counsel
CLO
Italian Section
CLERKS
SEP 30 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

FTLS

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1952

MT/ms
2 October 1946

AC/4005/5

SUBJECT : Claim by Italian Civilians against U.S. Forces: Ten.Col.Cav.Salvatore ROSSA.

TO : Il Ministero del Tesoro
Direzione Generale del Tesoro, Div.III
ROMA.

I enclose herewith a copy of a letter from the Ministry of War relating to a claim made by Ten. Col. Salvatore Rossa against the U.S. Forces for Damage done to his property. In compliance with the last paragraph on the Ministry's letter the documents relating to the claim are forwarded herewith for your consideration.

GUSCHAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

41.

BL/C.L.

4095

LEGAL SUB-COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CL RKS
SEP 26 1946

24 SET. 1946

19 A

1956

Ministero della Guerra

DIREZIONE GENERALE DEL GENIO

Uff. Centrale di Controllo per le Requisizioni A.A.

Divisione 11 Sez. I

Prot. N. 11963 Rif. Allegati

Risposta al Foglio del 12.7.46

Div. Sez. N. 30/4025/I

OGGETTO Richiesta di indennizzo inoltrata da civili italiani alle Forze Americane.

141A

1) E' stato chiesto all'Ufficio del Genio Militare per le Requisizioni A.A. di Firenze per quali ragioni non ha ricevuto il reclamo del Ten. Col. Massa, nonostante le disposizioni in materia diramate da questo Ministero con circolare n. VII/53657/Req del 25 luglio 1946.

Si fa riserva di ulteriori comunicazioni in proposito.

2) E' vero che in base ad un accordo intervenuto tra le Forze Alleate e le Autorità Italiane, tutti i reclami del tipo di quello del Ten. Col. Massa a partire dal 1 gennaio 1946, debbono essere inviati al Governo Italiano e per esso al Ministero della Guerra, Direzione Generale del Genio.

Per la liquidazione di tali reclami, però, nessuna disposizione esecutiva è all'ora pervenuta.

Infatti, il Ministero del Tesoro, all'uopo interessato non ha ancora dato conoscere se la competenza in materia di liquidazioni danni [illegible] Ministero della Guerra nè ha reso [illegible] note

4/9

Declassified E.O. 12356 Sec. 3.3/NND No. 785016

1) E' stato chiesto all'Ufficio del Genio Militare per le Requisizioni A.A. di Firenze per quali ragioni non ha ricevuto il reclamo del Ten. Col. Mossa, nonostante le disposizioni in materia dimanate da questo Ministero con circolare n. VII/63667/Rag del 25 luglio 1945.

Si fa riserva di ulteriori comunicazioni in proposito.

2) E' vero che in base ad un accordo intervenuto tra le Forze Alleate e le Autorità Italiane, tutti i reclami del tipo di quello del Ten. Col. Mossa a partire dal 1 gennaio 1946, debbono essere inviati al Governo Italiano e per esso al Ministero della Guerra, Direzione Generale del Genio.

Per la liquidazione di tali reclami, però, nessuna disposizione esecutiva è sinora pervenuta.

Infatti, il Ministero del Tesoro, all'uopo interessato non ha ancora fatto conoscere se la competenza in materia di liquidazioni danni resterà affidata all'Amministrazione della Guerra nè ha reso nota le norme esecutive e le disposizioni di dettaglio relative alle liquidazioni stesse.

3) Peraltro, poichè il reclamo del Ten.Col. Mossa non si riferisce a danni subiti in seguito a requisizione di immobile ma sibbene alla mancata restituzione di mobili asportati dalla sua abitazione, competen-

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL SUB COMMISSION

1947

MF/ne
27 September 1946

AC/4005/L

OGGETTO : Iscrizione ipotecaria sull'immobile in Trieste della Soc.Riunione Adriatica di Sicurtà.

A : Ministero Industria e Commercio
Ispettorato Assicurazioni Private.

Con riferimento a V/ nota Prot. N° 112956 del 28-8-1946 diretta alla Commissione Alleata, Sottocommissione Finanze si fa presente che la questione è attualmente allo studio presso questa Sottocommissione.

Data la delicatezza della questione preghiamo codesto spettabile Ufficio di mettersi in contatto con il Dott. Fiore (489-081) Int. 274) per alcune necessarie chiarificazioni.

Con la migliore considerazione

G.G. HAEMAFORD,
Lt.Colonel,
Deputy Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
A.C. 794
LEGAL SUB COMMISSION

192A

MT/ns
27 September 1946

AC/4005/L

SUBJECT : Request for Legal Advice.

TO : Sig.Angelo VANZI
Via Faentina Nº 127
FIRENZE.

1. I have to acknowledge the receipt of your letter of 10th inst. addressed to the Chief Commissioner, asking to be advised as to the steps you should take to regain the custody of your two children taken to England by your wife in 1945.

2. It appears from the document enclosed in your letter that while you were a prisoner of war and unaware of the proceedings your wife obtained an order from the Court in Firenze for the custody of your two children, and took them to England. On appeal this order was set aside and the custody of the two children granted to you.

3. If you wish to take steps to have the order served in England, you shall communicate with the Ministero degli Affari Esteri, as the matter has to be done through diplomatic channels. To be made effective in England the order of the Court in Firenze would require approval by the English Courts, and in order to obtain such approval it would be necessary for you to appoint a legal representative in England.

407

MERCURY THOMAS,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

ALLIED [redacted] COMMISSION

INTER-OFFICE MEMORANDUM

FILE No.

SUBJECT: Letter from Sig. ANGELO VANZI

23 September 1946

TO : Legal Sub Commission

1. Attention invited to attached letter from Sig. ANGELO VANZI addressed to the Chief Commissioner. Request that your Sub-Commission take appropriate action and reply direct to writer.

EDWARD D. S. SULLIVAN,
Major, Air Corps,
CSO to CC.

416

Florence, 10th September 1946

To the Admiral
ELLERY STONE
Chief of Allied Commission
Via Veneto
R O M A

Dear Sir,

Owing to a terrible familiar position in which I found myself at present, I take the liberty to write You this letter Sir, in order to get some help or, otherwise, a useful advice.-

But now, hoping not to annoy You, I think I had better to give You a description on the matter:

In 1943 I left Florence for Rumania transfered there by the Firm where I was working as a optical technician.- At the time of my departure I left in Florence, in a good economical position, my wife named MARGARET LEVITHORUTON, a British born, but Italian citizen by marriage, with my two little daughters, Fiorella VANZI 6 years old and ROBERTA VANZI of 4.-

While I Was abroad, until September 1943, I used to write Home very often; but afterward I was captured by the germen and closed in a concentration camp (Arges - Rumania) until I was freed by the Russian on the 24 of August 1944.-

After beeing in a Rumania hospital for genaral weakness, I could get safely Home where a terrible surprise waited

Declassified E.O. 12356 Section 3.3/NND No. 785016

But now, hoping not to annoy You, I think I had better to give You a description on the matter:

In 1943 I left Florence for Rumania transfered there by the Firm where I was working as a optical technician.- At the time of my departure I left in Florence, in a good economical position, my wife named MARGARET LEVYTHORNTON, a British born, but Italian citizen by marriage, with my two little daughters, Fiorella VANZI 6 years old and ROBERTA VANZI of 4.-

While I Was abroad, until September 1943, I used to write Home very often; but afterward I was captured by the germen and closed in a concentration camp (Arges - Rumania) until I was freed by the Russian on the 24 of August 1944.-

After beeing in a Rumania hospital for genaral weakness, I could get safely Home where a terrible surprise waited for me. While I was away, and specially after the Allied Forces entered Florence, my wife, may be on resenting Her race's price, decided to leave Florence for England,(People told me she had a British High Officer of Florence Command as a lover), taking with Her my Children, hoping not to give me them back any more.- In such a way , and a cinic style She wrote me a letter.- But on the contrery the Florence Law Court, according to Italian law, has entitled me to keep the Children.- But now the trouble is that at present I cannot get to England

./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

Angelo Vanzi

Sender's address:

Encl.:

Yours,

Many thanks for your kind reply and thanking that you will report this my application favourably I remain, Sir, your very gratefully and in anticipation I thank you very much.

Waiting for your kind reply and thanking that you

because born in Italy by Italian parents.-

is a Italian by marriage, while my two daughters are Italian

enclose documents testify that according to Italian law, my wife

And now, in order to clear the matter , herewith I

Daughters, after beeing 5 years without seeing them, I am ready to collect the required money also by selling my overcoat.-

because it is long time that I am waiting for British permission on my passport.-

In order to get my daughters back because of my money shortage and

So, I beg to apply to you,Sir, for this:

1) Tell me if there is any change to oblige my wife to hand my Daughters back here in Florence and whether you might help me for that purpose.-

2) If the first thing is impossible, whether you might get my passport' permission as soon as possible from the British Consulate of Florence, because rather than remaining without my very gratefully and in anticipation I thank you very much.

Yours,

2) If the first thing is impossible, whether You might get my passport' permission as soon as possible from the British Consulance of Florence, because rather than remaining without my Daughters, after beeing 3 years without seeing them, I am ready to collect the required money also by selling my overcoat.-

And now, in order to clear the matter , herewith I enclose documents testify that according to Italian Law, my wife is a Italian by marriage, while my two Daughters are Italian because born in Italy by Italian Parents.-

Waiting for Your Kind replay and trusting that You will regard this my application favourably I remain, Sir, Your very gratefully and in anticipation I thank You very much.

Your,

Paul Angeli

401

Sender's address:

Angelo Vanzi

Via Faentina nº 127 - Florence

Declassified E.O. 12356 Section 3.3/NND No. 785016

F.to Fabbri Cancelliere.

IL GIUDICE ISTRUTTORE

Visto il ricorso che precede rimette le parti dinnanzi sè medesimo all'udienza del 26 Giugno 1946 ore 9 per la discussione nella richiesta modifica dei provvedimenti provvisori di separazione coniugale.

Da notificare

Firenze 18/6/1946

F.to A. Gemboji.

F.to Adesso Canc.

Fatto estratto

18/6 - F.to Adesso Canc.

Successivamente, il giorno 26 Giugno 1946, ad ore 9, dinanzi nel dr. Adriano Gemboji, assistito dal Cancelliere sottoscritto , sono comparsi:

Iavv. Dino Lattes per l'attrice Levy Margaret;

L'avv. Antonio Baroni per il convenuto Venzi Angelo

401

Declassified E.O. 12356 Section 3.3/NND No. 785016

Visto il ricorso che precede rimette le parti dinnanzi sè medesimo all'udienza del 26 Giugno 1946 ore9 per la discussione nella richiesta modifica dei provvedimenti provvisori di separazio e coniugale.

Da notificare

Firenze 18/6/1946

F.to A. Gambogi.

F.to Adamo Cane.

Fatto estratto

12/6 = F;to Adamo Cane.

Successivamente, il giorno 26 Giugno 1946, ad ore 9, dinanzi noi dr. Adriano Gambogi, assistito dal Cancelliere sottoscritto , sono comparsi:

Iavv. Dino Lattes per l'attrice Levy Margaret;

L'avv. Antonio Baroni per il convenuto Vanni Angelo

L'Avv. Baroni insiste nella istanza di cui al precedente ricorso.

L'Avv. Dino Lattes eccepisce: che l'attuale processo di congiunzione per la separazione personale dei coniugi è sospeso per sospensione necessaria conseguente a pregiudiziale penale e cioè per l'Art. 3 C.P.P. e codice (sequestro conservative ed istruzio-

Declassified E.O. 12356 Section 3.3/NND No. 785016

ne preventiva art. 699 C.P.P.) inoltre l'ordinanz presidenziale può essere modificata dal Giudice istruttore soltanto se si verificassero mutamenti nelle circostanze, circostanze che non si sono modificate oggia ma che esistevano anche prima della sospensione del procedimento e che comunque dovevano esser fatte conoscere al deducente mediante la notificazione del ricorso. In denegatissima ipotesi la prosecuzione e rinnovazione del processo avrebbe potuto avvenire in altro modo: è in ciò in seguito a motivato ricorso al G. I. e conseguente decreto di fissazione di udienza, emhedue da notificarsi al deducente ai termini degli ultimi due cpv. Dell'Art. 297 C.P.C.

L'Avv. Perone insiste nel ricorso

NOI GIUDICI

ritenuto che la speciale facoltà delegata al G.I. dell'ultimo cpv. verso dell'Art. 705 C.P.C. possa essere esercitata in ogni stato del procedimento,

Declassified E.O. 12356 Section 3.3/NND No. 785016

le circostanze, circostanze che non si sono modificate oggi ma che esistevano anche prima della sospensione del procedimento e che comunque dovevano essere fatte conoscere al deducente sedimte la notificazione del ricorso. In dannatissima ipotesi la prosecuzione e riassunzione del processo avrebbe potuto avvenire in altro modo: e in cioè in seguito a motivato ricorso al G. I. e conseguente decreto di fissazione di udienza, sebedue da notificarsi al deducente ai termini degli ultimi due cpv. Dell'Art. 297 C.P.C.

L'Avv. Bruni insiste nel ricorso

SUL GIUDICE

ritenuto che la speciale facoltà delegata al G.I. dell'ultimo cpv. dell'Art. 708 C.P.C. possa esercitata in ogni stato del procedimento,

PROVVEDE

l'ordine di accompagnamento dei figli minori Fiorella e Roberta alla madre Levy Thornton Margaret nei Vanzi di cui all'ordinanza Presidenziale del 7 luglio 1945, disponendo che i medesimi figli minori vengono affidati alla custodia del padre Vanzi Angelo

L. C. S.

Declassified E.O. 12356 Section 3.3/NND No. 785016

201/2

F.to Avv. Enrico Antonio

F. to Avv. Dino Lattes

F.to Gambogi

F.to Adamo Cenc.

Per copia conforme al suo originale

Dalla Cancelleria del Tribunale Civile e Penale di

Firenze, li 26 luglio 1946

IL CANCELLIERE

f.to R Rossi

Per copia conforme alla prima copia

Visto per autenticazione

Firenze, li 26 - 7 - 1946

IL CANCELLIERE

Rossi

Declassified E.O. 12356 Section 3.3/NND No. 785016

per copia conforme al suo originale

Dalla Cancelleria del Tribunale Civile e Penale di
Firenze, li 26 Luglio 1946

IL CANCELLIERE
f.to R Rossi

per copia conforme alla prima copia

Visto per autenticazione

Firenze, li 26 - 7 - 1946

IL CANCELLIERE

Rossi

IL PRESIDENTE

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
2484

Office of the Economic Adviser,
British Embassy,
Rome.

November 27th, 1945.

For Chief Secretary,
Civil Affairs Branch,
G. . . .
. . . .

Copy to:
U.S. Allied Commission,
Legal Sub-Commission,
Rome.

LEGAL SUB - COMMISSION
NOV 29 1945

Subject: Societa Elettrica Colombo Vigliano -
Societa Nazionale per le Utilizzazioni
Imprese Elettriche

Your letter No. 1332/Legal/G. addressed to Legal Sub-Commission, . . . C., dated November 19th has just been referred to this Office for attention.

The published reports of the Italian Association of Joint Stock Companies show that Societa Industrie Elettriche [illegible] as a private and not a para-statal institution.

Inquiries made at the Association confirm that S.I.E.E., S.E.C.I., and S.N.I.E. are all to be considered subsidiary companies of the Society.

Societa de Elettricita which is one of the group of large private electrical undertakings operating in North Italy. Societa's shares are quoted on all the Italian Stock Exchanges.

Declassified E.O. 12356 Section 3.3/NND No. 785016

LEGAL SUB - COMMISSION
CJO - CIA
OCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd NOV 29 1946

1005

FILE
AMA

MEMO TO THE CHIEF COMMISSIONER:

1. As directed, accompanied by Colonel Battensby (E), I have journeyed to Trieste where, in a series of extensive oral conversations, the position of Venezia Giulia in relation to loans was duly explored, and the substance thereof was agreed upon, and thereafter was reduced to writing.

2. Such position is reflected in a written summary hereto attached (see Flag "A") and reflected in paragraphs 1 to 10.

3. Briefly, the position may be summarized as follows:

a) With the occupation of Northern Italy, including Venezia Giulia, the Supreme Allied Commander elected to segregate Venezia Giulia into a region separate and apart from the remaining portions of occupied Northern Italy. While the reasons for such decision were not precisely stated, it was fairly to be assumed that the uncertain political future of Venezia Giulia prompted the decision.

b) Italian law as of 8 September 1943 was adopted as the basic law of Venezia Giulia. However, Italian decrees promulgated since 8 September 1947 were not to be implemented. Because of this exclusion, and the mandate that "No steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation," there was vested in Venezia Giulia Military Government an i n d e p e n d e n c e in the choice of new Italian decrees to be instituted, and by the same token an i n d e p e n d e n c e in the w o r d i n g thereof, which i n d e p e n d e n c e was to be exercised by Venezia Giulia Military Government in i t s sound discretion

Declassified E.O. 12356 Section 3.3/NND No. 785016

follows:

a) With the occupation of Northern Italy, including Venezia Giulia, the Supreme Allied Commander elected to segregate Venezia Giulia into a region separate and apart from the remaining portions of occupied Northern Italy. While the reasons for such decision were not precisely stated, it was fairly to be assumed that the uncertain political future of Venezia Giulia promoted the decision.

b) Italian law as of 9 September 1943 was adopted as the basic law of Venezia Giulia. However, Italian decrees promulgated since 9 September 1943 were not to be implemented. Because of this exclusion, and the mandate that "No steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation," there was vested in Venezia Giulia Military Government an i n d e p e n d e n c e in the choice of new Italian decrees to be instituted, and by the same token an i n d e p e n d e n c e in the w o r d i n g thereof, which i n d e p e n d e n c e was to be exercised by Venezia Giulia Military Government in i t s sound discretion

c) Armed with this i n d e p e n d e n c e, when confronted with the Italian decree in question, wherein loans to industry guaranteed by the Italian Government were authorized, it was determined by Venezia Giulia Military Government in its sound discretion that if loans were granted under the provisions of the Italian decree and default was thereafter made in the payment of the loans, the Italian Government would be entitled to foreclose the lien and thus come into Venezia Giulia, - though expressly excluded from the Region by the mandate of the Supreme Allied Commander. To avoid such unfortunate situation and to indicate clearly by its action that Allied Military Government in Venezia Giulia was not concerned in the ultimate disposition of the territory, the order (No._____) was duly drawn, the terms of which admittedly do not follow the subject matter of the decree.

Declassified E.O. 12356 Section 3.3/NND No. 785016

It was intended by the order to show that Venezia Giulia was an i n d e p e n d e n t region, free from the Italian Government, which is excluded from such region. Consequently, the loans were made by the i n d e p e n d e n t region of Venezia Giulia in i t s favor.

It is interesting at this point to observe that the order of Venezia Giulia did not follow the substance of the Italian decree; rather, it followed the procedure employed by AMG in occupied Italy prior to the promulgation of the decree. It is here pointed out that the prior procedure followed by AMG was not a "loan" within the well-understood meaning of the word. Accurately, AMG made "advancements" either against existing debts already owed or contemplated to be owed by the Italian Government to the firms in question. Unhappily, the element of an existing debt, actual or contemplated, is absent in the Venezia Giulia cases. To meet such situation, emphasis was placed by Venezia Giulia on securing a "lien". Under the Italian decree, a lien was of secondary importance, - as will be hereafter pointed out.

4. If the facts are as I have stated them, - and certainly in the writing of an opinion it behooves me strictly to adhere to the facts - then the question occurs, "Was Venezia Giulia correct in assuming that t h e position was within the boundaries of the directive of the Supreme Allied Commander?"

A careful reading of the directive, and of the intent reflected from the language used therein, leads me to conclude that Venezia Giulia has given a far greater breadth in its interpretation of such document than was factually warranted.

O P I N I O N

Declassified E.O. 12356 Section 3.3/NND No. 785016

existing debt, actually [illegible]
to be owed by the Italian Government to the firms in question. Unhappily, the element of an existing debt, actual or contemplated, is absent in the Venezia Giulia cases. To meet such situation, emphasis was placed by Venezia Giulia on securing a "lien". Under the Italian decree, a lien was of secondary importance, - as will be hereafter pointed out.

4. If the facts are as I have stated them, - and certainly in the writing of an opinion it behooves me strictly to adhere to the facts - then the question occurs, "Was Venezia Giulia correct in assuming that its position was within the boundaries of the directive of the Supreme Allied Commander?"

A careful reading of the directive, and of the intent reflected from the language used therein, leads me to conclude that Venezia Giulia has given a far greater breadth in its interpretation of such document than was factually warranted.

O P I N I O N

With the collapse of enemy resistance, the Supreme Allied Commander was confronted with the problem of establishing under International Law an occupational government for the newly liberated areas of Northern Italy. Included, of course, was Venezia Giulia. At the time of the collapse, all of Northern Italy belonged to the Italian State, and under Italian sovereignty was administered by a government created by the Italian State. By the provisions of International Law of War of Occupation, whereas the Italian State continued as sovereign, the Supreme Allied Commander, as head of the occupying force, had power to and in fact did set up Allied

Declassified E.O. 12356 Section 3.3/NND No. 785016

Military Government in such areas, in lieu of and in the nature of trustee for the government established by the Italian State for such areas, including Venezia Giulia

5. It is of no legal consequence that for administrative purposes the Supreme Allied Commander elected to treat Venezia Giulia as a region s e p a r a t e from the rest of Northern Italy. The l e g a l pattern for occupational government to follow in Northern Italy, including Venezia Giulia, remained the same. In each, Italian sovereignty was fully recognized by establishing as basic law the Italian Law of 9 September 1943. The instruction to Venezia Giulia that "No steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation" in no way altered the legal pattern to be followed in Venezia Giulia. The most that can be said of this instruction is that it was a timely warning by the Supreme Allied Commander to Allied Military Government that the administrative procedure to be followed by it would severely adhere to the law of occupation with utmost political disinterest in its actions, leaving to the political agencies of the Allies the solution of the political future of Venezia Giulia. This premise is plainly borne out by the language used in the proclamation of the Supreme Allied Commander, of June 1945, wherein Italian law as it existed on 8 September 1943 was plainly prescribed as the basic law for Zone A under the Administration, of Venezia Giulia Allied Military Government. By such proclamation, Venezia Giulia legally became and remains technically Italian until the promulgation of the Peace Treaty. Whereas Allied Military Government in the nature of a trustee for the Italian State became the government of the separate region of Venezia Giulia, Allied Military Government as a whole (including the Allied Commission) was admonished to act in all things without anticipation of how the ultimate political destiny of the Region was to be decided.

Further, under the plain language used, Venezia Giulia, like all other regions of occupied Italy, was to continue under the technical administration of the Allied Commission, - which acts for the Supreme Allied Commander, - and is a chain of command to higher authority.

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the Supreme Allied Commander to Allied Military Government that the administrative procedure to be followed by it would severely adhere to the law of occupation with utmost political disinterest in its actions, leaving to the political agencies of the Allies the solution of the political future of Venezia Giulia. This premise is plainly borne out by the language used in the proclamation of the Supreme Allied Commander, of June 1945, wherein Italian law as it existed on 8 September 1943 was plainly prescribed as the basic law for Zone A under the Administration, of Venezia Giulia Allied Military Government. By such proclamation, Venezia Giulia legally became and remains technically Italian until the promulgation of the Peace Treaty. Whereas Allied Military Government in the nature of a trustee for the Italian State became the government of the separate region of Venezia Giulia, Allied Military Government as a whole (including the Allied Commission) was admonished to act in all things without anticipation of how the ultimate political destiny of the Region was to be decided.

Further, under the plain language used, Venezia Giulia, like all other regions of occupied Italy, was to continue under the technical administration of the Allied Commission, - which acts for the Supreme Allied Commander, - and in a chain of command to higher authority.

The establishment of Venezia Giulia Military Government into a s e p a r a t e region fell far short of establishing it into an i n d e p e n d e n t region, clothed with the attributes of an "independent state". In this connection, it is here timely to be observed that a n y assumption, - expressed or implied, - that Venezia Giulia is an "independent state" violently collides with the mandate of the Supreme Allied Commander that "No steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation", for the simple reason that by the very assumption of such position, an indication is given to the world that the territory in question is earmarked for ultimate disposition other than to Italian sovereignty.

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Neither in law nor in fact can it be seriously contended that by making Venezia Giulia a separate region, it became an independent state. If it became an independent state, it would be independent to act for all purposes of personnel, supply, legislation and administration, without regard to the Allied Commission or Allied Force Headquarters. It is submitted that it is much too late now to contend for such independence, after a long course of dealing as a mere separate region fully answerable in this chain of command to higher authority. As these two statuses hopelessly conflict, they cannot exist side by side at one and the same time.

I am unable to go along with the premise that whereas the Italian Law of 9 September 1943 was adopted as basic law, all Italian decrees promulgated after 9 September 1943 were not to be implemented, and consequently an independence was vested in Venezia Giulia, not only in the choice of such decrees but their wording as well, because of the mandate not to act in indication of the ultimate disposition of Venezia Giulia.

To begin with, the choice of decrees to be implemented in occupied territory at no time during occupation was vested in a region. Quite to the contrary, this choice at all times was vested elsewhere. Whereas the Supreme Allied Commander elected to make Venezia Giulia a separate region, the position of the Allied Commission in the chain of command was expressly continued, in the same manner as in other regions not made separate.

If this be true, - and it cannot be seriously denied, - this provision was not directed to Venezia Giulia alone, but to the Allied Commission in the chain of command where the power was at all times vested and continued to remain, in the choice of decrees to be implemented.

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If this be true, - and it cannot be seriously denied, - this provision was not directed to Venezia Giulia alone, but to the Allied Commission in the chain of command where the power was at all times vested and continued to remain, in the choice of decrees to be implemented.

Further, the idea of independence of choice in the wording of a decree was expressly negated by the order of the Supreme Allied Commander which provided that whereas, when a new decree was decided upon, the s u b j e c t m a t t e r would be incorporated in the order.

Reading all these provisions together, the following simple formula concerning new Italian legislation was formulated for Venezia Giulia:

> For special reasons, - no doubt political in character, - Venezia Giulia is segregated from the rest of Northern Italy, and will be operated as a separate region, but like other regions, under the Allied Commission in its chain of command with higher authority.

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In lieu of implementing Italian decrees by endorsement thereon, - as done in other regions, (to foreclose political agitation), the implementation will be accomplished by a Region order. While the subject matter of Italian decree decided upon to be implemented in Venezia Giulia will be incorporated in the order, (to foreclose political agitation), no steps will be taken (in drafting the wording of the order) which support or appear to support or prepare for any ultimate disposition of the area to any claimant nation.

It is urged that had the loan been made after the pattern of the Italian decree, upon default in payment, the Italian G o v e r n m e n t would be entitled to foreclose the lien and seize the properties, although the Italian Government was expressly excluded from Venezia Giulia.

Such argument is unsound. It overlooks the premise that the Italian Government was excluded from a l l occupied territory, and not merely from Venezia Giulia. As I have heretofore pointed out, the principal function of occupational government in the nature of a trustee is to replace during occupation the government created by the Italian State. Unlike an agent who acts solely on orders of his principal, a trustee acts in his own right within the framework of his trust powers. If, for example, in the exercise of trust powers, a trustee is authorized to make a loan in behalf of the estate being administered, an incident to the making of such loan is the power to receive payment when due or to foreclose on the security upon default. The grant of the power to make the loan carries with it all powers necessary to carry the contract of loan to its natural end, which include the powers to collect or to foreclose. It is error to contend that having made a loan, repayment or foreclosure is vested in personalities other than the trustee. These rules are elemental.

35

Was the transaction authorized by the Italian

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be entitled to foreclose the lien and seize the properties, although the Italian Government was expressly excluded from Venezia Giulia.

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Was the transaction authorized by the Italian decree actually a "loan"?

In Republican Italy, where in normal times the Italian State functions thru the Italian Government, there are broad powers vested by the Italian State in the Italian Government which are familiarly known as "police powers". Actually, such powers are vested in some form by states to <u>every</u> government. Broadly defined, it is a power to do any act within constitutional boundaries that has for its object the preservation of the life, health, morals and well-being of the people of the state. If the people of the state are protected, the state is protected. The state is, "We, the people".

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With grave disorders threatened by reason of unemployment, seriously effecting the very existence of the state, under the broad police powers vested in government and the mandatory duty to exercise such powers, the Italian Government might well have lawfully parceled out Italian funds as a "dole", (this was done in Britain, as I recall) or as a W.P.A. (this was done in the United States) or as a loan to private industry for the purpose of relieving unemployment or unrest, (as seemingly was contemplated by the Italian decree). The last plan has this virtue: if it worked successfully, the money would come back to the Italian treasury for further use. In the event the expenditure to industry was lost beyond collection, as the expenditure was a lawful one from the beginning, made within the range of permitted choice of methods, no one could complain of the expenditure being unlawful.

The Italian decree in question without doubt was passed under the broad police powers vested in the Italian Government by the Italian Republic. It was optional to Allied Military Government in its nature as trustee for the Italian Government, whether the decree should be implemented in Venezia Giulia, admittedly under Italian sovereignty. If decided in the affirmative, the transaction would not be a "loan" in the true sense but rather an expenditure for the Italian state in the region of Venezia Giulia. By following the decree (observed elsewhere by Government in republican Italy), unquestionably such authorized expenditure by Allied Military Government could never be questioned by the Italian State. Allied Military Government simply would be following a plan authorized for the expenditure of Italian funds by the Italian Government under authority of the Italian State.

While Venezia Giulia has proceeded in the transactions as if lending out on security the taxpayers' money, still, when all the mechanics followed are carefully studied, the "loans" were not "loans" but appear to be a substantial exercise of the police powers as I have outlined them, and seem to have been [illegible] by everyone, except, perhaps, Venezia

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While Venezia Giulia has proceeded in the transactions as if lending out on security the tax payers' money, still, when all the mechanics followed are carefully studied, the "loans" were not "loans" but appear to be a substantial exercise of the police powers as I have outlined them, and seem to have been so understood by everyone, except, perhaps, Venezia Giulia! . (Under the reasons here given, under the Italian decree obviously a lien is not of primary importance and properly so.) To foreclose any and all questions of irregularity, even now the so-called "loans" should be brought in line as Italian expenditures, under the "police powers" theory. In so doing, after all, this is what should have been done under the Supreme Allied Commander's orders.

At this point it is interesting to observe that there is distinct evidence of two conflicting view points existing side by side and at the same time concerning the present status of Venezia Giulia. In an envelope hereto attached (see Flag "B") will be found two revenue stamps which I personally obtained from civilians who had purchased cigarettes in Trieste. These stamps recite, "Monopoly of the S t a t e of Venezia Giulia." Unquestionably, these stamps have been issued with the knowledge, if not by the invention, of Allied Military Government, Venezia Giulia.

The other view is set out in a statement of educational policy, given to the press, and published

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in "Basic News", (88th Division) Page 13, which I attach for information (see Flag "C").

Each view is public knowledge. One is right; one is wrong. Which one is the world at large entitled to believe?

Prior to going to Trieste, much has been written and said about the "State of Venezia Giulia". From the long and illuminating discussions had at Trieste, I came to the conclusion that whatever was said concerning the State of Venezia Giulia in prior writings and discussions was an inexpert resort to terms employed in describing the independence of Venezia Giulia, not only from Italian sovereignty, but sub-consciously from every other authority.

It would serve no useful purpose for me to repeat at this point the statement I have heretofore made on the distinction between "State" and "Government". The views expressed in the statement of educational policy are in accord with the distinctions there made. In my opinion, the views are in full accord with the directive of General Alexander, as claimed in the educational news item (Flag "C") and evidenced by the language and intent of the directive as I have construed it.

If it is seriously contended that by making it a separate region, the directive went further and made Venezia Giulia an independent region, and by some mystic powers it became a "state", then only by the operation of such mystic powers can this be true, nor it is beyond the powers of military commanders by use of military orders to create a "state" where none existed.

If, on the other hand, what has been written or said about the "State of Venezia Giulia" were inexpertly used only to convey the i n d e p e n d e n t position of Venezia Giulia from Allied Control, a readily obnoxious position is taken, if the views

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If it is seriously contended that by making it a separate region, the directive went further and made Venezia Giulia an independent region, and by some mystic powers it became a "state", then only by the operation of such mystic powers can this be true, for it is beyond the powers of military commanders by use of military orders to create a "state" where none existed.

If, on the other hand, what has been written or said about the "State of Venezia Giulia" were inexpertly used only to convey the i n d e p e n d e n t position of Venezia Giulia from Allied Control, an equally obnexious position is taken, if the views of interpretation of the Supreme Allied Commander's directive which I have here given are taken as sound.

Notably is this true if the i n d e p e n d e n c e views are interchangeably used by Venezia Giulia with the public as meaning the same and same thing as the "State of Venezia Giulia". Under my interpretation n e i t h e r should be used.

Quite to the contrary, by assuming its rightful role as Allied Military Government, an even keel is readily obtained and sound balance is returned to all concerned.

Whether in law, medicine, religion, economics or what have ye, certain basic fundamental principles usually capable of being counted on the fingers of two hands, - when followed - far more times than not, lead to solid achievements. In writing at length for your information, I have painstakingly sought to emphasize such premise in this report. In so doing, I have made it my basic recommendation, without resort to the conventional standard order of procedure, and have sought to get at the substance of the situation which

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basically is in need of a cure-all. Actually, every premise I have urged already has been published in the directive of the Supreme Allied Commander. There is no need for a supporting document; rather, there is need for clarity in understanding.

I found no evidence of male-fides on the part of Venezia Giulia. That is foreign to this report.

If the views contained in the "Statement of Educational Policy" are sound, they should be observed by Allied Military Government in all of its works.

JOHN E. WEBER
Colonel, Infantry
Chief Legal Advisor

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1
CIA

John K. Singer
Colonel, Texas
Chief Legal Advisory

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F.O. 371/42424

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

MT/mb

AC/4005/L

SUBJECT : Societa' Elettrica Coloniale' Italiana
Societa' Nazionale per lo Sviluppo delle
Imprese Elettriche

TO : Civil Affairs Branch (Attn: Major T.E.B.
Kimpton)
M.E.L.F.

1. Reference your letter No. 11144/A/35/CA of 14 November 1946.

2. While this Division would have been glad to assist you in your inquiry as to the true status of the two above-named Companies, it is prevented from doing so by reason of a recent letter from G-5:AFHQ stating that the Allied Commission is not the proper channel for communications with Governments of ex-Italian colonies. (Copy of letter from G-5 attached for your information).

3. A copy of your letter has been passed to the British Embassy.

See p. 245 A for reply

MUSGRAVE THOMAS
Italian Branch
for Chief Legal Advisor

(copy attached
letter from
G-5 AFHQ)

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4005
V

No.11144/A/35/34.

CIVIL AFFAIRS BRANCH
G.H.Q., S.E.A.F. 2414

14th November, 1946.

H.Q., Allied Commission,
Legal Sub-Commission,
A.P.O. 794,
C.M.F.

S.E.C.I. & S.N.S.I.E. etc.

170 A

I am directed to refer to your AC/4005/L of the 9th September 1946 and to enquire whether the information on the status of the above companies requested in this Branch letter 11144/A/28/3A of the 2nd September 1946 may be supplied now.

for CHIEF CIVIL AFFAIRS OFFICER.
(J.H.G. McDOUGALL)

LEGAL SUB - COMMISSI...
CJO - CLAJGF/AA.
BCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd NOV 25 1946

33

Roma 23.5.46

GUERRA e DIRITTO INTERNAZIONALE

Mi sia consentito ricordare a tutti e, specialmente ai vin= citori della 2° Guerra Mondiale, che al di fuori della legge del più forte, esistono delle Convenzioni Internazionali fir= mate da tutti i popoli civili, che stabiliscono testualmente che in caso di guerra o di invasione, la vita e i beni delle popolazioni deve essere rispettata.

Contrariamente a questo trattato fatto a Ginevra ed omolo= gato dal Tribunale Internazionale dell'Aia, esso, non venne in nessun modo rispettato da parte dei Tedeschi; ed i popoli invasi furono tutti sottoposti ad un sistema di rapine e di violenze. Fra questi il popolo Italiano fu la vittima prescel= ta, per aver osato ribellarsi alla guerra nazista con l'armi= stizio dell'8.9.43.

La maggiore responsabilità delle sciagure del nostro popolo per le deportazioni e per la distruzione dei suoi beni è la Ger= mania; essa ha ormai punito con i mezzi a tutti noti, migliaia di Italiani che si erano rifiutati di collaborare con il tede= sco invasore.

Anche gl'Italiani invocano nei confronti della Germania la applicazione delle norme sancite dal Tribunale Internazionale dell'Aia.

E' provato, che la Germania nazista, servendosi dell'allean= za di Mussolini aveva premeditato l'invasione dell'Italia. Ciò infatti è stato dimostrato dai fatti.

L'esercito tedesco, con la scusa di studiare i piani di of= fensiva in Africa s'infiltrò, prima in tutti i comandi milita= ri italiani, non escluso quei dicasteri, chiave della vita na= zionale; e con il beneplacito del Regime Fascista e con la crea= zione mostruosa di quell'Asse diventarono in breve tempo i pa=

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Il popolo Italiano dovette presto convincersi di essere diventato prigioniero dei tedeschi e, l'odio oppresso dalla propaganda fascista non tardò a produrre quegli effetti, che portarono al minamento continuo delle forze armate e del fronte Interno. Le ragioni di contrasto tra noi e il tedesco erano di natura remota.

La prima e la più incidente era la guerra 1915-1918, la seconda era dettata dalla mentalità latina del nostro popolo amante del Diritto.

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L'alleanza dei Tedeschi era fondata su Mussolini e, su quella esigua schiera di fedeli fanatici, che avevano dichiarato la guerra.

Le colpe del Popolo Italiano sono relative e, gli Anglo-Americani con la loro propaganda ci hanno sempre incoraggiati a liberarci dalla tirannia, appunto, perchè sapevano che in fondo eravamo democratici.

E' falso, come i Tedeschi hanno sovente affermato che l'Italia li abbia traditi.

L'Italia non è stata mai alleata dei nazisti ed infatti appena che si è presentata l'occasione per liberarsi dal giogo nazi-fascista, l'epopea mussoliniana si è chiusa il 25.7.943, senza reazione e senza un colpo di fucile.

Seguì l'8 settembre e, quando il Maresciallo Badoglio annunziò l'Armistizio, una cappa di piombo, che per un ventennio aveva oppresso la coscienza nazionale liberò il popolo Italiano dalla schiavitù totalitaria.

La gioia del popolo Italiano non ebbe nè limiti, nè confini, per aver riacquistato la libertà sia pure con gravi sciagure della Patria.

Conseguentemente il Maresciallo Badoglio dichiarava guerra alla Germania trasformando la penisola in un vero campo di battaglia.

I nostri rapporti con gli Alleati debbono essere per sempre chiariti e, tutte le promesse fatte da Radio-Londra e, da portavoci del Governo, nonchè dai loro diretti rappresentanti devono trovare una soluzione equa e giusta.

Perchè si vuol ancora punire il Popolo Italiano dopo un così notevole contributo dato per la causa della libertà. Se è

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Perchè si vuol ancora punire il Popolo Italiano dopo un così notevole contributo dato per la causa della libertà? Se è vero che le colpe si cancellano con l'espiazione di una pena, l'Italia troppo duramente l'ha scontata.

La pacifica convivenza del popolo si fonda sul diritto e sulla giustizia.

Oggi si parla di mutilare l'Italia del suo territorio Nazionale, quando l'integrità delle frontiere ci era stata promessa. Oggi ci vogliono spogliare di tutto, si pretendono riparazioni e vogliono le colonie.

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E' mai possibile raggiungere una vera pace, con questi me= todi di spoliazione ? Il popolo Italiano ha mantenuto l'impegno di liberarsi dal Fascismo, ed ha combattúto a fianco degli Al= leati facendo ogni sforzo per ritornare fra i popoli liberi, o= ra attende, che le promesse fatte dagli Alleati vengono mante= nute, rivolgendo un otvo ringraziamento agli Stati Uniti e, alla Inghilterra per avere concesso viveri e vestiarto al popo= lo Italiano in questo immane flagello abbattutosi sulla nostra Patria.

Ed in questa occasione, mi si consenta ricordare ai vinci= tori, che ogni promessa è un debito; nulla si deve togliere a= gli Italiani; poichè essi vi saranno grati oggi e sempre per l'atto di giustizia, che voi gli accorderete.

I nostri rapporti con la Russia sono chiari, essa non ha alcuna necessità di togliere all'Italia del territorio e darlo alla Jugoslavia, sapendo benissimo che Trieste e la Venezia Giulia sono Italiane e ci costano circa 600.000 morti e 900.000 feriti nella guerra 1915-1918.

La Russia ha un territorio vasto con tutte le materie prime, da poter mantenere mezzo mondo; quindi può benissimo accordare se crede, l'Emigrazione Slava, e, covantaggiarsi nel lavoro sfruttando le sue ricchezze.

I Russi sono uomini pratici da comprendere la situazione di un popolo oppresso e dovrebbero venirci incontro senza creare delle palesi ingiustizie a scopi strategici. La Russia ha del= le mire strategiche servendosi della Jugoslavia, come pedina ed ha fatto male a far cadere la sua scelta su Trieste città Italiana per tradizione, per ragione etnografiche e storiche.

DISTRUZIONE DELL'ITALIA E ASSURDA RICHIESTA DI RIPARAZIONI

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DISTRUZIONE DELL'ITALIA E ASSURDE RICHIESTE DI RIPARAZIONI

In questa guerra il diritto internazionale riguardante il
rispetto delle popolazioni civile residente negli agglomerati
urbani è stato violato da tutti i belligeranti o per misure
di ritorsione o per costringere al collasso i fronti interni.
La distruzione del nostro paese per opera dei bombardamenti
l'abbiamo dopo l'armistizio maggiormente subita perchè la
guerra si spostò dal territorio africano a quello nazionale.

Il popolo Italiano con le distruzioni che ha subito, non
è in condizione di pagare riparazioni che alcune potenze ci
chiedono.

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Noi che abbiamo avuto le case distrutte ed il patrimonio asportato dai tedeschi, per ricostruire il perduto dobbiamo ricorrere proprio a quei Stati che in questo momento si sono assunti la veste di giudici.

E' ovvio che l'assurdità delle riparazioni nei nostri riguardi non trova alcun fondamento pratico e ne renderebbe un buon servizio alla causa della pace.

E' vero che gli Stati Uniti e l'Inghilterra si sono astenuti da queste assurdità difendendo la nostra miseria, e noi speriamo che questi paesi maestri di democrazia e di libertà, continueranno ancora a lavorare per la pacificazione del mondo aiutando il nostro popolo con mezzi materiali nell'opera di ricostruzione.

LE NOSTRE NAVI E LE PRETESE ALTRUI

I nostri marinai non permettono,mai che le nostre navi dopo essersi battute per gli ideali comuni alle Nazioni Unite siano poi considerate preda di guerra e consegnate ai mercanti di riparazioni che per merito degli altri hanno diviso i frutti della vittoria.

Essi hanno sacrificato per quell'ideale comune la vita pur di conservare quelle navi, che con tanta audacia seppero sottrarre alla ingordigia teutonica.

Come nel periodo di cobelligeranza i nostri marinai hanno saputo guadagnarsi la stima ed il riconoscimento del loro valore; essi, da parte alleata sapranno in un domani difendere al servizio dell'O.N.U. gli ideali della pace. A mio avviso le navi dovrebbero rimanere all'Italia essendo un paese marittimo e le Nazioni Unite potranno per cinque anni controllare le intenzioni della flotta, evitando così il sicuro au-

Declassified E.O. 12356 Section 3.3/NND No. 785016

nuti da queste [illegible] speriamo che questi paesi maestri di democrazia [illegible] continueranno ancora a lavorare per la pacificazione del mondo aiutando il nostro popolo con mezzi materiali nell'opera di ricostruzione.

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L'ITALIA E LE SUE COLONIE

La Tripolitania, l'Eritrea, la Somalia attendono il ritorno degli Italiani, che l'hanno beneficate e civilizzate tanto è vero, che le popolazioni si sentono più Italiani di noi.

Agli Italiani interessa il lavoro da loro fatto e sono attaccati alla terra come i rami al proprio albero.

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Le Colonie per gli Italiani non hanno scopi strategici o espansionistici; esse hanno una funzione economica nel quadro del lavoro.

Se gli Alleati dovessero pensare alla strategia dei nostri possedimenti coloniali siano disposti ad accettare dei controlli di carattere militare per un periodo di cinque anni, ma non si deve togliere pane e lavoro ad un popolo di 45.000.000 di abitanti.

AFRICA ORIENTALE E LE ASPIRAZIONI DEL NEGUS

Assurde sono le aspirazioni da parte del Governo Abissino, nei riguardi dell'Italia, per un complesso di ragioni inconfutabili, in quanto il popolo abissino invoca il ritorno degli Italiani, apportatori a quelle genti primitive, del segno di una grande civiltà e di benessere, poichè essi aveva intrapreso opere di bonifica per l'agricoltura, avevano costruito una rete stradale degna delle Nazioni più progredite e soprattutto l'opera verso quelle popolazioni retrograde fu di natura sanitaria, costruendo ospedali, ambulatori ed altre opere atte a tutelare la salute di gente minata da quei malanni tropicali di difficile guarigione.

Il popolo Abissino pur vantando dei diritti in conseguenza dell'aggressione fascista non può permettersi di chiedere riparazioni all'Italia, in quanto il nostro paese ha già speso miliardi in un così breve periodo di occupazione.

Le pretese del Negus sulla Somalia e sull'Eritrea non hanno alcun fondamento giuridico.

Le due colonie italiane sono così bene amministrate e così civili, per essere cedute ad uno Stato in condizioni semibarbare.

[illegible] nel possesso delle Nazioni ci-

Declassified E.O. 12356 Section 3.3/NND No. 785016

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L'Abissinia per poter entrare nel consesso delle Nazioni civili ha bisogno ancora dell'opera civilizzatrice degli Italiani, fondata sul lavoro, sulla cooperazione e sulla capacità organizzativa.

30

GRECIA E DODECANNESO

Anche questo gruppo di Isole è stato ceduto all'Italia mediante trattati Internazionali, ed esse furono la risultante della nostra vittoria contro i Turchi.

Le Nazioni Unite hanno sempre promesso che l'Italia, dopo

Declassified E.O. 12356 Section 3.3/NND No. 785016

la guerra nazista avrebbe perduto tutto ciò che era stato conquistato con la violenza dalla Dittatura fascista.

Ora perchè queste isole devono essere cedute alla Grecia dopo che il lavoro ed il capitale italiano ha creato delle condizioni di vita e di benessere tra quelle popolazioni ?

ALBANIA E DIRITTO INTERNAZIONALE

L'Albania è stata aggredita da Mussolini, ma con tutto ciò essa è stata beneficata per mezzo di lavori sia di bonifica, che industriali.

Gli Italiani hanno voluto attuare ciò che nel paese Albanese era impotenza; sono stati ancora essi che hanno portato prosperità al paese stesso.

Per qual motivo oggi l'Albania approfittando dello stato armistiziale perseguita e rapina i cittadini italiani, che hanno investito i loro capitali ed il loro lavoro in opere a tutto vantaggio della stessa Albania ?

Perchè questi inermi cittadini non vengono protetti dal Diritto Internazionale contro i soprusi dello Stato Albanese ?

In sostanza l'aggressione fascista ebbe solo scopi strategici, ma in compenso l'Albania si è trovava avvantaggiata dalle opere del cosidetto rapina.

LA FRANCIA E LE SUE AGGRESSIONI CONTRO DI NOI

Tra noi ed il popolo francese deve cessare questo stato di tensione.

Bisogna mettere una pietra sul passato, affinchè fra le due Nazioni sorelle vi sia quella comprensione necessaria dopo che

Declassified E.O. 12356 Section 3.3/NND No. 785016

essa è stata beneficata per mezzo di lavori sia di bonifica, che industriali.

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In sostanza l'aggressione fascista ebbe solo scopi strategici, ma in compenso l'Albania si è trovata avvantaggiata dalle opere del cosiddetto regime.

LA FRANCIA E LE DUE ASPIRAZIONI CONTRO DI NOI

Tra noi ed il popolo francese deve cessare questo stato di tensione.

Bisogna mettere una pietra sul passato, affinchè fra le due Nazioni sorelle vi sia quella comprensione necessaria dopo che la sciagura ha colpito il popolo Italiano ed il popolo Francese.

I Francesi sanno, che il popolo italiano era stato soggiogato dalla Dittatura fascista e devono ammettere che la guerra dichiarata dal dittatore non fu condivisa dagli Italiani.

Tutti fummo colpiti da un senso di dolore nel pensare che le nostre armi dovevano fatalmente essere puntate contro i nostri fratelli.

Cosa si poteva fare e quale forza aveva il popolo per evita-

Declassified E.O. 12356 Section 3.3/NND No. 785016

re quello che purtroppo è avvenuto ? Nulla ! Per questo motivo, oggi dobbiamo noi ancora serbare un odio, che solo il fraterno perdono può creare quell'atmosfera di pace e di benessere tra componenti della stessa razza e della stessa famiglia.

Quando il popolo italiano era libero e poteva esprimere le proprie tendenze, nella guerra 1915-1918, non esitò a schierarsi contro i tedeschi per salvare la Francia in pericolo.

Ora perchè vuol punire il popolo Italiano con la richiesta di riparazioni riflettenti parti del territorio Nazionale ?

Il momento esige, che la giustizia sia la base della convivenza fra nazioni civili ed amanti della pace.

Per questi motivi, la Francia vittoriosa per opera dei suoi Alleati, deve rinunziare ad esercere con una pace punitiva quei lembi di territori che sono indiscutibilmente Italiani.

Comm. GIUSEPPE ALESSI
Via Casilina n. 33 - R O M A -
Tel. 71300

Declassified E.O. 12356 Section 3.3/NND No. 785016

sia di riparazioni ragionevole per [illegible]

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Via Casilina n. 33 - R O M A -
Tel. 71300

Declassified E.O. 12356 Section 3.3/NND No. T85016

Declassified E.O. 12356 Section 3.3/NND No. 785016

E 711

400

239A

Ref: 6535/23/10 12 November, 1946.

SUBJECT: Alleged Soviet Traitors.

TO : The Ministry of Foreign Affairs,
ROME.

Reference is made to your memorandum No. 38554/246 dated 16th November, 1946.

The question concerning the arrest and extradition of alleged traitors claimed by other Countries has already been raised by this Commission with a letter to the Prime Ministers on 9th October, 1946, copy of which is enclosed for easy reference.

This Commission is not in a position therefore, to reply to your memorandum under reference until an answer to this question is received from the Italian Government.

BY HIS MAJESTY'S COMMISSIONER:

/s/ M. CARR.

M. CARR, Brigadier,
Executive Commissioner.

copy to: Legal Div.

LEGAL SUB - COMMISSION
CJO - CIA 38
OCLC
CHIEF COUNSEL
ITALIAN SECTION
Recd NOV 23 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

4895

No.11144/481/C...

CIVIL AFFAIRS BRANCH. 238A
G.H.Q., M.E.I.F.

Tel. ME "George" Ext. 22

7th November, 1946.

H.Q., Allied Commission,
Legal Sub-Commission,
A.P.O. 794,
C.M.F.

Re fp 582A, 1088A

Status of Lloyd Triestino.

attached
257A

I am directed to refer to your AC/4005/L dated 25th October 1946 and enclose herewith the Declaration which was omitted in error from this Branch letter 11144/471/CA of the 15th ult.

(J.H.G. McDOUGALL)
for CHIEF CIVIL AFFAIRS OFFICER

Encl.

JGF/AA.

LEGAL SUB - COMMISSION	
CJO - CLA	
DCLO	
CHIEF COUNSEL	
ITALIAN SECTION	387
Recd NOV 15 1946	

461 A

MINISTERO DELLA MARINA
Direzione Generale Marina Mercantile
Ispettorato dei Servizi Marittimi

D I C H I A R A Z I O N E

Roma, li 4 LUG 1946

Su richiesta della Soc. An. di Navigazione "LLOYD TRIESTINO" con sede in Trieste, si dichiara che la Società stessa, per la sua struttura e come risulta dal suo statuto attualmente in vigore, è una Società Anonima ai sensi delle relative norme del Codice civile e non un organo statale nè parastatale.

Si rilascia la presente dichiarazione per gli usi consentiti dalla legge.

IL MINISTRO

CONCESSIONI GOVERNATIVE ATTI AMMINISTRATIVI

MINISTERO DEGLI AFFARI ESTERI
SI ATTESTA L'AUTENTICITÀ DELLA FIRMA
DEL SIG. Ballanti

Luigi Rapa
Ministero
Affari Esteri, Roma

4 Aug 1946

H. Pamille Lemmon
BRITISH VICE-CONSUL

Declassified E.O. 12356 Section 3.3/NND No. 785016

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IL MINISTRO

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SI ATTESTA L'AUTENTICITA' DELLA FIRMA
DEL SIG. Ballanti
ROMA - 8 LUG 1946
P. ORDINE DEL MINISTRO

For the legalization of the seal and signature of Signor Luigi Rizzo
Signing for the Ministry
For Foreign Affairs, Rome
10th July 1946
H.B. Cumble
BRITISH VICE-CONSUL

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

237 A1

FILE

FILE 23 4/17

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AC/4005/L. MT/rm.
25 October 1946.

SUBJECT : Status of Lloyd Triestino.

TO : Civil Affairs Branch
C.M.G., M.E.L.F.

1. Reference your No. 11144/471/CA of 15th October 1946.

2. The Declaration mentioned in para 1 of your letter was not enclosed, and we should therefore be glad if it could now be sent.

For the Chief Commissioner :

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

B/F to Restitution Control

378

LEGAL SUB-COMMISSION
CIC
DSD
CHIEF COUNSEL
ITALIAN SECTION
OCT 22 1946
Rec'd

SUBJECT: Lloyd Triestino - Para-statal Status.

No.11144/471/CA.

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

Tel. ME "George" Ext. 27.

15th October, 1946.

The Allied Commission,
Legal Sub-Commission,
A.P.O. 794,
C. M. E.

I am directed to ask your assistance in connection with the attached Declaration from the Italian Ministry of Mercantile which this Branch has received from B.M.A., Eritrea.

2. It will be observed that the Declaration merely alleges a fact and adduces no evidence in support thereof.

3. The concern was treated as para-statal for the reasons set out hereunder.

(a) Under Royal Decree No.2081 of 7 Dec.36, nine shipping companies of "pre-eminent national interest" were to be reconstructed into four companies, of which Lloyd Triestino was one. This company was to be formed with a share capital of 300 million Lire and was to be given the exclusive rights for passenger, goods traffic and postal services for Africa beyond Gibraltar, and for the Far East and Australia beyond Suez.

...2081 of 7 Dec.36, Istituto...

Declassified E.O. 12356 Section 3.3/NND No. 785016

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(b) Under Royal Decree 2082 of 7 Dec.36, Istituto per la Ricostruzione Industriale (I.R.I.) was authorised to subscribe for the share capital, up to 900 million Lire, of a company to be formed and called "Società Finanziaria Marittima (FINMARE)". The capital of FINMARE was to be used to purchase shares in the four companies formed under Decree No.2081 and give those companies any financial assistance they might require. The majority of the shares in the four companies was to be held either by I.R.I. or FINMARE. 3 -

(c) By convention dated 1 Feb.'39, the State undertook to make up any deficit when profits were insufficient to pay a divident of 4%, while profits in excess of 8% were to be utilised to

.../...

Declassified E.O. 12356 Section 3.3/NND No. 785016

reduce advances made to the company by the State. The company's accounts were subject to governmental control and approval, and the State took a percentage of the income arising from postal contracts with foreign governments. The State had the option to take over the whole or part of the fleet at a valuation at the end of 20 years.

4. I am to ask that this Branch be informed whether I.R.I. or FINMARE has been deemed to be a statal concern ?

5. I am to ask that the Declaration be returned to this Branch in due course.

T. D. B. Kimpton

(T.D.B. KIMPTON)
Lt-Col.,
for CHIEF CIVIL AFFAIRS OFFICER.

TDBK/AA.

Declassified E.O. 12356 Sec. 3.3/NND No. 785016

(T.D.P. KIMPTON)
Lt-Col.,
for CHIEF CIVIL AFFAIRS OFFICER.

TDEK/AA.

3-6

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
A35A

C.f. 225A

x 271 A

Executive Commissioner

CC's Comments.

1. There is no break of legal continuity when the occupied territories are restored to Italian administration. Occupation law remains in force unless abolished by the last act of the occupant or until the returning Sovereign does so. Acts done under the provisions of Occupation law also remain in force until the returning Sovereign alters or cancels their effect, which he is at liberty to do unless specifically prevented by the terms of restoration.

The Italian Government has already interpreted in that sense the period of validity of Allied Proclamations and Orders and acts done under their provisions. For instance :

Bld 571 of 31 August 1945 - appointments to public offices by AMG Art. 1 : As far as Italian law is concerned, all appointments to public offices made by AMG in territory under their jurisdiction are to be considered as temporary appointments.

Bld 162 of 20 July 1944 - Juridical regime in territories restored to Italian administration. Art.1: "With the cessation of AMG, all Proclamations and Orders promulgated by the Military Governor of the Allied Forces or his Delegates will cease to be operative in Italian territories formerly under Allied Administration.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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>
> Bill 415 of 30 July 1945 - cancelling the provisions of Proclamation Nº 3 and specifying that yellow seal dollars and BMA pounds will cease to be legal currency in territories restored to Italian administration.

2. It is agreed that the word only is redundant.

3. Acts done by Allied Officers under the provisions of Proclamations and Orders effecting private interests are valid, in any case, until the end of AMG administration and continue to be valid until one or more of the parties concerned decide to amend or cancel their effects either by mutual agreement or through a judicial or administrative decision. Jurisdiction to render a decision affecting persons or interests situated in restored territory must obviously be vested in the local Italian Courts.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4. The Tribunal of Milan for instance has declared null and void a sentence of epuration pronounced under the provisions of G.O. 45, because the decision of the Committee of epuration was rendered when two members only were sitting and not three as provided for in the G.O. above mentioned. The sentence was obviously null "ab initio" but it is not contested that it falls now within the jurisdiction of the Italian Court to adjudicate whether a decision of a Committee set up under an Allied Order is valid or not.

5. On the other hand sentences of epuration passed under G.O. 45 have been confirmed by Italian authorities as valid. Prefects in Southern Italy have kept in force rates of telephone and electricity increased by Provincial Orders.

6. Whether the contract entered into by the P.C. Officer in Catania on behalf of Mrs. Marshall is valid or not is immaterial. If Mrs. Marshall is not satisfied with it she must bring her case before the local Court. If the Tribunal of Catania decline jurisdiction on grounds which are not known to this Division she must go to a higher Court. But it is not up to the Allied authorities now to give an opinion as to the validity of the contract.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

FILE

Allied Commission
Legal Division
APO 794

1340

1 November 1946

Dear,

I should very much like to know what the Legal Department of the F.A. think of the enclosed.

Not that I have any doubt on the technical value of this opinion, but because of the material consequences arising from its judicial application.

I am especially concerned with the position of the Nelson-Bronte estate of Bronte in Sicily. Adams of Property Control is fully cognizant of the case which can be summed up as follows (subject to new developments which Adams will undoubtedly know of). The Bronte estate was confiscated as enemy property and later could called to be split up into plots under existing Italian legislation which is neither racial nor political.

The confiscation was rescinded by decree of a Prefect appointed by the Allies during the period of military Government.

I strongly recommend at the time that the special status of the Nelson estate be acknowledged by decree of the Italian Government or some provision to that effect included in the Peace Treaty.

As far as I am aware this has not been done.

Confiscation laws are still in force and part of Italian substantive legislation.

There is a reasonable possibility of an Italian Court declaring null and void the decree of the Prefect as being ultra vires and in any case ruling that its scope could not extend further than the period of

3 -

Declassified E.O. 12356 Section 3.3/NND No. 785016

This would mean the return of the "Status quo ante" and the probable nonification of the status under existing substantive legislation.

In view of the importance of the estate and the interest taken in it by both the U.K. and the British Public the matter is certainly worth carefull consideration.

Yours

Henry Hankey Esq.,
British Embassy,
Kuala.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
230

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AC/4005/L dgl/ns
29 November 1946

SUBJECT : Persons Interned under Nazi Occupation.

TO : H.Q. 4th Army AFO
Attn: G.S.O.

Reference T/32 dated 5/12 addressed to Paraskos, St.Alexandris.

1. Please note that Corfu is under the jurisdiction of the Greek State, whose sovereignty has been fully restored.

2. The Allied Commission for Italy never had jurisdiction over Greek territory.

3. Therefore this matter should be referred to the Ministry of Justice Athens through the British Embassy.

4. Your re-direction is returned herewith.

For the Chief Commissioner :

G.S. HEADFORD,
Lt.Colonel,
Deputy Chief Legal Adviser.

371

DLG/LH.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4017

3413

LEGAL

CONFIDENTIAL

Subject:- Legal Aid

Legal Aid (Welfare) Section,
G.H.Q. M.E.L.F.

LAW/MELF/P/I/54722

H.Q.,
Allied Control Commission,
Rome,
Italy.

Re: W/ME/223625, S/Sgt PROTOPAPAS M.

We have received an enquiry made on behalf of the a/n, a copy of which we enclose, dealing with property in Corfu.

As this is the first occasion on which we have had a claim for territory under your jurisdiction, we would be obliged if you could inform us of the relevant regulations.

Please acknowledge receipt.

W.J. Parry.
Major GS.

(W.J. PARRY) MAJOR
LAW. GHQ MELF.

WJP/RG
8 Nov 46.

LEGAL SUB - COMMISSION
CJO - CLA
DCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd NOV 14 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

2307

HEADQUARTERS ALLIED COMMISSION
A.C. 794
LEGAL DIVISION

F I L E

AC/1005/L 9001/as
13 November 1946

SUBJECT : Legal opinion.

TO : Legt. P. Chiocchi,
Studio Vassalli, Lungotevere Vallati 24,
ROME.

I should like to have your opinion on the enclosed before replying to the Italian Government.

I have spoken to Prof. Vassalli about it and also to the Embassy and it has been further referred to the Foreign Office.

W.G. HARRISON,
Lt.Colonel,
Deputy Chief Legal Adviser.

3[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
231/2

COPY

SECRET

Ref. : AG/4005/1. 1 November 1946.

SUBJECT : Jurisdiction over offenses by Allied Nationals.

TO : Allied Force Headquarters.
(Attention: G-5 Section)

1. I refer to your G-5/01 of 11 October 1946 on the subject of trial of Allied Nationals accused of committing offenses in A.M.G. territory.

2. I am enclosing a copy of a memorandum on this subject prepared by the Chief Legal Advisor of this Commission.

3. Not being in possession of any of the original directives which may have been issued in regard to the powers of the Military Governor in this Theatre, I am unable to express an opinion as to whether the Courts established by the Military Governor can have jurisdiction over Allied Nationals.

Proclamation No. 1 would appear to cover Allied Nationals but in the light of the enclosed memorandum there would seem to be some doubt as to the validity of the proclamation in this respect.

In general, it would appear that the directives dealing with jurisdiction under A.M.G. tend only to cover Nationals of the territory under Government.

Since the question is one of national laws of the U.S. and the U.K. and not of International law, I suggest that it is for the Judge Advocate General to advise on the powers possessed in this respect by the Supreme Allied Commander in his capacity as Military Governor. It may be that the Supreme Allied Commander should seek directions from higher authority in this matter.

4. The letter from SCAO Venezia Giulia refers only to American and British Nationals. The problem, however, would appear to arise in the case of all Allied Nationals and it would appear inequitable if the Allied Military Government did not take jurisdiction over all Allied Nationals in respect of violations of AMG Proclamations and of Civil law if it assumes it over American and British Nationals.

5. As regards American Merchant Seamen, a ruling has been conveyed recently to the Italian Government by the American Embassy to the effect that the cases of American Merchant Seamen, except those who come under the jurisdiction of the U.S. military authorities,

Declassified E.O. 12356 Section 3.3/NND No. 785016

accused of violating Italian Laws in Italy, will be considered as triable by Italian authorities. The note, however, does state that jurisdiction over American seamen in the port of Trieste or other parts in Venezia Giulia will continue to be detained by A.M.G. Authorities. A copy of this ruling was forwarded to your Headquarters under the Commission's letter 5606/156/HG of 7 November 1946.

As regards British Merchant Seamen, the present position is that they are not protected by the Armistice or Terms of Restoration of Territory to Italian Administration, nor by any covenant to which the Italian Government are a party. Under International Law therefore seamen are triable at present by Italian Courts for offences committed on Italian territory. The fact that the Foreign Office are of opinion that British seamen should not be tried by Italian Courts but come under the provisions of Articles 10 and 12 of the draft Civil and Military Affairs Agreement is not at present relevant as the Civil Affairs Agreement has not been signed.

British Seamen under English Law are subject to Defence Regulations 47 Act and triable by British Courts. The Italian State is not legally concerned with British internal regulations and has an unquestionable right to exercise its full jurisdiction over persons who commit offences in territory where Italian Sovereignty has been fully restored, unless they accept to abandon such jurisdiction by agreement. So far the Italian authorities have held their hand, not because of lack of jurisdiction but for reasons of policy.

The British Embassy in Rome has brought these facts to the notice of the British Foreign Office and has requested further instructions in view of the definite position taken by the United States in this matter.

6. Having regard to the foregoing, I do not consider that I am presently able to draft the proposed reply to A.M.G. Venezia Giulia letter AMG/LG/122/2941 of 2 October 1946.

HENRY K. HOSE
Rear Admiral, USN
Chief Commissioner.

Copy to : F.O.
I.O.
Foland (A)
Foland ( )

3[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
22 F

SECRET/PARTIES AND TREATIES
APO 74
LEGAL DIVISION

AP/10.
15 November 1946.

AC/4005/14.

SUBJECT : Property of Bulgarian of Sweden.
Restoring of expelled race.

TO : Ministry of Pardon and Justice.

1. Reference to yesterday's telephone conversation (Dr. Redfield - Mr. PEARCE) herewith enclosed copies of the letters received here from Hq. U.S.A. Delegations relating to above mentioned matter.

2. It would be appreciated if arrangements could be made for the return of the same to the British Military Administration of Sweden.

L. . HARRISON,
Lt. Colonel,
Deputy Chief Legal Advisor.

Incls.

316

4005

4034

3391 LEGAL

224A

Subject: Property of Tribunale of Rhodes.

H.Q. B.M.A.
Dodecanese

Legal Dept.
Ref: L/4005/2
29th October 1946

To: H.Q. Allied Commission, Rome, C.M.F.
(Attention Legal Sub-Commission)

I am directed by the Chief Administrator to request your assistance in identifying and restoring to this Administration a gilded mace, which by misapprehension has been permitted to leave this Territory for Italy.

2. The object in question, which appears to have been part of the official equipment of the local Courts and so part of the Statal property of this Territory, ~~Administration and~~ was apparently entrusted by the former head of the Italian judiciary to a local advocate Giovanni Petruzzi, with instruction to return it to the Ministry of Justice in Italy. Permission was recently given to the said advocate on behalf of this Administration to take back the mace to Italy, and the Ministry of Justice was informed accordingly. Copies of the relevant letters are enclosed herewith.

3. There seems little doubt that the Greek Government, when this territory is handed over, would be entitled to claim this object as state property, and it has in fact been indicated on their behalf that they will do so. It would accordingly be

Declassified E.O. 12356 Section 3.3/NND No. 785016

I am directed by the Chief Administrator to request your assistance in identifying and restoring to this Administration a gilded mace, which by misapprehension has been permitted to leave this Territory for Italy.

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3. There seems little doubt that the Greek Government, when this territory is handed over, would be entitled to claim this object as state property, and it has in fact been indicated on their behalf that they will do so. It would accordingly be appreciated if the matter could be taken up with the Ministry of Justice in Rome and arrangements made for the return of the mace to this Administration.

Prospero More
Lt Col

(J.MORE)
Lieut.Col.,
Legal Adviser,
for Chief Administrator.

Enclosures :
Copy of letter from
S.de Simone to Giovanni Petruzzi
of 31 May 1945.

Copy letter of 18 October 1946 from
B.M.A. Dodecanese to Ministry of
Justice, Rome.

Copy to: (Chief Secretary
(Commissioner of Police.

SUB-COMMISSION

CJO-CLA	
OCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	NOV 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

C O P Y

ITALIAN GOVERNMENT OF THE AEGEAN ISLANDS

Rhodes, May 31st, 1945

To: Avv. GIOVANNI PETRUZZI
Vive-Pretor
RHODES

and for information:
to the MINISTRY OF GRACE AND JUSTICE
ROME

Subject: Gilded mace

I trust to you the gilded mace of this Court and bind you to secure it and to transfer it in Italy and there to consign it to the Ministry of Grace and Justice.

(signed) S. De Simone
Chief of Justice Affairs.

C O P Y

BRITISH MILITARY ADMINISTRATION
H.Q. B.M.A. Police Dodecanese

Ref. No.3507/8-1942

Rhodes (Dodecanese) 18th Oct.1946

Al Ministero di Grazia e Giustizia
(Gabinetto)

R O M A

Eccellenza,

Ho l'onore di portare a conoscenza di V.E. che l'avvocato ragioniere Petruzzi Giovanni, professionista di questo Foro e vicepretore di Rodi, partito in data odierna per l'Italia, per rimpatrio definitivo, è latore del bastone dorato simbolico di magistrato appartenente a questo Palazzo di Giustizia, per incarico del già Procuratore di Stato De Simone Salvatore e col consenso dell'Autorità competente dell'Amministrazione Militare Britannica, perchè venga consegnato al vostro Dicastero.

Vi sarei molto grato, Eccellenza, se vorrete farmi tenere un cenno di assicurazione non appena l'oggetto sopradescritto sarà consegnato a chi di diritto.

Vogliate gradire, Eccellenza, i sensi della 3(mia alta considerazione.

Lieut.
A.S.P. C.I.D.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Vogliate gradire, Eccellenza, i sensi della mia alta considerazione.

Lieut.
A.S.P. C.I.D.
for Commissioner of Police.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
L26A

MEMORANDUM ON VENEZIA GIULIA ALLIED MILITARY GOVERNMENT
GENERAL ORDER 70

1. This Order carries signs of having been prepared and published under pressure. It was not submitted to the Legal Division Allied Commission before publication out, following the Chief Commissioner's attention being drawn to it by newspaper comment, has been carefully scrutinized by that Division.

2. The English version of Allied Military Government Proclamations and Orders prevails. The English of this Order leaves much to be desired. It is substantially a not very good translation of the provisions of an Italian Decree of the Lord Lieutenant - n° 134 of 1946. It bears in the preamble that "Whereas it is the Policy of the Allied Military Government to suppress fascism in all its forms..." therefore the Order is made. This statement is considered objectionable : if only because it is irrelevant, the Order being aimed at the confiscation of the profits etc. of the regime and not against the regime's future or present activity. The lack of precision in the English of the Order is a serious defect. Parts of the Order are incomprehensible and parts are wide-open to misinterpretation. An Order which leaves those administering it to decide interpretation according to individual taste, and which would embarrass any Court into constructive legislation to interpret it, is a bad one. There are a number of misprints in the Order : two at least are really serious "action" where the word intended is"auction" and "formally" where the word intended is "formerly". Two expressions are frequently used in the Order and are not interpreted "Public Treasury" in whose favour the profits etc. are expropriated and proper[illegible] "Finance Administration" which has onerous

Declassified E.O. 12356 Section 3.3/NND No. 785016

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The various time limits under the Order are not satisfactory, and one of which expires 30 from 23rd September 1946 gives the position some urgency.

3. It is the recommendation of the Legal Division Allied

Declassified E.O. 12356 Section 3.3/NND No. 785016

Commission

(a) that all action under the Order be suspended forthwith

(b) that the Order be re-written in its entirety.

4. In view of the recommendation (b) above, and indeed in obtaining the information to prepare this Memorandum, this Division has prepared lengthy notes on the Order, Article by Article. If the recommendation (b) is accepted a copy of these notes could be made and forwarded to Allied Military Government Venezia Giulia in supplement to the generalized criticisms of this Memorandum.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
123A

Executive Commissioner + L. f. 235 A & 235 A

SUBJECT : Extent of AMG jurisdiction - Validity of contracts to which AMG officials are parties

1. This Division has been approached by the Minister of Justice who wishes to have a ruling concerning the extent and validity of certain contracts passed by AMG officials and affecting private individuals and interests.

2. The Minister states that many cases have already been brought to his notice, but he stresses more particularly the case of Mrs. Marshall, a British subject owning property in Catania.

3. Mrs. Marshall came back to Sicily to find the 1000 acre estate in which she has a life interest under her husband's will rented for a paltry sum through a lease passed between the Allied Property Control Officer and a local "mezzadria" . The lease is for six years and ends in 1950. It is understood that not only is the "mezzadria" making a fortune out of this transaction, but that it has left Mrs. Marshall practically penniless.

Mrs. Marshall started proceedings before the local tribunal in order to have this leonine contract declared null and void.

Unfortunately the Tribunal of Catania has declined jurisdiction in cases where Allied military personnel are a party until such time as Allied authorities have expressed officially their point of view on the subject.

The Property Control Officer at the British Embassy thinks he is not in a position to help Mrs. Marshall in

Declassified E.O. 12356 Section 3.3/NND No. 785016

been brought to his notice, but he stressed [illegible] particularly the case of Mrs.Marshall, a British subject owning property in Catania.

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Mrs.Marshall started proceedings before the local Tribunal in order to have this leasing contract declared null and void.

Unfortunately the Tribunal of Catania has declined jurisdiction in cases where Allied military personnel are a party until such time as Allied authorities have expressed officially their point of view on the subject.

The Property Control Officer at the British Embassy thinks he is not in a position to help Mrs.Marshall in her predicament.

4. This Division proposes to give the following reply to the Minister of Justice.

> "In answer to Dott. Bonelli's verbal query requesting a ruling from Allied authorities as to the scope and validity of contracts and other instruments entered into by Allied Officers in Italy the opinion of this Division is set forth hereunder.
>
> a) The question as to whether an Allied officer has exceeded his authority or not, is an internal matter which can only be decided upon by Allied authorities and not by the Italian judicial or administrative authorities.

./.

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c) There is no legal doubt that when Sovereignty is restored to the legal Government after Military occupation such laws of the State as may have had their effects suspended by an act of the occupant acquire once more their full force and effect, unless the returning Sovereign decides to maintain in force the acts of the occupant.
(Cassation - Brussels 1925 - Supreme Court of Peru 1932 etc.etc.)

d) Under the terms of restoration it was clearly specified that "All Allied Orders and Proclamations were recognised by the Italian Government as having been validly issued during the time they were operative". That is to say that until the territory was restored to Italian Sovereignty, they had "the same effect as if they had been issued by the Italian Government".

e) All acts done by any member of the Allied Forces in pursuance of such Proclamations and Orders were also recognized as valid by the Italian Government under the terms of restoration. It stands to reason, however, that if the Proclamations and Orders of the Allied Military Governor were recognized as valid during the time they were operative, acts done by Allied Officers in pursuance thereof could not have a legal effect exceeding that of the instrument whence they derived their legality.

e) It follows therefore that all acts done by Allied Officers in the regular course of their duties were valid for the time Allied Military legislation was operative, but could not remain binding after that time unless the Italian authorities or private individuals concerned agreed to maintain their effect in force.

Declassified E.O. 12356 Section 3.3/NND No. 785016

operative". That is to say that until the territory was restored to Italian Sovereignty, they had "the same effect as if they had been issued by the Italian Government".

d) All acts done by any member of the Allied Forces in pursuance of such Proclamations and Orders were also recognised as valid by the Italian Government under the terms of restoration. It stands to reason, however, that if the Proclamations and Orders of the Allied Military Governor were recognised as valid during the time they were operative, acts done by Allied Officers in pursuance thereof could not have a legal effect exceeding that of the instrument whence they derived their legality.

e) It follows therefore that all acts done by Allied Officers in the regular course of their duties were valid for the time Allied Military legislation was operative, but could not remain binding after that time unless the Italian authorities or private individuals concerned agreed to maintain their effect in force.

f) Consequently if an Allied Officer entered into a contract which, through error or ignorance exceeded the period when Allied Military legislation was operative, it would now be within the jurisdiction of the Courts of the returning Sovereign to declare such contract valid or invalid, and not within the jurisdiction of the Allied authorities.

g) So sure as Italian Courts (Courts of the returning Sovereign) have, under International law the same right to adjudicate principles of international law applicable in a case before them as have the Courts of any jurisdiction. Therefore it is within their jurisdiction to decide that an act done under occupational law, which is bottomed on International Law, is valid or invalid.

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5. International law authorities point out that if the legal government of an occupied country were obliged to recognize the continuing effects of any act of administration carried out under an occupant's authority a few week's occupation might very well result in servitudes being set up or obligations undertaken which would prejudice the legal government and private citizens for a generation.

6. Finally under international law and practice there is no example in the part of the courts of an occupied country refusing to assume a power of revision. These Courts have always tested the validity of the acts of the occupying power by the criterion of Art. 43 of the Hague Convention where it is set out that "the occupant shall take all measures in his power to restore and ensure public order and safety while respecting, unless absolutely prevented, the laws in force in the Country".

7. I hope you will agree with the opinion expressed in our draft letter to the Minister of Justice.

W.J. MACNAMARA,
Lt.Colonel,
Deputy Chief Naval Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
2240

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AG/1005/1.

14 November 1946.

SUBJECT : Powers of Attorney for use in Italy.

TO : Alfrid K. Lowenfeld.
Solicitor
[redacted]
Queensland, Australia.

1. Reference your letter of 25th October, 1946.

2. With regard to the questions submitted in paras (a) and (b) of your letter the answer is No.

3. To be valid in Italy the power of attorney signed and attested by a notary public requires to have the signature of the notary authenticated by some Italian consular authority. I would therefore suggest that you have the notary public's signature duly authenticated by the nearest Italian Consular Authority.

[redacted]
Chief of Section,
Italian Branch,
for Chief Legal Adviser.

Declassified E.O. 12356 Section 3.3/NND No. 785016

WILFRID N. LEES
SOLICITOR

TELEPHONES
OFFICE : TEXAS 9
RESIDENCE : 96
P.O. BOX No. 52

VISITS INGLEWOOD AND YELARBON

3409

AIR MAIL

Light
9/35A

High Street,
Texas 28th October, 194 6.
QUEENSLAND AUSTRALIA

WNL/IN

IN REPLY REFER TO NO. O/C

The Officer In Charge Administration,
Allied Control Commission,
ITALY.

Dear Sir,

re Powers of Attorney for use in Italy.

I have received instructions from a naturalised British subject, who was previously an Italian, to prepare a Power of Attorney appointing my client's son, who is a resident in Italy, to act for and on behalf of my client in relation to my client's assets which are located in Italy.

Will you please inform me, per air mail, on the following:-

(a) Provided such a Power of Attorney is duly signed and attested by a Notary Public is there any restriction on an Italian subject residing in Italy acting ~~herein~~ as such an Attorney

(b) Does your Commission require any special provisions to be set forth in the Power

(c) Are there any other matters in relation to the Power required by you which would need attention by my client before forwarding the Power to his son.

Yours faithfully,

Wilfrid N. Lees

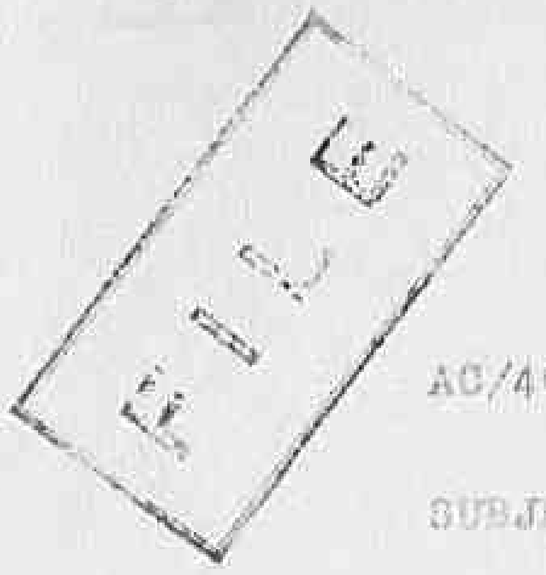
LEGAL SUB - COMMISSION

SUB-CLA	
SUB-LO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	NOV 13 1946

Rec'd 14 Nov.

3 L

Declassified E.O. 12356 Section 3.3/NND No. 785016



2424

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AC/4005/L

MT/ns
14th November 1946

SUBJECT : Disposal of Service articles confiscated by Police in Messina.

TO : Flag Officer Liaison, Italy.

1. Reference your HQF.O.L.I. 944/7 of 8 Nov. '46.

2. If the goods confiscated by the civilian police in Messina were imported for purposes of trade the Italian authorities would have the right to seize and retain them. In the letter dated 25th July '46 the Resident Naval Officer, Taormina, states that the articles confiscated were "Service articles, such as tobacco, clothing etc." Such goods for the use of the Forces under the Armistice Terms enter Italy free of all duties.

3. The confiscated goods have been handed over to the British S.S.S. at Catania with the consent of the Italian Customs authorities. The question of their disposal is not a legal one, but purely administrative, and in the view of this division the confiscated goods, which have never ceased to be Allied property, should be returned to the Supply or other authority which was responsible for the issue of such articles to the Forces.

MUSGRAVE THOMAS
Italian Branch
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4065
V

BLACK MARKET IN SICILY.
(The Rear Admiral, Malta's Minute II No.Malta 633, dated 21st October, 1946).

III.

No. F.O.L.I. 944/7.

THE LEGAL SUB COMMISSION,
ALLIED COMMISSION.

166 P

Forwarded with reference to your Minute IV, No.AC/4065/L, dated 27th August, 1946.

2. In view of paragraph 2 of Minute II, it would be appreciated if this could receive your very early attention.

for REAR-ADMIRAL.

ROME,
8th November, 1946.

Declassified E.O. 12356 Section 3.3/NND No. 785016

...SECT ... PAGE ONE IN SICILY.

FROM ... RESIDENT NAVAL OFFICER, PALERMO. Rec. 4.22/6th.

DATE ... 15th October 1943.

TO ... THE HIGH ADMIRAL, MALTA.

With reference to the attached letter No. 633 from Rear Admiral Malta, the following report is submitted.

2. The "Chiefs"Department (Sicilian authorities) attached to the Palermo police state that they have been instructed by the authorities in Rome to hand over all unconnected Allied goods to the Sicilian U.S.A. as Consuls.

3. It has been confirmed by the Sicilian naval officer Reporting that such goods are handed to the U.S.A. at Catania. The Chief Commissaire U.S.A. has informed the U.S.A. Admiral that he now wants to request instructions for unclaimed goods.

4. It is understood all unclaimed goods are handed over to the Swedish Consul as the Swedish Consul appointed by the Royal Sicilian Government.

633

RESIDENT NAVAL OFFICER TAORMINA

3...

Declassified E.O. 12356 Section 3.3/NND No. 785016

BLACK MARKET IN SICILY.

(Resident Naval Officer, Taormina's No.422/GB dated 15th October, 1946.)

II.

Malta No. 633.
FLAG OFFICER LIAISON, ITALY.
(Copy to:-
Resident Naval Officer, Taormina.)

Forwarded with reference to your FOLI.944/7 of 31st August, 1946.

2. As the Resident Naval Officer, Taormina is being withdrawn on 31st October, 1946 and Naval representation in Sicily will cease entirely on about 14th November, 1946, it is requested that early advice may be communicated.

21st October, 1946.

(M.H.A. KELSEY.)
REAR ADMIRAL, MALTA.

FLAG OFFICER LIAISON ITALY
Date - 5 NOV 1946
ROME

Declassified E.O. 12356 Section 3.3/NND No. 785016

COPY

Subject ... BLACK MARKET IN SICILY

FROM ... RESIDENT NAVAL OFFICER, TAORMINA

DATE ... 15th October 1946 Ref. 422/GB.

TO ... THE REAR ADMIRAL MALTA

With reference to the attached letter No.633 from Rear Admiral, Malta, the following report is submitted.

2. The "Finance" Department (Customs authorities) attached to the Messina police state that they have been instructed by the authorities in Rome to hand over all confiscated Allied goods to the British C.M.P. at Catania.

3.. It has been confirmed by the Resident Naval Officer Taormina that such goods are passed to the C.M.P. at Catania. The Officer Commanding C.M.P. has informed the R.N.O. Taormina that he now awaits disposal instructions for recovered articles.

4. It is regretted as the complete details required were not included in the Civil police report that further information as to the authority in Rome etc. cannot be forwarded.

(Sgd) TUCKER
LIEUTENANT, R.N.V.R.

351

Declassified E.O. 12356 Section 3.3/NND No. 785016

C O P Y

BLACK MARKET IN SICILY.
(Resident Naval Officer, Taormina's No.422/GB dated 15th October, 1946).

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21st October, 1946.

(Sgd) M.H.A. KELSEY
REAR-ADMIRAL, MALTA

Declassified E.O. 12356 Section 3.3/NND No. 785016

DUPLICATE

BLACK MARKET IN SICILY.
(The Rear Admiral, Malta's Minute II No.Malta 633,
dated 21st October, 1946).

III.

No. F.C.L.I. 944/7.

THE LEGAL SUB COMMISSION,
ALLIED COMMISSION.

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2. In view of paragraph 2 of Minute II, it would be appreciated if this could receive your very early attention.

(signed) S. N. BLACKBURN

for REAR-ADMIRAL.

ROME,
8th November, 1946.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
2204

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AG/4005/1. /rm.
13 November 1946.

SUBJECT : Power of Attorney executed in London.

TO : Sig. [illegible] Emilio
Viale Eritrea 72

ROME

The attached Power of Attorney was executed before a Notary Public, Mr. [illegible], whose signature has been duly authenticated by the proper official of the Italian Embassy in London. The latter officials signature has been certified to be the true signature of that person by an official of the Ministry of Foreign Affairs in Rome.

The Power has therefore been authenticated fully in accord with the requirements of both English and Italian law, and no further authentication is required to render the document valid in Trieste, except of course an official translation.

Power of Attorney is returned herewith.

[illegible]
Italian Branch,
For Chief Legal Advisor.

3 U

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

Roma, 13 Novembre 1946

219H

Alla Commissione Alleata
Divisione Legale
R o m a
Via Veneto

Il sottoscritto Prister Emilio si pregia esporre a questa On.Commissione quanto segue:

Acclude originale di procura rilasciata dai Signori Adolfo Ernesto Gentilli e Sarah Frorath alla Signora Gemma Giachin e rogata dal Notaio Felix William Grain. La firma del detto Notaio è stata autenticata dall'Ambasciata Italiana a Londra. La firma del Cancelliere d'Ambasciata debitamente autenticata dall'Ufficio Legalizzazioni del Ministero Affari Esteri.

Il sottoscritto dovendo produrre l'accluso documento in Trieste, città ancora sotto l'occupazione militare, prega codesta Divisione di voler dichiarare se l'allegato documento è in conformità alle disposizioni di legge.

Con perfetta osservanza.

Emilio Prister

Viale Eritrea, 72

All.

3

1960

Declassified E.O. 12356 Section 3.3/NND No. 785016

FIL 218A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

DGH/ps.
9 Nov 1946.

AG/4005/L.

SUBJECT : W/C Lines's claim for restitution of confiscated currency.

TO : British Embassy, Rome.

1. The claim of Wing Commander E.Lines, late RHAF has been carefully considered in the light of the evidence produced at the trial of Sigg.POCAS and CARITATO by an AMG Court. The defendants, Greek citizens, resident in Naples were accused of having purchased from W/C Lines and F/O Leones on 6 Jan 45 foreign currency at rates higher than that fixed by the schedule in Proclamation 3 of the Allied Military Government.

2. On 22 June 1945 the President of the Court, found the defendants guilty on all charges, sentenced them to a term of imprisonment, imposed a heavy fine and ordered the confiscation of all Exhibits in the case. The foreign currencies confiscated by RAF Police from W/C Lines and F/O Leones were among the exhibits.

3. At the time the trial took place both W/C Lines and F/O Lones had been dismissed from the Greek Air Force by Air Minister Plastiras, after an official inquiry for the same facts which brought their accomplices POCAS and CARITATO before the Allied Court.

4. Unfortunately the Greek Ministry of Air did not think fit to send these two officers before a Court Martial, being satisfied with their dismissal from the Service under Greek Army regulations. The ultimate destination of the smuggled currency could only be decided by the Court of Naples where the offence had been committed ~~and~~ therefore no mention of this was made in the order of dismissal.

5. In the case of POCAS and CARITATO the Court of Naples had ordered the forfeiture of all exhibits in favour of the Italian State. The decision of the Court came up for review by this Headquarters in July 1945.

1961

Declassified E.O. 12356 Section 3.3/NND No. 785016

6. While the conviction, sentence and fine pronounced against FOCAS and CARITATO were duly affirmed, the order of forfeiture was revoked on the following grounds :-

Under Allied Proclamations forfeiture is an additional power which a Court possesses. Before this power may be invoked the Court must be authorized to impose lawful punishment of fines imprisonment or death. In the case against FOCAS and CARITATO, it was undisputed that the currency which constituted the exhibits in the case were the property of Linos and Leones. Neither were before the Court. If the Court could not impose lawful punishment against these Greek officers, it certainly could not exercise an additional power of forfeiture.

7. It must also be remembered that these exhibits were not before the Court as property but as evidence. The Court was entitled to treat them as such, determining their probative value. This purpose being served, the exhibits had to be returned to those entitled to take.

8. It w s therefore our opinion that the order of forfeiture, being ultra vires the power of the Court, was void, and consequently was set aside.

9. It is further pointed out that Italian Custom Law, which prohibits export and import of foreign currency, does not apply to members of the Allied Forces. The status of Allied personnel is determined by the Armistice Terms and the Terms of restoration of territory to the Italian administration. Allied officers and other ranks do not fall under the jurisdiction of Italian Laws and Courts.

10. It is therefore the opinion of the Legal Division that the monies confiscated from W/C A. Linos be returned to him, as under the circumstances of the case there exist ~~no~~ no laws or regulations in Italy or Britain justifying their retention or disposal in favour of any third party.

11. It would be however regrettable if the Paymaster General C&P and the Air Ministry, because of their extraterritorial Status, became the instrument through which the export of currency unlawfully introduced in Italy could be effected.

Declassified E.O. 12356 Section 3.3/NND No. 785016

It is therefore suggested that the monies belonging to W/C Lines or their equivalent be restored to W/C Lines in Italy in accordance with the rules and regulations governing Foreign Exchange, which were in force at the time the offence was committed and are still in existence at the present time.

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

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

8 November 1946

2174

Memorandum : TORINO, Francesco, fi Gaetano.

To: Chief Legal Advisor.

1. Request instructions as to disposition to be made of subject prisoner, who is confined "a disposizione" of Allied Commission, in the Insane Asylum at Aversa, because he killed an Allied soldier in Naples in July or August of 1944.

2. Letters dated 20 August 1946 and 17 October 1946 from Ministry of Justice are appended, together with translation of the second of the two letters. The first one says much the same thing, but adds that TORINO when admitted was suffering from a hereditary venereal disease, the treatment of which has resulted in improvement of his mental condition.

3. Recommend that we request the Ministry of Justice to have TORINO brought to trial before an Italian court. In the event that his mental condition be such as to preclude trial at this time, TORINO would nevertheless become the responsibility of the Italian Government rather than of Allied Commission.

as the second letter ^

PAUL McVEIGH,
1st Lt, AGD,
Statistical and
Prisons Officer.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

COPY

U.S. MARITIME COMMISSION

Naples, Italy
Sept. 25, '46

F 216A

To: Commanding General MTOUSA - APO 512
Chief, Navy Sub-Commission, Allied Commission, Rome

From: C.L. Troutman, Operations Manager, Med.

Subject: Jurisdiction over Merchant Seamen

Frequent questions and incidents are arising which require clarification with respect to jurisdiction over Merchant Seamen.

This Commission requests that we be advised regarding:

1. Are American seamen under the sole jurisdiction of Allied Military Police, or are Italian Police empowered to seize and to arrest American seamen, for infringement of Customs regulations or any offences whatsoever in any port of Italy?

2. If seamen are under the sole jurisdiction of Allied Military Police, are we to assume that trials will be held by Court Martial by American Military authorities, or if not under sole jurisdiction of Allied Military Police, are Italian Authorities empowered to hold American seamen for trial and to conduct trials and carry out sentences?

3. Are Customs laws, as stated by the Italian Ministry of Finance applicable to Allied citizens and seamen?

4. Is it permissible for Italian Police to be aboard Allied flag vessels in an official capacity?

Clarification of the foregoing points should assist this Commission in guiding the Operators of American vessels and their agents, since we desire to take those steps that will enable us to back up a forceful policy wherein all unauthorized persons and undesirables can be kept off American ships, and wherein the frequent occasions of pilferage and theft of ships' property and ships' cargoes sometimes involving members of the crews, can be minimized. ./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

We understand that policies exist, however, we desire some rulings in order to issue necessary advices and instructions.

L.L. TROITZAN
Operations Manager, Med.
U.S. Maritime Commission

MJT:TT

c.c. Mr. Byron Black
American Embassy, Rome

c.c. A.L. Genoa, APL Genoa, Lykes Bros. Genoa

3[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

ALLIED CONTROL COMMISSION

INTER-OFFICE MEMORANDUM

Economic Division

FILE No.

SUBJECT:

31 October 1946

TO : Legal Division

May we have your opinion on the matter covered in attached correspondence, please.

J.de B. WALBACH
Colonel C.A.C.
Director.

ALCOM LEGAL DIVISION
REC'D
NOV 1 - 1946
hrs

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL DIVISION

FILE
214B

AC/4005/L

MT/ns
8 November 1946

SUBJECT : A.C.T. Sicily:
Payment of Allowances.

TO : Economic Division.

1. Reference your Inter-Office Memo of 31 October 1946.

2. On 16th March the Econo ic Section in a letter to the Minister of Transport proposed the transfer to the Italian Government of the assets in Sicily of ANT (National Transportation Office) upon the terms set out in the letter. The material terms were that (1) the Italian Government would take over all the assets and liabilities of the ANT, (2) that the Allied Commission would have no further financial responsibilities of any kind in connection therewith, and (3) that the Italian Government would be liable for any claims made against A.C., the Allied Government, ANT or their representatives, which had arisen during the period of operation by ANT. From a letter dated 13 September from the Ministry of the Treasury it appears that the agreement proposed by the Economic Section was accepted on behalf of the Italian Government.

3. In a letter of 3rd April 1945 sent to the "Direzione Generale ANT" - Palermo it is stated certain special awards would be made to the Di-

Declassified E.O. 12356 Section 3.3/NND No. 785016

2. On 16th March the Economic Section in a letter to the Minister of Transport proposed the transfer to the Italian Government of the assets in Sicily of AMT (National Transportation Office) upon the terms set out in the letter. The material terms were that (1)the Italian Government was to take over all the assets and liabilities of the AMT, (2)that the Allied Commission would have no further financial responsibilities of any kind in connection therewith, and (3)that the Italian Government would be liable for any claims made against A.C., the Allied Government, AMT or their representatives, which had arisen during the period of operation by AMT. From a letter dated 19 September from the Ministry of the Treasury it appears that the agreement proposed by the Economic Section was accepted on behalf of the Italian Government.

3. In a letter of 3rd April 1945 sent to the "Direzione Generale I.T." - Palermo it is stated certain special awards would be made to the Director General, and three Vice-Directors:

"In order to recompense your efforts, a special award is to be added to your contract at the moment of dismissal, apart from the normal dismissal bonus, whatever and for whatever reasons each of you ceases to work as member of the Direction General..." The amount of the awards is then set out; 30 months' salaries to the Director General, and 25 for each of the three vice-directors.

This letter is signed by A. . Calvanese, Capt. Road Haulage, Capt. Control Officer.

4. A claim has now been made for payment on the basis of terms of Capt. Calvanese's letter

Declassified E.O. 12356 Section 3.3/NND No. 785016

of allowances that are "far exceeding the conditions of all collective work contracts now in force," and the question submitted for opinion is whether in taking this special award Capt. Galvanese had authority to bind the Allied Military Government and so render the Italian Government liable to satisfy the claim now made, or whether his act was entirely outside the scope of his duties.

5. It is obvious that Capt. Galvanese's authority to bind his principals can not be unlimited. His powers must of necessity be limited to the performance of the duties of his post as Transport Control Officer. In the absence of clear evidence to the contrary we are of opinion that the duties of such a post could not include the power to make substantial monetary payments to the directors of IRT on terminating their service in excess of the sums duly provided for that event in the statutory conditions of service. In fact the order by Capt. Galvanese for the payment of large additional sums to the directors was contrary to regulations contained in AFHQ Administrative Memorandum No 14/40 which provides that Allied Forces employees shall have the same benefits as they would have enjoyed if employed by Italian civilian employers. Further, it is to be noted that the terms under which the employees of IRT work are laid down by Italian legislation and regulations, and therefore could not be varied by an order of an officer of the Transport Control for which IRT employees were temporarily working. The only additional rewards that it would have been competent for Capt. Galvanese to order for payment to the directors of IRT, assuming he had been duly authorized by the Transportation Sub-Commission and the Finance Sub-Commission, would be such as fell

Declassified E.O. 12356 Section 3.3/NND No. 785016

contrary we are of opinion that the duties of such a post could not include the power to make substantial monetary payments to the directors of ITT on terminating their service in excess of the sums duly provided for that event in the statutory conditions of service. In fact the order by Capt. Galvanese for the payment of large additional sums to the directors was contrary to regulations contained in AFHQ Administrative Memorandum N° 14/16 which provides that Allied Forces employees shall have the same benefits as they would have enjoyed if employed by Italian civilian employers. Further, it is to be noted that the terms under which the employees of ITT work are laid down by Italian legislation and regulations, and therefore could not be varied by an order of an officer of the Transport Control for which ITT employees were temporarily working. The only additional rewards that it would have been competent for Capt. Galvanese to order for payment to the Directors of ITT, assuming he had been duly authorised by the Transportation Sub-Commission and the Finance Sub-Commission, would be such as fell within the framework of Italian legislation governing the conditions of service under which ITT employees worked.

6. For these reasons this division is of opinion that Capt. Galvanese's order purporting to make special awards on the directors' termination of service was invalid in that it was (1)at variance with the statutory provisions governing the conditions of service of employees, including those of ITT, (2)at variance with AFHQ regulations, and (3)outside the scope of his duties as Dept.Control Officer to make such an order, and consequently not binding upon A.M.G.

GUSTAV- THOMAS.
Italian Branch.
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
NOV 0 1946

1005

2/14A

RESTORATION OF TRANSFER OF ITALIAN PRISONERS FROM GERMANY

AG/[illegible]/L.

5th Nov 1946.

SUBJECT : Italian citizens sentenced by Allied Courts in Germany and transferred to Italian prisons.

TO : Executive Commissioner.

1. Further to my report to you of today's date, new documents have been received from the Ministry of Justice including a report from the "Procuratore della Repubblica" of Bolzano.

2. In this report it is stated that by a circular of the Ministry of the Interior dated 7th May 1946 Italian judicial officials were informed that Allied authorities had made arrangements for the repatriation to Italy of Italian civilian prisoners now detained in Germany for offences committed in this country or in Italy. The circular further stated that the services of Public Safety at the Italian border would take charge of the prisoners and hand them over to competent judicial authority.

3. On 21 Sept 24 prisoners were brought to the prison of Bolzano by the Questura. None of these prisoners had any documents with them, nor had the Questura. The Director of the prison had to rely on the information given verbally by each prisoner as to their identity and their sentences before he could enter them in the prison register.

4. From the prisoners' declaration it appeared that some had been tried and sentenced by Italian Courts before the war and presumably had escaped or been taken to Germany where they had been detained. It is therefore in order that they should

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including a report from the "Procuratore della Repubblica" of Solzano.

2. In this report it is stated that by a circular of the Ministry of the Interior dated 7th May 1946 Italian judicial officials were informed that Allied authorities had made arrangements for the repatriation in Italy of Italian civilian prisoners now detained in Germany for offences committed in their country or in Italy. The circular further stated that the services of public safety at the Italian border would take charge of the prisoners and hand them over to competent judicial authority.

3. On 24 Sept 46 prisoners were brought to the prison of Solzano by the Questura. None of these prisoners had any documents with them, nor had the Questura. The Director of the prison had to rely on the information given verbally by each prisoner as to their identity and their sentences before he could enter them in the prison register.

4. From the prisoners' declaration it appeared that some had been tried and sentenced by Italian courts before the war and presumably had escaped or been taken to Germany when they had been detained. It is therefore in order that they should be restored to Italian gaols and jurisdiction.

5. On the other hand a certain number had been sentenced by Nazi courts in Germany for offences against Allied Orders and Proclamations and others had been convicted by ordinary German courts for offences against German law. These courts are situated outside the territorial jurisdiction of the Italian State.

6. Italian judicial officials rightly indicate that they have no legal authority to retain in Italian gaols prisoners convicted by a foreign tribunal sitting outside of Italy or sentenced by the Courts whose jurisdiction obviously does not extend further than German territory. They also point out that even if they kept these prisoners in custody under an Allied order, (the validity of which is open to discussion),

Declassified E.O. 12356 Section 3.3/NND No. 785016

they would not be able to release them under the authority of a judicial body which not only has no jurisdiction in Italy but in the case of Allied Courts may be abolished before the prisoners have completed their sentences.

7. It is pointed out that neither Public Safety or Legal Divisions have been informed of the existence of an Allied order compelling the Italian authorities to accept the transfer of Italian prisoners from Germany to Italy.

8. It is therefore requested that A.C. Germany be informed, through AFHQ, of the difficulties faced by the Italian authorities. Their attention should further be drawn to the unsatisfactory way in which the transfers have been carried out, the complete absence of official documents concerning the prisoners and finally the illegality of the whole procedure.

9. If it is however decided to keep the order of transfer in force, the Italian Government should then be requested to promulgate the necessary legislation in order to legalise the position of Italian prisoners sentenced by foreign courts, whether civil or military, and serving their sentence in prison situated in Italian territory.

J. C. Hannaford,
Lt.Colonel,
Deputy Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

F 2107

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

4.005
AC/4002/1

AE/mb
10 January 1947.

SUBJECT : POSTIGLIONE, Domenico.

TO : Ministry of Pardon and Justice.

1. Re your letter of 4 January 1947, No WG/4344-2.

2. Sentences imposed by Allied Military Government Courts have been reviewed for the purpose of fixing the maximum term to be served by prisoners convicted by such courts.

3. If a prisoner escapes, upon re-capture he should serve out the unserved portion of his sentence as modified on review.

4. In this connection, in the review of cases, it has been found that prisoners have been released thru illegal means. Nevertheless, and knowing of such fact, the sentences are being reviewed and in many cases reduced. If and when these prisoners are returned, they should be caused to serve out the portion of the sentence remaining as reflected by the review.

5. Nothing said herein should be taken as an excuse for not returning such prisoners to jail. A prisoner should serve out his sentence, even when he has been released in good faith. Where he has been released thru fraud, he should be prosecuted for his offence against the dignity of the Italian State as well. Unfortunately there are several instances where such releases have been obtained thru fraud, and the prisoners have not been returned to jail nor prosecuted for their

Declassified E.O. 12356 Section 3.3/NND No. 785016

fraud. It is our opinion that such cases should be pressed for action, as the prestige of law may suffer.

4. The construction here given is to be applied as a matter of policy in cases similar to the [illegible], Moreno Case.

7. Please acknowledge receipt of this letter.

JOHN K. [illegible],
Colonel, Infantry,
Chief Legal Advisor.

1975

Declassified E.O. 12356 Section 3.3/NND No. 785016

400 ✓ see fo. 274 B.

279 A

9 January 1947.

CC 5201

SUBJECT: Proposed "Joint Consultative Commission" in the C.M.B.A.

TO : S.C.A.C., HQ. AMG, Venezia Giulia.

1. I have carefully considered Major Scicluna's report on the above subject dated 19 December 1946. I have discussed it at some length with him and arranged for him to discuss it with the Chief Financial Advisor and the Director of the Economic Division of this Commission.

2. It is to be regretted that amelioration of labor conditions in C.M.B.A. were not effected in 1945 or 1946 to the extent now recommended. The appointment now of a Commissario to implement such a plan is considered too drastic a solution in view of the imminent withdrawal of AMG from Venezia Giulia, particularly since the full rights of the diverse shareholder interests must be preserved in order adequately to give effect to paragraphs 10 and 12 of the "Property and Debt Provisions Relating to the Free Territory of Trieste" annex to the "Instrument for the Provisional Regime of the Free Territory of Trieste" dated 14 December 1946 of the Council of Foreign Ministers, copies of which have been forwarded you by G-5, AFHQ.

3. This Commission hopes that improvement can be made in the labor setup within the C.M.B.A. and has no objection to the proposed advisory committees, representing management and workers, but considers that the time has long since passed for the appointment of a Commissario, by and on the initiative of AMG, for this purpose.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USN
Chief Commissioner

Copy to:
A.F.A.
C.L.A.
Economic Division
Ex Commr
CC Files

USFLCOM
FREEDOM
SEP 1700
9 1947
LEGAL DIVISION

Declassified E.O. 12356 Section 3.3/NND No. 785016

1971

4005

F 1 2404

Note for Executive Commissioner:

C.O. 146 and 270 of Venezia Giulia declaring certain Communes Devastated Areas and saddling AMG (without participation of the landlord) with the responsibility of reconstructing private buildings destroyed or damaged through enemy action (German or Fascist) are not actually based on any previous Italian Government Decrees, although they spring from the same necessity. Italian Legislation dealing with the reconstruction of private houses "in order to secure a roof for people rendered homeless because of acts of war" starts with RDL 366 of 17 November 1944, and continues with DLL 305 of 9 June 1945.

I understand that there is a final text before the Council of Ministers which has not yet been approved.

The principal provisions of the Italian Decrees can be summed up as follows:

1) The Minister of Public Works initiates the reconstruction of certain private buildings damaged by war.
2) State contributes one half of the cost up to 75,000 lire and one third after that sum up to 150,000. Over 150,000 loans may be granted.
3) Landlords reimburse 2/3 of State loans within a number of years (up to 20).
4) Repairs are carried out by the Genio Civile under certain conditions.
5) When Genio Civile decide to rebuild without the consent of the landlord, the latter will in any case be responsible of 35% of the cost.

Declassified E.O. 12356 Section 3.3/NND No. 785016

6) Certain provisions in favour of existing tenants.

C. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Declassified E.O. 12356 Section 3.3/NND No. 785016

277A

This letter was sent in the file [redacted] AE/4193/L

(Legal Opinion sent to C.L.O. V.G. regarding AMG and Statal employees)

Declassified E.O. 12356 Section 3.3/NND No. 785016

40057 Jan 46

FILE

276A

Examples of acts done by Allied and Italian officials under AMG and subsequently confirmed by the Italian judicial and administrative authorities as valid under the Proclamations and the terms of restoration.

Region IV (Rome) sold to private firms a number of hulks of German and Italian vehicles in order to secure cheap transport from the country into Rome.

After the restoration of territory the Ministry of War, exhibiting AMG instructions in support of their case) contended that Italian Nationals could not hold public owned military vehicles.

It was ruled that by the terms of restoration all acts done by Allied Officials during AMG were valid under Allied Military Legislation as if done under Italian Legislation and therefore the sales were confirmed.

If the sales had been subsequently declared invalid by the returning Sovereign, it would have meant a loss of many millions to the private purchasers.

Whether the purchasers had or had not the possibility of obtaining redress in Court against AMG would be of little consequence if compared to the deplorable effect which would have been created by such flagrant injustice.

On the other hand the Italian authorities have sometimes benefited from the acts of the occupant.

Rates of electricity, telephones, etc. increased under AMG administration in Northern Italy were maintained as "legally imposed by the occupant" under the said terms of restoration.

"Epuration" sentences passed under Allied General Order No.

Declassified E.O. 12356 Section 3.3/NND No. 785016

were confirmed by the Italian Courts in Milan when the procedure set out in the order had been regularly followed and declared invalid when it had not.

Therefore it is often the advantage of the Italian Government to endorse acts done by AMG officials under the legislation of the occupant, amending such legislation in their own.

Furthermore would it not be an anomaly to see a "citizen" of Udine able to start an action in an Italian Court for reasons which would be denied to his Venitian neighbour.

P.S. - Military necessity covers many sins, but until further notice it in still defined and restricted by Arts. 42 to 55 of the now battered and war-scarred Hague Convention.

"Vox clamans in deserto". I know, originally so La Fontaine would have said: "ça n'effrayerait pas les chasseurs".

3.6

Declassified E.O. 12356 Section 3.3/NND No. 785016

1952

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HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

FILE 2717

30 December 1946

SUBJECT : S. S. GINETTO

TO : Navy Sub-Commission

1. This privately owned Italian ship was grounded by air attack in Greek waters in August 1943, and if I understand the position correctly, fell in Greek hands before 8 September 1943.

2. At that time Italy had not surrendered and was still considered to be a full fledged enemy of the United Nations.

3. Therefore the fate of SS GINETTO did not come under the provisions of any agreement signed after 8 September 1943, but was regulated by prize law as internationally applied to the capture of enemy vessels in time of war.

4. It appears therefore that if the Greek authorities have abided by these rules and brought the SS GINETTO before a Prize Court, which, by confirming the capture through adjudication of the prize, have rendered its appropriation final, they have acted within their legitimate rights.

5. If, on the other hand, SS GINETTO fell in Allied hands after the surrender of Italy and the signing of the DeCourten-Cunningham agreement, it should not have been seized in prize but returned to the Italian Government for operation (Admiralty Note July 46 refers).

6. The ultimate fate of SS GINETTO is therefore a question of fact upon which no doubt the Greek authorities are in a position to throw the necessary light.

7. Question of salvage or/and compensation etc. cannot be discussed at present on the meagre information available.

G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

3

1983

Declassified E.O. 12356 Section 3.3/NND No. 785016

4 Jan 1947

Floor
Heat Plan
274 B

TO: Economic Division
Attention: Col. Walbach

Reference your note 3 January 1947, the Legal Division have little comment to make on Major Sacluna's memorandum and the views you have expressed thereupon. The fact is that most points raised therein have no legal aspect at all and when they have, they are not easily answerable at this stage as neither the future status of the Free State nor the commitments which will be imposed on the Italian Government are known to us.

As far as it is known, IRI is a parastatal organization. It does not follow, however, that the fact that IRI controls CRDA makes the latter equally parastatal. To date, the Italian Civil Code and the Supreme Court are of a contrary opinion. It may therefore be considered that CRDA are still a private company whose shares are held by the public. The State through IRI being one of the shareholders, who may at his discretion, put his stock of shares on the market.

If we accept the fact that CRDA are still a private company, the property of the shipyards located in Trieste will remain theirs, whatever the new status of the city may become, unless nationalized at a later date. Whether the Governor of Trieste will be in a position to compel CRDA to continue the plan advocated by Major Sacluna (if ever put in operation) or not depends on the powers vested in him, which are also unknown to this Division.

Under ordinary municipal law the concurrence of the owners should be obtained before putting the suggested plan into effect by law. If this was done against the will of the owners, it would amount to a form of partial expropriation which only military necessity or the interest of the public could justify.

This however appears to be the case. The plan would therefore be put into effect under the police powers which are vested in AMG as custodian of the governmental powers in occupied territory.

If the appointment of a Commissario is considered essential, it would appear preferable to have him appointed by AMG decree with the concurrence of the Italian Government or even better, appointed by the Italian Government, whose decree would be implemented by AMG in Venezia Giulia.

It must be remembered that the Monfalcone shipyards are located in territory which will remain Italian and furthermore, that the Italian Government through IRI are the principal shareholders of CRDA.

Whether the adoption of the plan is advisable or not cannot be decided by the Legal Division. It is definitely a matter of local labor conditions

3

Declassified E.O. 12356 Section 3.3/NND No. 785016

upon which the Labor Division is fully qualified to express an opinion and make concrete suggestions.

Whether it is worthwhile altering existing conditions for a period which may not exceed a few months seems however open to question but there again this is not a legal matter.

4 Jan 1943

C. C. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Declassified E.O. 12356 Section 3.3/NND No. 785016

Legal opinions

2447

NOTE: LT.COL.C.O.HARRISON

HQ ALLIED COMMISSION
LEGAL DIVISION
APO 794

3 January 1947.

Dear Henry,

Just a few legal examples which might help you in preparing your minute.

Henry Hankey Esq.,
British Embassy
KRAS

1986

Declassified E.O. 12356 Section 3.3/NND No. 785016

Examples of acts done by Allied and Italian officials under AMG and subsequently confirmed by the Italian judicial and administrative authorities as valid under the Proclamations and the terms of restoration.

Region IV (Rome) sold to private firms a number of hulks of German and Italian vehicles in order to secure cheap transport from the country into Rome.

After the restoration of territory the Ministry of War, (exhibiting AFHQ instructions in support of their case) contended that Italian Nationals could not hold public owned Military vehicles.

It was ruled that by the terms of restoration all acts done by Allied officials during AMG were valid under Allied Military Legislation as if done under Italian Legislation and therefore the sales were confirmed.

If the sales had been subsequently declared invalid by the returning Sovereign, it would have meant a loss of many millions to the private purchasers.

Whether the purchasers had or had not the possibility of obtaining redress in Court against AMG would be of little consequence if compared to the deplorable effect which would have been created by such flagrant injustice.

On the other hand, the Italian authorities have sometimes benefited from the acts of the occupant.

Rates of electricity, telephones, etc., increased under AMG administration in Northern Italy, were maintained as "legally augmented by the occupant" under the said terms of restoration.

"Epuration" sentences passed under Allied General Order 46 were confirmed by Italian courts in Milan when the procedure set out in the order had been regularly followed and declared invalid when it had not.

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Therefore it is often the advantage of the Italian Government to endorse acts done by AMG officials under the legislation of the occupant, embodying such legislation in their own.

Furthermore, would it not be an anomaly to see a "citizen" of Udine able to start an action in an Italian Court for reasons which would be denied to his Venitian neighbour.

P.S. - Military necessity covers many sins, but until further notice it is still defined and restricted by Arts. 42 to 55 of the now battered and war-scarred Hague Convention.

"Vox clamans in deserto". I know, especially as La Fouchardie're would have said: "ca n'effrayerait meme pas les chameaux".

3

Declassified E.O. 12356 Section 3.3/NND No. 785016

E 2130

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

27 December 1946

Ref: Address

SUBJECT: Contracts entered into by AMG officials in Italy

TO : Ministry of Justice,
Italian Government.

In reply to your letter of 22 November 1946, the Legal Division is of the opinion that in those areas already returned to Italian Court administration, cases relating to the validity of contracts entered into by Allied officials during the period of Allied Military administration in Italy can, when appropriate, be brought before the Italian Courts which have now complete jurisdiction to adjudicate upon them.

JOHN K. WEBER
Colonel
Chief Legal Adviser

Copy to: CC.

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MEMORANDUM FOR THE EXECUTIVE COMMISSIONER:

1. On the very threshold of this case one encounters the doctrine of law known as "legal fiction". A legal fiction is a principle of law which assumes as true, and will not allow to be disproved, something which, though it may not be strictly true, is yet considered to be so in the interest of the general advancement of justice. Briefly stated, the fiction now referred to is "Everyone is presumed to know the law".

2. When the parties entered into the contract in this case they stood charged with the notice, which the law will not allow to be disproved, that, regardless of the period of time mentioned therein, the contract could never extend beyond the length of time for which military government was authorized to make the contract in the first instance. The life tenant does not dispute the validity of the lease, nor any rights which may have been created thereunder. Her position is simply that:

a. Under international law, of which all parties stood charged with knowledge, the longest time for which the lease would remain effective could not extend beyond the period of Allied occupation;

b. By reason of voluntary relinquishment of rights of occupation by the Allies, the contract of lease came to its natural lawful end;

c. As life tenant, from and after the natural end of the term of lease, she is entitled to receive her property;

d. That full jurisdiction to decide all such questions releting to persons and property was vested by the Allies in the Italian courts upon restoration of the occupied territory concerned to the Italian Government.

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2. When the parties entered into the contract in this case they stood charged with the notice, which the law will not allow to be disproved, that, regardless of the period of time mentioned therein, the contract could never extend beyond the length of time for which military government was authorized to make the contract in the first instance. The life tenant does not dispute the validity of the lease, nor any rights which may have been created thereunder. Her position is simply that:

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b. By reason of voluntary relinquishment of rights of occupation by the Allies, the contract of lease came to its natural lawful end;

c. As life tenant, from and after the natural end of the term of lease, she is entitled to receive her property;

d. That full jurisdiction to decide all such questions relating to persons and property was vested by the Allies in the Italian courts upon restoration of the occupied territory concerned to the Italian Government.

3. It will be observed that the claimant here is not seeking to abrogate a contract entered into by Allied Military Government, nor is she disputing any rights which may have become vested thereunder during its lawful existence, which, of course, are as valid after occupation as before. All she seeks is a declaration by the Court that the lease contract in question does not exist beyond the time of Allied occupation, and that the pretended right asserted by the tenant to the contrary is unfounded both in law and in fact. The claimant is the life tenant of the property. Neither Allied Military Government nor the lessee dispute this condition. In fact, they tacitly admit good title in the claimant by the execution of the lease in the first instance. Therefore, the only legal point really required to be decided in this case is regarding how long this contract is valid. This is a question of law for a court to determine. If it is held that occupation has not ceased, it follows

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that the tenant temporarily is entitled to remain in possession, as the life tenant does not challenge any rights which may have accrued under the lease. If, on the other hand, it is held that occupation has ceased, then, as life tenant, the claimant is entitled to possession. This would be so not because of any invalidity of the lease, but because by operation of law the term for which it was to run had already expired.

4. Normally, of course, in the exercise of their lawful functions, it is for the Italian courts to pass on all legal questions relating to persons and property within their jurisdiction. This is true whether the legal question is bottomed on internal Italian law or external International law. Where Allied Military Government has relinquished such powers, it would be highly improper for the Allied Commission to re-invade such jurisdiction of the Italian courts by giving an opinion regarding a matter which properly lies within the free exercise of their judicial mandate.

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

10 December 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

10 December 1946

CAC : 5

Declassified E.O. 12356 Section 3.3/NND No. T855

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Executive Commissioner

Lapp 225 A
235 A

SUBJECT : Extent of AMG jurisdiction - Validity of contracts to which AMG officials are parties

1. This Division has been approached by the Minister of Justice who wishes to have a ruling concerning the extent and validity of certain contracts passed by AMG officials and affecting private individuals and interests.

2. The Minister states that many cases have already been brought to his notice, but he stresses more particularly the case of Mrs.Marshall, a British subject owning property in Catania.

3. Mrs.Marshall came back to Sicily to find the 1000 acre estate in which she has a life interest under her husband's will rented for a paltry sum through a lease passed between the Allied Property Control Officer and a local "mezzadria". The lease is for six years and ends in 1950. It is understood that not only is the "mezzadria" making a fortune out of this transaction, but that it has left Mrs.Marshall practically penniless.

Mrs.Marshall started proceedings before the local Tribunal in order to have this leonine contract declared null and void.

Unfortunately the Tribunal of Catania has declined jurisdiction in cases where Allied Military personnel are a party until such time as Allied authorities have expressed officially their point of view on the subject.

The Property Control Officer at the British Embassy

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owning property in Catania.

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Mrs.Marshall started proceedings before the local Tribunal in order to have this leonine contract declared null and void.

Unfortunately the Tribunal of Catania has declined jurisdiction in cases where Allied Military personnel are a party until such time as Allied authorities have expressed officially their point of view on the subject.

The Property Control Officer at the British Embassy thinks he is not in a position to help Mrs.Marshall in her predicament.

4. This Division proposes to give the following reply to the Minister of Justice.

"In answer to Dott. Bonelli's verbal query requesting a ruling from Allied authorities as to the scope and validity of contracts and other instruments entered into by Allied Officers in Italy the opinion of this Division is set forth hereunder.

a) The question as to whether an Allied Officer has exceeded his authority or not, is an internal matter which can only be decided upon by Allied authorities and not by the Italian judicial or administrative authorities.

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b) There is no legal doubt that when Sovereignty is restored to the legal Government after Military occupation such laws of the State as may have had their effects suspended by an act of the occupant acquire once more their full force and effect, unless the returning Sovereign decides to maintain in force the acts of the occupant.
(Cassation - Brussels 1925 - Supreme Court of Peru 1932 etc.etc.)

c) Under the terms of restoration it was clearly specified that "all Allied Orders and Proclamations were recognized by the Italian Government as having been validly issued during the time they were operative". That is to say that until the territory was restored to Italian Sovereignty, they had "the same effect as if they had been issued by the Italian Government".

d) All acts done by any member of the Allied Forces in pursuance of such Proclamations and Orders were also recognized as valid by the Italian Government under the terms of restoration. It stands to reason, however, that if the Proclamations and Orders of the Allied Military Governor were recognized as valid during the time they were operative, acts done by Allied Officers in pursuance thereof could not have a legal effect exceeding that of the instrument whence they derived their legality.

e) It follows therefore that all acts done by Allied Officers in the regular course of their duties were valid for the time Allied Military legislation was operative, but could not remain binding after that time unless the Italian authorities or private individuals concerned agreed to maintain their

Declassified E.O. 12356 Section 3.3/NND No. 785016

were recognized by the Italian Government as having been validly issued during the time they were operative". That is to say that until the territory was restored to Italian Sovereignty, they had "the same effect as if they had been issued by the Italian Government".

d) All acts done by any member of the Allied Forces in pursuance of such Proclamations and Orders were also recognized as valid by the Italian Government under the terms of restoration. It stands to reason, however, that if the Proclamations and Orders of the Allied Military Governor were recognized as valid during the time they were operative, acts done by Allied Officers in pursuance thereof could not have a legal effect exceeding that of the instrument whence they derived their legality.

e) It follows therefore that all acts done by Allied Officers in the regular course of their duties were valid for the time Allied Military legislation was operative, but could not remain binding after that time unless the Italian authorities or private individuals concerned agreed to maintain their effect in force.

f) Consequently if an Allied Officer entered into a contract which, through error or ignorance, exceeded the period when Allied Military Legislation was operative, it would now be within the jurisdiction of the Courts of the returning Sovereign to declare such contract valid or invalid, and not within the jurisdiction of the Allied authorities.

g) To sum up Italian Courts (Courts of the returning Sovereign) have, under international law the same right to adjudicate principles of international law applicable in a case before them as have the Courts of any jurisdiction. Therefore it is within their jurisdiction to decide that an act done under occupational law, which is bottomed on international law, is valid or invalid."

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5. International Law authorities point out that if the legal government of an occupied Country were obliged to recognise the continuing effects of any act of administration carried out under an occupant's authority a few week's occupation might very well result in servitudes being set up or obligations undertaken which would prejudice the legal government and private citizens for a generation.

6. Finally under international law and practice there is no example in the past of the Courts of an occupied country refusing to assume a power of revision. These Courts have always tested the validity of the acts of the occupying power by the criterion of Art. 43 of the Hague Convention where it is set out that "the occupant shall take all measures in his power to restore and ensure public order and safety while respecting, unless absolutely prevented, the laws in force in the Country".

7. I hope you will agree with the opinion expressed in our draft letter to the Minister of Justice.

G.G. Hannaford

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

Declassified E.O. 12356 Section 3.3/NND No. 785016

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

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1999

Declassified E.O. 12356 Section 3.3/NND No. 785016

La registrazione con riserva degli atti degli Alti Commissari può essere disposta soltanto dal Governo, fermo restando quanto stabilito dall'ultimo comma dell'articolo 25 del testo unico 12 luglio 1934, n. 1214.

Art. 5.

I rendiconti delle aperture di credito a favore di funzionari delegati dell'Alto Commissario sono inviati alle delegazioni per l'esame amministrativo e la dichiarazione di regolarità ogni tre mesi e, in ogni caso, entro trenta giorni da quello in cui è stata ultimata l'utilizzazione dell'ordine di accreditamento. La dichiarazione di regolarità è emessa dal magistrato direttore di ufficio.

Art. 6.

Per quanto non previsto dal presente decreto si applicano le norme del testo unico delle leggi sull'ordinamento della Corte dei conti, approvato con R. decreto 12 luglio 1934, n. 1214, e le altre disposizioni relative alla Corte medesima.

Art. 7.

Le disposizioni del presente decreto avranno applicazione a partire dal 15 luglio 1945.

Ordiniamo che il presente decreto, munito del sigillo dello Stato, sia inserto nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarlo e di farlo osservare come legge dello Stato.

Dato a Roma, addì 21 giugno 1945

UMBERTO DI SAVOIA

BONOMI — SOLERI

Visto, *Il Guardasigilli:* TOGLIATTI
Registrato alla Corte dei conti, addì 27 *luglio* 1945
Atti del Governo, registro n. 5, *foglio n.* 73. — FRASCA

DECRETO LEGISLATIVO LUOGOTENENZIALE 30 luglio 1945, n. 415.

Cessazione, nella parte del territorio nazionale attualmente soggetto alla giurisdizione del Governo italiano, del corso legale della valuta cartacea degli Stati Uniti d'America, denominata «Dollaro timbro giallo» e della valuta cartacea della Gran Bretagna in sterline, recante l'iscrizione «British Military Authority».

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

In virtù dell'autorità a Noi delegata;
Visto il Bando Reale del 24 settembre 1943, n. 61 A. C.;
Visto il R. decreto 28 aprile 1910, n. 204;
Visto il R. decreto-legge 8 dicembre 1931, n. 1942, convertito nella legge 9 gennaio 1936, n. 103;
Visto l'art. 4 del decreto-legge Luogotenenziale 25 giugno 1944, n. 151;
Vista la deliberazione del Consiglio dei Ministri;
Su proposta del Presidente del Consiglio dei Ministri, Primo Ministro Segretario di Stato;
Abbiamo sanzionato e promulghiamo quanto segue:

Art. 1.

A decorrere dal 31 luglio 1945 cessa, nella parte del territorio nazionale attualmente soggetta alla giurisdizione del Governo italiano, il corso legale della valuta cartacea degli Stati Uniti d'America comunemente chiamata «Dollaro timbro giallo» e della valuta cartacea della Gran Bretagna in sterline, recante l'iscrizione «British Military Authority».

Art. 2.

Fino al 31 agosto 1945 le valute, di cui all'articolo precedente, saranno cambiate al cambio ufficiale, con la valuta italiana presso le filiali dell'Istituto di emissione.

Art. 3.

A decorrere dal 1° settembre 1945 sono vietati l'importazione nel territorio dello Stato, la detenzione e il commercio delle valute indicate nel precedente art. 1.

Art. 4.

Con decreto del Ministro per il tesoro, i trasgressori delle norme del presente decreto sono puniti con una pena pecuniaria in misura non superiore al quintuplo del valore delle valute che costituiscono l'oggetto delle infrazioni.

Si applicano le disposizioni del R. decreto-legge 5 dicembre 1938, n. 1928, convertito nella legge 2 giugno 1939, n. 739 e successive modificazioni.

Le valute oggetto delle infrazioni sono in ogni caso sottoposte a confisca.

Art. 5.

Il presente decreto entra in vigore il giorno della sua pubblicazione nella *Gazzetta Ufficiale* del Regno.

Ordiniamo che il presente decreto, munito del sigillo dello Stato, sia inserto nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarlo e di farlo osservare come legge dello Stato.

Dato a Roma, addì 30 luglio 1945

UMBERTO DI SAVOIA

BONOMI

Visto, *il Guardasigilli:* TOGLIATTI
Registrato alla Corte dei conti, addì 31 *luglio* 1945
Atti del Governo, registro n. 5, *foglio n.* 23. — FRASCA

DECRETO LUOGOTENENZIALE 3 luglio 1945, n. 416.

Soppressione del Sottosegretariato di Stato per la stampa, spettacolo e turismo e provvedimenti per la temporanea gestione dei relativi servizi.

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

In virtù dell'autorità a Noi delegata;
Visto il decreto Luogotenenziale 31 luglio 1944, n. 165, relativo alla soppressione del Ministero per la cultura popolare e alla istituzione di un Sottosegretariato di Stato per la stampa e le informazioni;

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Art. 2.

Restano ferme, nei riguardi del personale di cui all'articolo precedente, tutte le altre disposizioni del decreto legislativo Luogotenenziale 16 novembre 1944, n. 425.

Art. 3.

Il presente decreto entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale* del Regno.

Nei territori non ancora restituiti all'Amministrazione italiana, il presente decreto entrerà in vigore dalla data di tale restituzione, o da quella in cui esso divenga esecutivo con ordinanza del Governo Militare Alleato.

Ordiniamo che il presente decreto, munito del sigillo dello Stato, sia inserto nella Raccolta ufficiale delle leggi e dei decreti del Regno d'Italia, mandando a chiunque spetti di osservarlo e di farlo osservare come legge dello Stato.

Dato a Roma, addì 25 maggio 1945

UMBERTO DI SAVOIA

BONOMI — RUINI — CERABONA — TUPINI — PESENTI — SOLERI

Visto, *il Guardasigilli*: TOGLIATTI
Registrato alla Corte dei conti, addì 25 luglio 1945
Atti del Governo, registro n. 5 foglio n. 70 — FRASCA

DECRETO LEGISLATIVO LUOGOTENENZIALE 14 giugno 1945, n. 414.

Delegazioni della Corte dei conti istituite presso gli Alti Commissariati per la Sicilia e per la Sardegna.

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

In virtù dell'autorità a Noi delegata;

Visto l'art. 5 del decreto legislativo Luogotenenziale 28 dicembre 1944, n. 416, recante provvedimenti regionali per la Sicilia;

Visto l'art. 5 del decreto legislativo Luogotenenziale 28 dicembre 1944, n. 417, recante provvedimenti regionali per la Sardegna;

Visto il testo unico delle leggi sull'ordinamento della Corte dei conti, approvato con R. decreto 12 luglio 1934, n. 1214;

Visto il regolamento per la carriera e la disciplina del personale della Corte dei conti, approvato con il R. decreto 12 ottobre 1933, n. 1361;

Visto il R. decreto-legge 9 febbraio 1939, n. 273, convertito nella legge 2 giugno 1939, n. 739, contenente disposizioni circa i provvedimenti legislativi riguardanti l'ordinamento e le funzioni del Consiglio di Stato e della Corte dei conti e sentita la Corte stessa a sezioni riunite;

Visto l'art. 4 del decreto-legge Luogotenenziale 25 giugno 1944, n. 151;

Visto il decreto legislativo Luogotenenziale 1° febbraio 1945, n. 58;

Vista la deliberazione del Consiglio dei Ministri;

Sulla proposta del Presidente del Consiglio dei Ministri, Primo Ministro Segretario di Stato, di concerto con il Ministro per il tesoro;

Abbiamo sanzionato e promulghiamo quanto segue:

Art. 1.

Le delegazioni della Corte dei conti, previste dall'art. 5 del decreto legislativo Luogotenenziale 28 dicembre 1944, n. 416, e dell'art. 5 del decreto legislativo Luogotenenziale 28 dicembre 1944, n. 417, sono costituite di un consigliere e di magistrati, funzionari ed impiegati di ruolo nel numero che sarà determinato con ordinanza del Presidente della Corte dei conti. Resta invariato il numero dei posti nei ruoli organici della Corte.

Ai servizi delle delegazioni può essere addetto anche personale non di ruolo, da assumersi mediante contratto a termine, osservando le norme stabilite dal regolamento per la carriera e la disciplina del personale della Corte dei conti, approvato con R. decreto 12 ottobre 1933, n. 1361, e dal R. decreto-legge 4 febbraio 1937, n. 100. Le relative assunzioni sono effettuate entro i limiti che saranno fissati con decreto del Presidente del Consiglio dei Ministri, di concerto con il Ministro per il tesoro.

E' consentito anche il comando presso le delegazioni della Corte dei conti di personale di gruppo *B* e *C* di altre Amministrazioni dello Stato, nel numero che a giudizio del Presidente della Corte dei conti sarà ritenuto indispensabile per il regolare funzionamento del servizio.

Art. 2.

Il Presidente di sezione addetto al coordinamento delle funzioni di controllo coordina l'azione delle delegazioni con quella degli altri uffici della Corte.

Art. 3.

Sono presentati alle delegazioni per il controllo preventivo di legittimità tutti gli atti emessi dagli Alti Commissari per la Sicilia e per la Sardegna o da funzionari delegati, per i quali, se emessi dall'Amministrazione centrale, è prescritto il controllo della Corte dei conti.

Art. 4.

I titoli di pagamento sono vistati dal magistrato direttore di ufficio che ne ordina la registrazione o, in caso di assenza, o di impedimento del magistrato, dal funzionario di grado 4 più elevato in grado. Gli atti di impegno e gli altri atti sono vistati dal consigliere che ne ordina la registrazione o, in caso di assenza o di impedimento del consigliere, dal magistrato più elevato in grado.

I rilievi ufficiosi sono firmati dal magistrato direttore di ufficio; il rifiuto di registrazione è deciso dal consigliere che ne dà comunicazione scritta all'Alto Commissario. Questi può chiedere che il provvedimento del consigliere sia sottoposto al riesame della sezione di controllo della Corte. In tal caso, il consigliere invia l'atto ed i documenti allegati, con una sua relazione, al Presidente della Corte, che sottopone l'atto all'esame della sezione di controllo, nominando un relatore fra i consiglieri componenti la sezione.

Questa decide definitivamente.

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DECRETO LEGISLATIVO LUOGOTENENZIALE 31 agosto 1945, n. 571.

Disposizioni circa le nomine ed i licenziamenti disposti dal Governo Militare Alleato.

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

In virtù dell'autorità a Noi delegata;

Visto il decreto legislativo Luogotenenziale 26 luglio 1944, n. 162;

Visto il R. decreto 11 novembre 1923, n. 2395, e viste le sue successive modificazioni;

Visto il R. decreto 30 dicembre 1923, n. 2960, e viste le sue successive modificazioni;

Visto il titolo II del decreto legislativo Luogotenenziale 27 luglio 1944, n. 159, e viste le successive disposizioni concernenti l'epurazione dell'Amministrazione;

Visto l'art. 4 del decreto-legge Luogotenenziale 25 giugno 1944, n. 151;

Visto il decreto legislativo Luogotenenziale 1° febbraio 1945, n. 58;

Vista la deliberazione del Consiglio dei Ministri;

Sulla proposta del Presidente del Consiglio dei Ministri, Primo Ministro Segretario di Stato, di concerto con tutti i Ministri;

Abbiamo sanzionato e promulghiamo quanto segue:

Art. 1.

A tutti gli effetti della legge italiana, le nomine ad uffici pubblici conferite dal Governo Militare Alleato nei territori ad esso soggetti, hanno carattere d'incarichi temporanei.

Art. 2.

Coloro che, all'atto del ritorno dei territori all'Amministrazione italiana, si trovino preposti a pubblici uffici, in virtù di disposizioni del Governo Militare Alleato, continuano ad esercitare le loro funzioni fino a quando non siano sostituiti dalla competente autorità del Governo italiano, salva la loro eventuale immissione in ruolo.

Ai fini del trattamento economico spettante per detti incarichi, le persone estranee all'Amministrazione sono equiparate ai dipendenti di ruolo del grado gerarchico cui corrispondono le funzioni ad esse affidate. Tale equiparazione è disposta con decreto del Ministro competente, di concerto con quello per il tesoro.

Ogniqualora trattisi di funzioni esercitate, da parte di estranei all'Amministrazione, in enti pubblici diversi dallo Stato è corrisposto il trattamento economico previsto dalle vigenti disposizioni o dai rispettivi ordinamenti per la carica cui le funzioni stesse corrispondano.

Art. 3.

I dipendenti dello Stato e degli enti previsti dall'art. 11 del decreto legislativo Luogotenenziale 27 luglio 1944, n. 159, rimossi dall'ufficio o licenziati per motivi di epurazione, dal Governo Militare Alleato, s'intendono sospesi cautelarmente dall'ufficio ai sensi dell'art. 22, terzo comma, del decreto legislativo Luogotenenziale 27 luglio 1944, n. 159.

Detta sospensione decorre dal giorno in cui i provvedimenti sindacati vennero adottati.

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Ordiniamo, a chiunque spetti, di osservare il presente decreto e di farlo osservare come legge dello Stato.

Dato a Roma, addì 20 luglio 1944

UMBERTO DI SAVOIA

BONOMI — TUPINI — SIGLIENTI — SOLERI — GULLO — GRONCHI

Visto, il Guardasigilli: TUPINI
Registrato alla Corte dei conti, addì 31 luglio 1944
Registro Presidenza n. 1, foglio 58. — MASI

DECRETO LEGISLATIVO LUOGOTENENZIALE 20 luglio 1944, n. 162.

Regime giuridico dei territori restituiti all'Amministrazione italiana.

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

In virtù dell'autorità a Noi delegata;

Visti gli accordi intervenuti col Governo Militare Alleato in relazione al ritorno all'Amministrazione italiana di territori già sottoposti al predetto Governo;

Visto il R. decreto-legge 11 febbraio 1944, n. 31, riguardante provvedimenti sul regime giuridico dei territori italiani liberati;

Visto il decreto-legge Luogotenenziale 25 giugno 1944, n. [illegible], concernente l'Assemblea per la nuova costituzione dello Stato, il giuramento dei Membri del Governo e la facoltà del Governo di emanare norme giuridiche;

Visto il R. decreto-legge 30 ottobre 1943, n. 2/B, sulla sospensione delle norme relative alla emanazione, promulgazione, registrazione e pubblicazione dei Regi decreti e di altri provvedimenti;

Visto il R. decreto-legge 29 maggio 1944, n. 141, sulla istituzione presso la sede del Governo di una Sezione speciale di controllo della Corte dei conti;

Vista la deliberazione del Consiglio dei Ministri;

Sulla proposta del Presidente del Consiglio dei Ministri e Ministro per l'interno, d'intesa con i Ministri per la grazia e giustizia, per le finanze, pel tesoro, per la guerra, per la marina e per l'aeronautica;

Abbiamo sanzionato e promulghiamo quanto segue:

Art. 1.

In ogni caso di cessazione del Governo Militare Alleato si applicheranno le seguenti norme.

Con la cessazione dell'Amministrazione Militare Alleata non avranno più vigore nei territori italiani ad essa già sottoposti, tutti i proclami e le ordinanze finora emanati dal Governatore militare delle Forze Alleate o dai suoi delegati.

Resta ferma l'efficacia degli atti o fatti compiuti dalle Autorità Militari Alleate di cui al comma che precede, in virtù di detti proclami ed ordinanze, compresi le nomine e i licenziamenti da uffici pubblici o privati, cui sarà riconosciuta, in ogni caso, piena validità agli effetti di legge, come se compiuti dal Governo Italiano.

Lo stato giuridico ed economico di coloro che siano stati assunti a pubblici uffici dal Governo Militare Alleato sarà regolato a norma delle leggi italiane.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Art. 2.

Resta egualmente ferma l'efficacia delle sentenze pronunciate dai Tribunali militari alleati che ad ogni effetto avranno valore come se pronunciate da Tribunali italiani, a meno che non siano revocate o modificate dalla Commissione Alleata di Controllo o col consenso della Commissione Alleata.

I procedimenti presso i Tribunali militari alleati per i reati precedentemente commessi, previsti dai proclami o dalle ordinanze di cui all'art. 1, saranno continuati e definiti da detti Tribunali ai sensi di dette norme.

Art. 3.

Chiunque entro il territorio sotto l'Amministrazione del Governo italiano compia atti ostili o commetta delitti contro il patrimonio in danno delle Forze Militari Alleate o dei membri di esso o dei funzionari rappresentanti od agenti delle Nazioni Unite, o compia manifestazioni sediziose contro le Forze Alleate o atti che comunque ostacolino lo sforzo bellico o aiutino il nemico è giudicato dall'Autorità giudiziaria italiana a norma delle leggi penali italiane.

E' però riconosciuta la competenza dei Tribunali Militari Alleati nei casi in cui essi ritengano di dover avocare a sè la cognizione di tali giudizi. In detta ipotesi i Tribunali Militari Alleati seguono la propria procedura, ma applicano le leggi penali italiane.

Nella ipotesi di cui al primo comma, qualsiasi membro delle Forze Armate Alleate potrà procedere all'arresto di ogni persona che si abbia ragionevole motivo di ritenere implicata nei fatti ivi previsti, tranne che si tratti di un ufficiale o di un alto funzionario italiano.

In tal caso, salvo ragioni di speciale urgenza, il Governo Italiano o la competente superiore autorità locale viene richiesta di provvedere a quanto sia necessario.

Art. 4.

Qualora nel territorio sotto l'Amministrazione del Governo italiano vengano istituite da parte delle Forze Armate Italiane zone militari, sarà riservato alle stesse, nell'ambito di dette zone, anche ogni potere di polizia, compreso quello di emanare ed applicare in esse regolamenti od ordinanze.

Art. 5.

Il presente decreto ha effetto dalle ore zero del giorno 20 luglio 1944 ed entra in vigore il giorno stesso della sua pubblicazione nella *Gazzetta Ufficiale* del Regno - serie speciale.

Ordiniamo, a chiunque spetti, di osservare il presente decreto e di farlo osservare come legge dello Stato.

Dato a Roma, addì 20 luglio 1944

UMBERTO DI SAVOIA

BONOMI — TUPINI — SICLIENTI — SOLERI — CASATI — DE COURTEN — PIACENTINI

Visto, il Guardasigilli: TUPINI
Registrato alla Corte dei conti, addì 31 luglio 1944
Registro Presidenza n. 1, foglio 57. — MASI

Mod. 462 MGG.

Il Guardasigilli

MINISTRO DI GRAZIA E GIUSTIZIA

Roma. 22. 11. 1946 19 A

uc/4538-4

Alla Commissione Alleata
Divisione Legale

ROMA

OGGETTO: Contratti eseguiti da ufficiali dell'A.M.G. in Italia.

Sono pervenute a questo Ministero alcune segnalazioni con le quali si domanda quale valore debba attribuirsi ai contratti stipulati dai funzionari dell'A.M.G. con privati in Italia e se la nostra autorità giudiziaria sia competente a giudicare della validità di tali contratti particolarmente per l'effetto che essi debbono dispiegare dopo la cessazione del Governo Militare Alleato.

Si tratta sopratutto dei contratti stipulati dagli Uffici alleati (Allied Property Control Office) che in base a disposizioni dell'AMG ho[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

OGGETTO: Contratti eseguiti da ufficiali dell'A.M.G. in Italia.

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Si tratta sopratutto dei contratti stipulati dagli Uffici alleati (Allied Property Control Office) che in base a disposizioni dell'AMG hanno rappresentato gli interessi dei proprietari stranieri di beni in Italia.

Dato il genere dell'argomento sarebbe gradito di ricevere in proposito il parere di codesta Commissione.

IL MINISTRO

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

SUB ZONES OF THE ROAR

ADMINISTRATION OF OCCUPIED AREAS

ROME, 22 NOV. 1944

AC/45273-4

TO : H.Q. AC
Legal Division, Rome

SUBJECT : Contracts prepared by Divisions of the AMG in Italy.

In a number of occasions the attention of this Ministry has been drawn to contracts entered between AMG officers and Italian private firms and individuals and requested to state how far could such contracts be considered validly performed, also whether the Italian judicial authorities have jurisdiction to rule on to their validity and finally, what will be the effects of these contracts after the cessation of Allied Military Government in Italian territories.

We refer especially to contracts drawn by Allied Property Control Officers who, in accordance with AMG provisions, have administered alien property in Italy.

Due to the nature of the subject, the opinion of your Division would be very much appreciated.

(signed) Fausto Gullo

4005

FILE 269A

Minute 3.

Chief Legal Adviser.

Please prepare in draft a directive for signature by the Chief Civil Affairs Officer and also a covering letter to AFHQ, G-5, submitting our draft to that HQ for concurrence.

M. Carr Brigadier

M. CARR,
Brigadier,
Exec.Comm.

17 Dec 46.

Minute 4.

Executive Commissioner.

1. I wish to withdrew the recommendation which I have made in this matter.

2. Since submitting the recommendation, an early termination of Military Government in Venezia Giulie has become assured. In the remaining period, in those cases where the punishment to be inflicted by fine is more than 50,000 lire, trial can be had in the Superior Court. The review of such cases by the Chief Judicial Officer should not prove a heavy burden, certainly in the limited time remaining to Military Government in Italy.

3. Out of the abundance of precaution, the above described procedure was inaugurated until a decision could be obtained on the question. It will continue in operation unless a change is ordered. By closing this file without further action, the above procedure can well handle future cases. Thus a situation is avoided where the cure is worse than the disease.

JOHN Y. WEBER
Colonel, Infantry

19 12

Declassified E.O. 12356 Section 3.3/NND No. 785016

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JOHN Y. WEBER
Colonel, Infantry
Chief Legal Adviser

19 Dec 46.

5

Chief Commissioner

Please see Minute 4 from C.L.A.

20/12

E.C.

E.C.

Noted

21/XII

CC

MG 77/12

Declassified E.O. 12356 Section 3.3/NND No. 785016

MEMO TO THE CHIEF COMMISSIONER

1. As a result of the devaluation of the lire, a situation has arisen which is in need of an authoritative declaration by the Military Governor. The situation is this: there are many provisions in the Proclamations wherein a sum of lire is named in relation to an offence and the jurisdiction of a court to try the same. For example, it is possible under Proclamation 1, Article IV, Section II, to inflict a death penalty if the property is valued at more than 10,000 lire. On the other hand, under Proclamation 1, Article V, Section 27, a fine or imprisonment only may be imposed if the property is valued at not more than 10,000 lire.

2. Another example, - one of pressing importance - is found in Proclamation 1, Part III, Art. IX, wherein the power of a Summary Court to impose fine is limited to not more than 50,000 lire. Other examples can be cited.

3. In my opinion, it is not necessary for the various proclamations to be amended. It is obvious from reading the Proclamations that the amounts in lire named therein were intended to be descriptive of monetary boundaries to be maintained rather than an arbitrary statement of so many lire without regard to the exchange value they might possess. If this be true, subsequent devaluations of the lire in no way change such boundaries although the number of lire are increased.

4. If I am correct in this conclusion, a simple directive to that effect issued by the Military Governor should foreclose any doubt thereon.

5. I recommend that such directive be issued. In this connection, the question presented is of current import to Venezia Giulia and Udine where the Proclamations are in force.

6. The Chief Commissioner issued the Proclamations on behalf of the Military Governor. It is suggested that in the event such directive is issued it be signed by the Chief Commissioner.

No

Declassified E.O. 12356 Section 3.3/NND No. 785016

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No
CCAO

311

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

2.

Chief Commissioner

In order to avoid an issue of forged Proclamations I favour the above solution subject to the matter being given very wide and repeated publicity. I do not think that the public should be left in any doubt as to the penalties which the Law can inflict.

For your directions please

16/12

DEC 17 1946

M Carnby
E.C.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

AC/4005/L

INTER - OFFICE MEMORANDUM

FILE
20 F 7

Subject : Insulting version re uniforms by AC.

Ref. AC/4005/L
13 December 1944.

Col. K. Wilson-Jones,
Executive Officer (I)

1. Reference Inter-Office Memorandum No. 393/4005/A dated 14 December

2. The misunderstanding in this matter has arisen by reason of the last clause in para 6 of Flag "A" which was put in by way of a reply to a suggestion by Col. Walker that payment for the goods in question should be made a responsibility of the Italian Government. I was only concerned to point out that goods ordered by and delivered to A.C. should be paid for by A.C. and not by anyone else. I regret that this has provoked a financial problem that I had not contemplated.

3. I have amended para 6 of Flag "A" by striking out the words stating that payment for these goods is not an A. C. C. expense.

HUGHAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

310

See p. 251A of 4005/L

4005
file

2647

Minute 4.

Executive Commissioner.

1. I wish to withdraw the recommendation which I have made in this matter.

2. Since submitting the recommendation, an early termination of Military Government in Venezia Giulia has become assured. In the remaining period, in those cases where the punishment to be inflicted by fine is more than 50,000 lire, trial can be had in the Superior Court. The review of such cases by the Chief Judicial Officer should not prove a heavy burden, certainly in the limited time remaining to Military Government in Italy.

3. Out of the abundance of precaution, the above described procedure was inaugurated until a decision could be obtained on the question. It will continue in operation unless a change is ordered. By closing this file without further action, the above procedure can well handle future cases. Thus a situation is avoided where the cure is worse than the disease.

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

19 Dec 46.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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JOHN M. WEBER
Colonel, Infantry
Chief Legal Adviser

19 Dec 46.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

966A

MEMORANDUM TO THE EXECUTIVE COMMISSIONER:

1. Let us suppose an order is issued wherein you are named as a member of a military court which is to try a man for his life. The court thereafter sits, and after hearing the evidence, you conclude that the man is "Not Guilty". But I come to you and say, "See here, Brigadier, you must enter a finding of "Guilty" in this case." After recovering from your astonishment, you say to me, "The judicial function, - that is, the act of deciding this case, - cannot be shared. It must be wholly exercised by me, or by you. If you, Weber, want a verdict of "Guilty" entered in this case, you should have wholly assumed the function of deciding this case yourself. I will not be a party to entering a judgment in this case, as my act, when in reality it is your act."

2. As pointed out in my memorandum to the Chief Commissioner, I have not recommended that the r e v i e w o f c a s e s be wholly undertaken by the S.C.A.O., or wholly undertaken by the judicial officer appointed for that purpose. Quite to the contrary, all that I have recommended is the observance of the rule that whoever undertakes the task of passing judgment on a case must wholly assume the exercise of such function free from interference from others.

3. In observing such premise, the S.C.A.O. relinquishes none of the powers vested in him, including the power to make rules not inconsistent with established law. Having made such rules, he is not permitted to resort to the expedient of applying them in a given case as his act under the guise of being the act of another. To obtain such result, he must wholly assume the function in his own name and evidence the same as his act and deed.

4. In the many cases which I have tried, no one has yet undertaken the doubtful task of telling me what judgment I should render therein. In all my service with occupational government, I have yet to tell one of my judges what decision he must render in the case before him.

5. The principles I have announced have been rigorously followed from the beginning of occupational government. It is much too late to depart from them. As I have pointed out in the memorandum to the Chief Commissioner, actually there is no need for the S.C.A.O. to tell a judicial officer the decision to be rendered in a case. It is wholly within his power to review any case over which he has jurisdiction as a Regional Commissioner. By the simple process of wholly assuming the judicial function of review as his act and deed, he lawfully exercises the powers vested in him and lawfully achieves the result he desires.

Declassified E.O. 12356 Section 3.3/NND No. 185016

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JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

17 December 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005
965A

MEMO TO THE CHIEF COMMISSIONER

1. As a result of the devaluation of the lira, a situation has arisen which is in need of an authoritative declaration by the Military Governor. The situation is this: there are many provisions in the proclamations wherein a sum of lira is named in relation to an offence and the jurisdiction of a court to try the case. For example, it is provided under proclamation 1, article IV, section II, to inflict a death penalty if the property in valued at more than 10,000 lire. On the other hand, under proclamation 3, article 3, section 27, a fine or imprisonment only may be imposed if the property in valued at not more than 10,000 lire.

2. Another example, - one of greater importance - is found in proclamation 2, Part III, Art. 14, wherein the power of a Summary Court to impose fine is limited to not more than 20,000 lire. Other examples can be cited.

3. In my opinion, it is not necessary for the various proclamations to be amended. It is obvious from reading the proclamations that the amounts in lire named therein were intended to be descriptive of monetary boundaries to be maintained rather than an arbitrary statement of so many lire without regard to the exchange value they might possess. If this be true, subsequent devaluations of the lire in no way change such boundaries although the number of lire are increased.

4. If I am correct in this conclusion, a single directive to that effect issued by the Military Governor should foreclose any doubt thereon.

5. I recommend that such directive be issued. In this connection, the question presented is of current import in Venezia Giulia and Udine where the proclamations are in force.

6. The Chief Commissioner issued the Proclamations on behalf of the Military Governor. It is suggested that in the event such directive is issued it be signed by the Chief Commissioner.

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FILE
1631

HEADQUARTERS ALLIED COMMISSION
APO 794
PRIVILEGED

AC/4005/1

10 September 1946.

SUBJECT : Repatriation of POW.

TO : Prisoner of War Internment Camp No. 385,
Via Roberto 77 AP 794,
Cantalupo Irpino, (Avellino).

Dear Sir:

In reply to your letter [illegible] I wish to make it clear that I did not promise to help the release of yours son but I solely draw your attention to the proper procedure to e followed for obtaining a release on conditional liberty in his case.

I have the pleasure of informing you that a few days ago the Italian Government has considered his case and granted the conditional liberty.

Therefore within a very few days he will be back home.

John K. Hurd,
Colonel, Infantry,
Chief Legal Advisor.

19 i

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION

AMG
LEGAL DIVISION

AG/4005/1 10 December 1946

SUBJECT : Liability to pay compensation for damage caused by riot.

TO : H.Q. A.C.A.
V Sezione Ufficio A.M.G. (Venezia Giulia).

1. Reference your No VG/A 17/10/2/10/36 of 21 November '46.

2. From the facts stated the events that took place at Trieste on 30th June appear clearly to constitute a riot. If the source of this riot damage was done by "uncontrolled mobs" to certain buildings and their contents. Substantial claims have been made upon A.M.G., Venezia Giulia, to compensate the owners of the property for the damage they have suffered. The question submitted for the opinion of this division is whether there is any legal liability upon A.M.G. to pay the owners the amount of the damage sustained.

3. The proper answer to that query is in the opinion of the Legal Division is that the matter is governed by the law in force in Venezia Giulia, and that is the Italian law in force on 8th September 1943 as varied or added to by orders issued by A.M.G. since that date. Italian Counsel is clearly of opinion that under Italian law there is no liability whatever upon the government, or any other authority, to compensate private persons for damage caused to their property by persons taking part in a riot. So far as we are aware no Order has been issued by A.M.G. touching this matter.

4. We therefore concur in the opinion

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you have expressed that government is not the insurer of property, and is not liable to pay compensation to private owners for damage caused to their property by riot.

John S. Mann,
Colonel, Infantry,
Chief Legal Advisor.

1935

4005

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
~~13 CORPS~~

2614

TELEPHONE No.:

Date 24 November 1946

REFERENCE No.. VG/AMG/LD/210/3685

SUBJECT : Claim for Riot Damage.

TO : ALLIED COMMISSION - LEGAL DIVISION

1. Serious demonstrations and accompanying riots took place in Trieste the latter part of June and early July as a result of which certain uncontrolled mobs destroyed certain real and personal property. The damage was done chiefly to Slovene Bookstores and Slovene Headquarters and offices. Two such claims have been present to this Headquarters, one a claim of 210.000 Lire and the other over 2 million Lire.

2. Briefly the facts are as follows : on June 30 certain rumors reached the Pro-Italians that certain Italians had been seriously injured by Pro-Slovens. Immediately groups of Pro-Italians gathered and demonstrated and engaged in encounters with Pro-Slovens in Trieste. As a result, the above described damage resulted to certain shops of Pro-Slovens. Police were engaged chiefly in attempting to prevent too serious physical encounters - the allegation has been made, which seems to be without foundation that Police, in sufficient numbers, were in the vicinity of the shops damaged and could have prevented the destruction had they been of a mind to do so.

3. In our opinion the basic legal point is that Government is not an insurer of property and that the obligation ceases upon furnishing reasonable facilities for the protection of property, but

Declassified E.O. 12356 Section 3.3/NND No. 785016

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3. In our opinion the basic legal point is that Government is not an insurer of property and that the obligation ceases upon furnishing reasonable facilities for the protection of property, but that even assuming a wilful refusal to provide the protection, no liability can be predicated. However in this instance the persons damaged seem to be quite innocent and the depravations have been caused thru no fault or aggressive act on their part, so that the equities are clearly in their favor.

4. It is our belief that a similar problem of riot damage has been presented to you in the course of the Italian campaign which may serve as a precedent for decision in this case.

5. Your views and comments on this problem will be greatly appreciated.

For the Senior Civil Affairs Officer

CHARLES M. MUNNECKE
Lt. Colonel
Chief Legal Officer

Copy to : A.F.H.Q.
S.C.A.O.

H' ALCOM RECD hrs 1400 29 NOV 1946 LEGAL DIVISION

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
~~XIII~~ CORPS

TELEPHONE No.

Date 24 November 1946

REFERENCE No. VG/AMG/LD/210/3685

SUBJECT Claim for Riot Damage.

TO ALLIED COMMISSION - LEGAL DIVISION

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Slovene bookstores and Slovene [illegible] offices. Two such claims have been present to this Headquarters, one a claim of 210.000 Lire and the other over 2 million Lire.

2. Briefly the facts are as follows : on June 30 certain rumors reached the Pro-Italians that certain Italians had been seriously injured by Pro-Slovens. Immediately groups of Pro-Italians gathered and demonstrated and engaged in encounters with Pro-Slovens in Trieste. As a result, the above described damage resulted to certain shops of Pro-Slovens. Police were engaged chiefly in attempting to prevent two serious physical encounters - the allegation has been made, which seems to be without foundation that Police, in sufficient numbers, were in the vicinity of the shops damaged and could have prevented the destruction had they been of a mind to do so.

3. In our opinion the basic legal point is that Government is not an insurer of property and that the obligation ceases upon furnishing reasonable facilities for the protection of property, but that even assuming a wilful refusal to provide the protection, no liability can be predicated. However in this instance the persons damaged seem to be quite innocent and the depravations have been caused thru no fault or aggressive act on their part, so that the equities are clearly in their favor.

4. It is our belief that a similer problem of riot damage has been presented to you in the course of the Italian campaign which may serve as a precedent for decision in this case.

5. Your views and comments on this problem will be greatly appreciated.

For the Senior Civil Affairs Officer:

CHARLES M. MUNNECKE
Lt. Colonel
Chief Legal Officer

Copy to : A.F.H.Q.
S.C.A.O.

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HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

December 1946

SUBJECT : Venezia Giulia

TO : Chief Commissioner

A. Following your instructions the question of

Loans to Industry

made by A. M.G., Venezia Giulia, was discussed at length with the C.C.D. and the C.L.O. of V.G. The C.C.D., V.G. states the procedure adopted was based on the following:

1. AMG Board Directive No 167/207 (Rev-3) dated 20 June 1945 to the Commander of the 5th Army concerning the creation of the Venezia Giulia Zone, in which it is stated, among other things, that Venezia Giulia would be administered as a MILITARY ZONE.

2. It also states that the laws of the Italian Government as on the 8th of September 1943, would be the basic law for this Region.

3. Further, that "NO STEPS will be TAKEN which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation."

4. By the same duly order the Italian Government was "excluded" from the territory.

5. In that part of Italy latterly administered by A.M.G. Italian decrees were implemented in the territory so administered by endorsement; the endorsement specifically excluded the decrees from being operative in Venezia Giulia.

6. In Venezia Giulia any new Italian Government decree that is considered desirable to apply in Venezia Giulia, is

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enacted not by "Declaration" but by the issue of a regional order.

7. The choice of decrees to be enacted in Venezia Giulia is left to . . . (para 7 OPD directive).

8. Replacing reconstruction loans to industry: the procedure in Italy, by an Italian decree, is not the loans are made by a bank and the bank is guaranteed by the Government. In case of default the Italian Government has the right to reimburse the bank and take possession of the security given for the loan. The A.F.H.Q. considers that if this Italian decree were implemented in Venezia Giulia, it would give the Italian Government, in case of default, the right to take possession of industry of Venezia Giulia, and this obviously would be in conflict with the clause referred to in para (5).

9. Under the Italian decree, the Italian Government would have credit to cover its possible liabilities under guarantee. Venezia Giulia is barred from using an Italian Government credit, as to do so would clearly be in conflict with the instructions referred to in para (5).

In addition, the banks in Venezia Giulia - with head office in Italy - were not disposed to make advances of this kind under the guarantee of A.F.H.Q. Therefore, in view of the different situation existing in Venezia Giulia, if it was desirable to finance industry, - and that is not disputed, - it could only be done by the issuing of an independent order, which was the reason why order No 104 was issued.

10. The Finance Sub-Commission were aware of the procedure, and this was stated by the Director of the Finance Branch of the Economic Section - Lt.Col. Timbrell - in his report to the Acting Vice President of the Economic Section on the 26th of April 1945.

11. The accounts of the A.M.G. Trie-

12. In A.M.G. territory advances to industry were only free

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2027

the local Treasury section of funds allotted by order of A.M.G. for the purpose of financing items essential to the war effort. Usually these items were creditors of the Italian government either on "old" account or on account of goods supplied to or in course of production for the Allied Armies as such, or occupational cost to be borne by the Italian government.

3. It is laid down by Circular 3/C that, in making such advances, the Bank Budget (i.e.) procedure is to be followed. This requires the submission of a request on the appropriate I.B. form, the approval of which by the A.M.G. authorizes the A.M.G. (or Regional Officer at Territorial H.Q.) to issue an "order or credit" on the Local Treasury. (Since Sicily = Treasury section) in favour of the Intendente di Finanza for the approved amount. The A.M.G. forms covering the advance are to be sent to A.C. for control and proper representation to the Italian Treasury.

4. The Intendente, in payment over the advance, obtains a formal acknowledgement. No interest accrues on the advance and no mortgage is registered on the immovable property of the firm receiving the advance. The amount advanced is entered by the Intendente in and outwards on a "special account (capitale) in his books.

5. The Italian Decree, to which reference is made in para 2 above, provides for rehabilitation loans to rehabilitate Industry through the banks. In the terms of the Decree and for the setting up a fund by the Treasury, up to which amount the Treasury may guarantee the banks. Only in the case of a default, therefore, are Government funds utilized.

6. Thus, two different ways of financing are apparent (a) advances from Treasury funds on account receivable from the Government (either accrued or to be accrued) and (b) loans by the banks under Italian Government guarantee.

7. The A.M.G. loans totalling 2 ½ billion (approximately) were first made out of A.M.G. (AFHQ) funds and, not being in effect an expenditure, were repaid to the extent of 2 billion in June and July 1945. - (The balance of ½ billion is expected to be repaid in the near future) out of so-called "State" funds, claimed by G.O.I. to be the "State" of A.M.

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The funds were obtained by an "order of credit" on the Banca d'Italia - Treasury section and are, therefore, Italian government funds until and unless the liability on the account with the Treasury section is assumed by the Allieato government of the area, if other than Italian.

7. Under the Italian decree (a copy of which was sent), in Italy, be made by Banks, even by the Commercial Banks (unless domestic Italians, within Italian, since it does) which have in recent times obtained legal powers to carry on this type trade. Some ten banks operate presently by those banks with the powers of a "mandato fondiario".

8. According to the local Treasury was made by reason of the reluctance of the local branches of the banks to advance against the guarantee of A.M.G. alone because of the banks' qualification as the limitation of "Allied" lending powers under the banks' internal regulations.

9. A.M.G. Venezia Giulia issued on the 1st August 1945 their first order bonds for a total of L. 1,417,000,000 (in-stead of those mentioned in 5 above) have been sold. A list is attached showing the amounts and repayments to date.

10. The order differs from the Italian decree in that it legislates for bonds of A.M.G. type Treasury funds. The procedure has been followed, and has been amended by the insertion of a repayment date in lieu of the inscription of a mortgage in the name of A.M.G. on the immovable property of the Bank and the issuance of a policy of insurance in favour of A.M.G. The relative forms have not, so far, been forwarded to A.M.G.

11. Under the order, applications are first examined by a local committee of experts which makes its recommendations to the C.A.O.

12. In the course of discussions with the Directors of the Banca d'Italia, Credito Italiano and other banking officials in Trieste I was informed that the Committee is quantitative in its preliminary examination. The general banking opinion here is favourable to the order as it felt it enabled a

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such moral impetus to be given to local industry on terms favourable to the borrower. The interest, amortization and mortgage registration clauses are considered as inducive to repayment. In answer to a direct question as to whether U.S.A. was required as trustee for the eventual covenant I received the answer in the affirmative.

4. In my opinion, the negotiations are required with care and thoroughness and flexibility, the goals are not restrictive. I consider that order of the should have followed more closely on the lines of the Italian decree and using only by the value under the appropriate arrangements with the respective United Nations. Failure on the part of the local banks to use their surplus banking funds in U.S. for like purpose is unfortunate.

5. At, even if the banks did respond to appeal, additional funds, and U.S. is called upon to act in the emergency, in my case, it should have used the U.S. procedure as laid down by Clause 3/d I.a. as the "Government" for the time being and not a system which, rightly at present, did not come to the mind that allied funds were involved.

6. Finally, figures given to me in Trieste of "global" account to 30 June 1951 show a deficit on a 7.167 billion lire a. of Revenue 5 1.033 billion, Ordinary Expenditure 4.100 billion Extraordinary Expenditure 4.100 billion Total 5 8.700 billion. U.S. funds are not sent to A.C. and it follows that the limitation of the over-draft on the "global" account is solely within the discretion of the U.S.A.

Lt. Col.

(Sgd.) [illegible]
General, U.S.A.
Allied Force

2:7

Copy

23.11.1946

LIST OF LOANS SUBMITTED TO INSPECTET

2915

Name			Amount	Amounts reimbursed
Cantieri S.Giorgio, Trieste	Ship yards	L	40.000.000.	
ILMEA Impresa lavori Navali, Trieste	" "	"	9.000.000.-	
G.Beltrame S.A., Trieste	Clothing manufacturers	"	6.000.000.-	
Umberto Nissaglia, Trieste	Ship constructer	"	5.000.000.-	
Jutificio e canapificio triestino	Hemp Jute factory	"	217.000.000.-	
Pastificio Triestino, Trieste	Pasta factory	"	10.000.000.-	
Solvay & Co Monfalcone	Chemical factory	"	100.000.000.-	
AQUILA, Trieste	Oil refinery	"	150.000.000.-	
Cantieri Riuniti dell'Adriatico, Trieste	Ship yards	"	900.000.000.	
Ettore Martinazzi, Trieste	" "	"	40.000.000.-	L 4.500.000.-
Enrico Sperco & C., Trieste	"	"	11.000.000.-	" 250.000.-
Cantieri Felszegy, Trieste	"	"	20.000.000.-	
Francesco Peccenini, Trieste	Stone quarry	"	20.000.000.-	
Various small shipyards (together)		"	6.5000.000.-	300.000.-
Viotti & Co., Trieste	Chemical Factory	"	3.000.000.-	
		L	1.467.500.000.-	L 5.050.000.-

The reimbursement has just started.

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40261

FILE

6 Dec

Request Classified Cable

S/S Secret Letter, AFHQ,

to AG 387/267 GEG-O,

dated 24 June.

EDA Concurs

Draft Cable

MEMO TO THE CHIEF COMMISSIONER

1. As directed, I have made a trip to Trieste with Colonel Battenaby (E) for the purpose of inquiring into the position taken by Venezia Giulia in relation to the matter of loans to industry authorized to be made there. The whole situation was explored in a series of conversations, the subject matter of which was agreed upon and later reduced to writing. This position is reflected in paragraphs 1 to 10 of the written summary hereto attached (See Flag "A").

2. Briefly stated, the attitude of Venezia Giulia in this connection may be summarized as follows:

a. With the occupation of Northern Italy, including Venezia Giulia, the Supreme Allied Commander, by a directive dated 26 June 1945 A.G. 387/207 GCS-O, elected to constitute Venezia Giulia into a region s e p a r a t e and apart from the remaining portions of occupied Northern Italy. The reasons for such decision were not precisely stated therein, but it was fairly to be assumed that the uncertain political future of Venezia Giulia was the moving cause. (Use of the term "Venezia Giulia" in this memorandum with references to times subsequent to the Morgan Agreement, dated 9 June 1945, is intended to include only that part of the whole region so named which is under Allied Military Government and known as Zone "A".)

b. Inasmuch as Italian law as it existed on 8 September 1943 was adopted as the basic law of Venezia Giulia, Italian decrees promulgated after that date were not to be implemented. Furthermore, the Italian Government was expressly excluded from Venezia Giulia. Owing to these premises, and the instruction in the directive that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation", there was vested in Military Government, Venezia Giulia, an i n d e p e n d e n c e in the selection of Italian decrees to be instituted, and by the same token an i n d e p e n d e n c e in the wording of the substance thereof, which i n d e p e n-

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directive dated 26 June 1945 [illegible]
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s e p a r a t e and apart from the remaining portions
of occupied Northern Italy. The reasons for such
decision were not precisely stated therein, but it was
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future of Venezia Giulia was the moving cause. (Use of
the term "Venezia Giulia" in this memorandum with
reference to times subsequent to the Morgan Agreement,
dated 9 June 1945, is intended to include only that
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Allied Military Government and known as Zone "A".)

b. Inasmuch as Italian law as it existed on 8 September
1943 was adopted as the basic law of Venezia Giulia,
Italian decrees promulgated after that date were not to
be implemented. Furthermore, the Italian Government was
expressly excluded from Venezia Giulia. Owing to these
premises, and the instruction in the directive that "no
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Military Government, Venezia Giulia, an i n d e p e n-
d e n c e in the selection of Italian decrees to be
instituted, and by the same token an i n d e p e n d e n c e
in the wording of the substance thereof, which i n d e p e n-
d e n c e was to be exercised by Military Government,
Venezia Giulia, in i t s sound discretion.

c. That changes in the substance of the decree of the
Italian Government authorizing loans to industry were
necessary for the purposes of Venezia Giulia, in that if
loans were granted under the provisions of the Italian
decree and default was thereafter made in the payment of
a loan, the Italian Government would be entitled to foreclose
a lien and would thus come into Venezia Giulia, though
expressly excluded from the region by the directive of the
Supreme Allied Commander. Therefore, to avoid such situation
and to indicate clearly by its action that it was not con-
cerned in the ultimate political disposition of the territory,
it was deemed advisable that Venezia Giulia draw the order
containing the features described by the Financial Adviser,
Col. Bettonsby, in his report to the Chief Commissioner,
incorporated in this file.

20.

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3. The foregoing raises the question as to whether Military Government, Venezia Giulia, was correct in assuming that its elected position regarding this matter was within the boundaries of the directive of the Supreme Allied Commander. After carefully reading that directive, and weighing the intent of the language used therein, I am led to the conclusion that Military Government, Venezia Giulia, has given a greater breadth in its interpretation of the terms thereof than was really warranted. This conclusion is based upon the following:

a. With the collapse of enemy resistance the Supreme Allied Commander was confronted with the problem of establishing an occupational government for the newly liberated areas of Northern Italy under International law. Included among such areas, of course, was Venezia Giulia. Though the Italian State continued as sovereign over all of such areas, including Venezia Giulia, the Supreme Allied Commander, as head of the occupying force, had power to and in fact did set up Allied Military Government therein in lieu of government by the Italian State.

b. It is of no legal consequence that in following this course the Supreme Allied Commander elected to treat Venezia Giulia as a region s e p a r a t e from the rest of Northern Italy for administrative purposes. The l e g a l pattern of occupational government in all Northern Italy, including Venezia Giulia, remained the same. Italian sovereignty over all of this territory was fully recognized by establishing there as basic law the Italian law as it existed on 8 September 1943. In the case of Venezia Giulia the additional instruction that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation" in no way altered the legal pattern to be followed in that area. The most that can be said of this instruction is that it was a timely warning by the Supreme Allied Commander to Allied Military Government (Italy) that administrative procedure to be followed in Venezia Giulia must rigidly adhere to the law of occupation with utmost political disinterest, leaving to the political agencies of the Allies the solution of the political future of Venezia Giulia. Under the plain language used by the directive, Venezia Giulia, like all other regions of occupied Italy, was to continue under the technical administration of the Allied Commission, which, in the chain of command to higher authority, acts for the Supreme Allied Commander.

c. The setting apart of Venezia Giulia as a s e p a r a t e region fell far short of establishing it as an i n d e p e n d e n t

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b. It is of no legal consequence that in following this course the Supreme Allied Commander elected to treat Venezia Giulia as a region s e p a r a t e from the rest of Northern Italy for administrative purposes. The l e g a l pattern of occupational government in all Northern Italy, including Venezia Giulia, remained the same. Italian sovereignty over all of this territory was fully recognized by establishing there as basic law the Italian law as it existed on 8 September 1943. In the case of Venezia Giulia the additional instruction that "no steps will be taken which support or may appear to support or prepare for any ultimate disposition of the area to any claimant nation" in no way altered the legal pattern to be followed in that area. The most that can be said of this instruction is that it was a timely warning by the Supreme Allied Commander to Allied Military Government (Italy) that administrative procedure to be followed in Venezia Giulia must rigidly adhere to the law of occupation with utmost political disinterest, leaving to the political agencies of the Allies the solution of the political future of Venezia Giulia. Under the plain language used by the directive, Venezia Giulia, like all other regions of occupied Italy, was to continue under the technical administration of the Allied Commission, which, in the chain of command to higher authority, acts for the Supreme Allied Commander.

c. The setting apart of Venezia Giulia as a s e p a r a t e region fell far short of establishing it as an i n d e p e n d e n t region clothed with the attributes of an "independent state". Any assumption, expressed or implied, that Venezia Giulia is an "independent state" violently collides with the mandate of the Supreme Allied Commander that "no steps will be taken which support or appear to support or prepare for any ultimate disposition of the area to any claimant nation", for the obvious reason that thereby indication is given to the world that the territory in question is earmarked for ultimate possible disposition other than to Italian sovereignty.

d. Furthermore, it cannot be seriously contended that by making Venezia Giulia into a s e p a r a t e region it became an i n d e p e n d e n t region. If it became an independent region it would have been independent for all purposes, including

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personnel, supply, and administration, as well as legislation. Against such contention is a long course of dealing wherein the principle has been recognized that the region, while s e p a r a t e, has been fully answerable in the chain of command to higher authority.

e. Likewise the contention that an independent legislative power became vested in Military Government, Venezia Giulia, because of adoption there of Italian Law as it existed on 8 September 1943, with consequent non-implementation of Italian Decrees in the area thereafter, is untenable. Such premise loses sight of the conditions that:

(1) At all times during occupation the choice of decrees to be implemented in occupied territory has been vested in higher authority.

(2) The directive in this instance plainly stated that the separate region of Venezia Giulia was to function under the technical guidance of the Allied Commission.

f. In consideration of all factors bearing upon this matter together, it becomes apparent that though for special reasons, no doubt political in character, Venezia Giulia was set apart from the remainder of Northern Italy to be operated as a s e p a r a t e r e g i o n, like other regions it was under the technical supervision of the Allied Commission; that to foreclose political agitation, in lieu of implementing Italian decrees by endorsement thereon as was done in other regions, implementation there was to be accomplished by regional orders; that the regional orders of Venezia Giulia were to contain the subject matter of Italian decrees decided upon by higher authority for implementation; and that to avoid political implications, no steps would be taken in the wording of such regional orders which would support, or appear to support, or prepare for, any ultimate disposition of the area to any claimant nation.

4. Upon examination the reasons advanced in support of the loan procedure authorized by the order of Military Government, Venezia Giulia, fail to have the merit claimed for them. As one example of this, it is urged that had such loans been made after the pattern of the Italian decree, upon default in payment the I t a l i a n Government would be entitled to foreclose liens and seize the properties concerned, though the Italian Government was expressly excluded from Venezia Giulia.

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f. In consideration of all factors bearing upon this matter together, it becomes apparent that though for special reasons, no doubt political in character, Venezia Giulia was set apart from the remainder of Northern Italy to be operated as a s e p a r a t e r e g i o n, like other regions it was under the technical supervision of the Allied Commission; that to foreclose political agitation, in lieu of implementing Italian decrees by endorsement thereon as was done in other regions, implementation there was to be accomplished by regional orders; that the regional orders of Venezia Giulia were to contain the subject matter of Italian decrees decided upon by higher authority for implementation; and that to avoid political implications, no steps would be taken in the wording of such regional orders which would support, or appear to support, or prepare for, any ultimate disposition of the area to any claimant nation.

4. Upon examination the reasons advanced in support of the loan procedure authorized by the order of Military Government, Venezia Giulia, fail to have the merit claimed for them. As one example of this, it is urged that had such loans been made after the pattern of the Italian decree, upon default in payment the I t a l i a n Government would be entitled to foreclose liens and seize the properties concerned, though the Italian Government was expressly excluded from Venezia Giulia. This conclusion is considered to be erroneous. Under International Law, during occupation, the government of the Italian State was excluded not only from Venezia Giulia but from a l l of occupied Italy. In all of such territory, within the framework of its authorized powers under International Law and the Armistice terms, occupational government acted under its own right of control. If, in the exercise of such control it was authorized to make loans, a necessary incident thereto was the power to receive payment, or, in default, to foreclose liens against security. This is but a simple statement of the rule that a grant of expressed powers necessarily carries with it all implied and incidental powers needed to carry the expressed powers to their natural end. Thus, upon default in the payment of loans so made, power to foreclose would rest with occupational government and not the Italian government. The fear of intrusion into Venezia Giulia by the Italian Government in this connection was, therefore, without foundation.

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5. However, aside from all of this, and perhaps more important, is the question whether it was the intent of the original Italian enabling decree that in disbursing funds thereunder the unqualified legal relationship of debtor and creditor was to be established. The contrary would appear to be the case. In Republican Italy, as in the case of every state, there are broad powers vested in Government known as "police powers". Broadly defined, these permit government to do any act within constitutional boundaries that has for its object the preservation of the life, health, morals and well-being of the people of the state. If the people of the state are protected, the state is protected, the state being "We, the people". Threatened with grave unemployment disorders, serious enough to challenge the very existence of the state, under the broad police powers vested in government, and the mandatory duty to exercise them, the Italian Government justifiably might have prevailed out Italian funds either as a "dole" (this was done in Britain, as I recall), through a W.P.A. (this was done in the United States), or as loans to private industry (subsidies), for the purpose of relieving unemployment target (as seemingly was contemplated by the Italian decree). The last plan, of course, had the virtue that to the extent that ventures thereunder were successful moneys would come back into the Italian Treasury for further use. On the other hand, if loans so made proved uncollectible, as moneys expended lawfully, within the range of permitted choice of methods, no one could complain thereof. Liens and their foreclosure under such circumstances necessarily would become matters of secondary, not primary, importance. The Italian decree with which we are concerned, without doubt, was passed under the broad police powers vested in the Italian Government. It was optional to Allied Military Government whether the decree should be implemented in Venezia Giulia, admittedly under Italian sovereignty. If decided in the affirmative, transactions thereunder would not be "loans" in the true sense, according to best interpretation, but, rather, expenditures by way of subsidy made for the Italian state in the region of Venezia Giulia. By following the decree (observed elsewhere by Government in Republican Italy), unquestionably such authorized expenditures by Allied Military Government could never be successfully challenged by the Italian State. Thus construed, Allied Military Government simply would be following a plan authorized for the expenditure of Italian funds by government under authority of the Italian State.

6. Therefore, while Venezia Giulia has proceeded with transactions of this kind as though lending out taxpayers' money on security, careful study of all considerations in this connection reveals the circumstance that disbursement of such moneys was actually made under an authority of much broader intent, and this seems to have been understood by all except, perhaps, Venezia Giulia. The Italian decree, in terms, refers to loans, but it is believed that thereunder the relation of lender - borrower

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United States), or as [illegible] purpose of relieving unemployment except (as seemingly was contemplated by the Italian decree). The best plan of course, and the virtue that to the extent that ventures thereunder were successful moneys would come back into the Italian Treasury for further use. On the other hand, if loans so made proved uncollectible, as moneys expended lawfully, within the range of permitted choice of methods, no one could complain thereof. Liens and their foreclosure under such circumstances necessarily would become matters of secondary, not primary, importance. The Italian decree with which we are concerned, without doubt, was passed under the broad police powers vested in the Italian Government. It was optional to Allied Military Government whether the decree should be implemented in Venezia Giulia, admittedly under Italian sovereignty. If decided in the affirmative, transactions thereunder would not be "loans" in the true sense, according to best interpretation, but, rather, expenditures by way of subsidy made for the Italian state in the region of Venezia Giulia. By following the decree (observed elsewhere by Government in Republican Italy), unquestionably such authorized expenditures by Allied Military Government could never be successfully challenged by the Italian State. Thus construed, Allied Military Government simply would be following a plan authorized for the expenditure of Italian funds by government under authority of the Italian State.

6. Therefore, while Venezia Giulia has proceeded with transactions of this kind as though lending out taxpayers' money on security, careful study of all considerations in this connection reveals the circumstance that disbursement of such moneys was actually made under an authority of much broader intent, and this seems to have been understood by all except, perhaps, Venezia Giulia. The Italian decree, in terms, refers to loans, but it is believed that thereunder the relation of lender - borrower, with its incidents of liens and foreclosures, was but collateral to the main purpose of granting a subsidy to industry for the relief of unemployment, and that in promulgating the subject matter of the decree in Venezia Giulia it would have been better to have followed it closely rather than to substitute therefor that which was contained in the order issued.

7. It is interesting to observe that there is distinct evidence that two conflicting viewpoints exist side by side and at the same time at Venezia Giulia concerning the present status thereof. In an envelope hereto attached (see Flag "3") will be found two revenue stamps which I personally obtained from civilians who purchased cigarettes in Trieste.

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These stamps reads, "Monopoly of the S t a t e Venezia Giulia". Unquestionably, these stamps have been issued with knowledge, if not design, on the part of Military Government, Venezia Giulia. The other view is set out in a statement of educational policy, given to the press, and published in "Stars News", (88th Division), Page 13, which I attach for information (see Flag "C"). Thus, both of these views having been brought to public attention, the question arises as to which of them the world at large should believe. From the long and illuminating discussions in which I participated at Trieste, I came to the conclusion that whatever reference has been made to the "State of Venezia Giulia" in prior local writings and discussions was a resort to terms employed in describing the i n d e p e n d e n c e of Venezia Giulia not only from Italian sovereignty, but sub-consciously from other authority. In this connection it is considered unnecessary that I refer again to the position I have heretofore taken on the distinction between "State" and "Government". In my opinion my views on this subject are in accord with the proclamation of General Alexander, as referred to in the educational news item (Flag "C") and the language and intent of the pertinent directive. If it is seriously contended that the directive making Venezia Giulia a separate region was broad enough to make it an independent region and, by virtue of that fact, a "state", then only by the operation of mystic powers could this be true, for it was beyond the powers of the Military Governor by use of military orders to create a "state" where none existed. If, on the other hand, local reference to the "State of Venezia Giulia" was made to convey the idea that Venezia Giulia was i n d e p e n d e n t of Allied Control, an equally false position was taken, if my interpretation of the Supreme Allied Commander's directive is sound.

R E C O M M E N D A T I O N S

8. The remedy to be applied in this case is simple. If what has been said regarding educational policy of Allied Military Government is correct (see Flag "C"), the acceptance thereof by all concerned is all that is presently required. In my opinion, the well-considered directive issued by the Supreme Allied Commander to the Eighth Army leaves little to be desired. Therein the position of Venezia Giulia is described as that of a separate Region, functioning like other regions under a chain of command to higher headquarters. For political reasons, in the discharge of legislative functions by Venezia Giulia, Italian decrees decided upon by higher authority for implementation therein should be contained in its regional orders, in lieu of conventional

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pertinent directive. If it is strictly [illegible] making Venezia Giulia a separate region was broad enough to make it an independent region and, by virtue of that fact, a "state", then only by the operation of mystic powers could this be true, for it was beyond the powers of the Military Governor by use of military orders to create a "state" where none existed. If, on the other hand, local reference to the "State of Venezia Giulia" was made to convey the idea that Venezia Giulia was I n d e p e n d e n t of Allied Control, an equally false position was taken, if my interpretation of the Supreme Allied Commander's directive is sound.

R E C O M M E N D A T I O N S

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9. If and when problems arise, the solution of which may not be arrived at by use of this simple guide, it will then be necessary that a different formula be prescribed. As shown from the discussion herein, the legislative decree in question presented no such problem. It is not considered necessary that the language of this directive be clarified by additional writing. In unusual situations an oral explanation of the reasons for the language used in the directive, and its intent, would go far in establishing a uniform understanding. As the necessity might arise, this could well be done at a conference of personnel duly assembled for such purpose.

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10. Concerning loans already made in Venezia Giulia, to avoid future controversy it is desirable that they be regularized under the procedure which should have been followed there in the first instance. Such procedure contemplated getting authorization from the Italian state for expenditures to be so made in its behalf, and the consent of higher Allied authority to expend those funds. Too much care cannot be taken in protecting our Governments from claims occasioned by irregular action in this regard. As these loans were made, germs of future controversy were definitely planted. It is highly desirable that they now be eradicated. This can but be attempted as outlined below in recommendations made by the financial director, in which I join.

JOHN K. [illegible]
Colonel, Infantry
Chief Legal Adviser

ADDITIONAL JOINT RECOMMENDATIONS AND REMARKS

1. That further loans to industry under V.G. Order No. 194 be forthwith suspended.

2. That supporting papers for the loans already made by A.M.G. from the local Treasury (V.G.) be forwarded to Allied Commission.

3. On receipt of these papers it is planned to approach the Italian Government, through the Banca d'Italia, with a view to the transfer of these loans to the banks under guarantee of A.M.G.

4. It is our opinion that funds taken from the Local Treasury by A.M.G. are in fact, Italian Government funds, and that the Government will recognise this.

5. To ensure that the Italian Government be asked to "accept" as

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Declassified E.O. 12356 Section 3.3/NND No. 785016

ADDITIONAL JOINT RECOMMENDATIONS AND REMARKS

1. That further loans to industry under M.G. Order No. 194 be forthwith suspended.

2. That supporting papers for the loans already made by A.M.G. from the local Treasury (M.G.) be forwarded to Allied Commission.

3. On receipt of these papers it is planned to approach the Italian Government, through the Banca d'Italia, with a view to the transfer of these loans to the banks under guarantee of A.M.G.

4. It is our opinion that funds taken from the Local Treasury by A.M.G. are in fact, Italian Government funds, and that the Government will recognise this.

5. We propose that the Italian Government be asked to "earmark" an amount in favour of A.M.G. from the funds allocated under the Italian Decree covering rehabilitation loans to industry. 239

6. The amount to be so "earmarked" should be sufficient to cover guarantees to be given by A.M.G. to the banks for loans already granted, or to be approved in the future.

7. M.G. Order No. 194 should be rescinded and a new order issued following the subject matter of the Italian Decree.

8. If the Italian Government does not accept these proposals, a re-examination of the position of these loans will then be necessary.

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9. In any case, any future loans to industry in Venezia Giulia should be subject to technical control of Allied Commission as laid down in AFHQ A.C. 387/207 G.E.-O of 26 June 1945.

10. Turning from the question of loans to that of the overdraft account in the name of A.M.G. with the Banca d'Italia Trieste, we consider that the Provincial, Comunal, State and "Special Expenditure" Budgets approved by A.M.G., and charged to this account, should be sent to the Allied Commission for official communication to the Italian Government.

Col

Col. Def.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Monroe
Cor. Sof.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

MEMORANDUM TO THE CHIEF COMMISSIONER:

1. The letter of the S.C.A.O., Venezia Giulia, Subject: "Coordination between Legal Divisions of AMG Venezia Giulia and Higher Echelons", received in response to your letter of 7 November 1946, is set out at Flag"A".

2. In this connection it is a well settled rule of law that certain acts are so personal in nature as to be incapable of lawfully being done through an agent. For example, a person required to take an oath cannot discharge this obligation by having an agent take it for him. Nor can a judge of a court perform his judicial function by appointing an agent to act for him in this behalf.

3. In recognition of this well-established principle of law, "Consolidated Instructions for Allied Military Courts" wisely provides that the act of Judicial Review (in effect the function of an Appellate Court) should be performed by the Chief Commissioner and Regional Commissioners, o r by Judicial Officers appointed by them f o r t h a t p u r p o s e. Under such rules it is entirely within the province of the Chief Commissioner and the Regional Commissioners to retain full and final review powers over all cases within their respective fields of operation. Where this situation might exist it would be perfectly proper that the Judicial Officer concerned be required to review such cases and make recommendations regarding them. In these circumstances, of course, final judicial decisions rendered would be those of the Chief Commissioner or Regional Commissioner, as the case might be, rather than of such Judicial Officer.

4. Insofar as death penalty cases are concerned the Chief Commissioner has thus retained his right of final decision, though in every case of this kind, before exercising it, he has sought the advice of the Chief Judicial Officer. At no time has the Chief Judicial Officer been directed to perform the function of review in such cases as agent for the Chief Commissioner. As permitted by the rules, in cases involving punishment less than death, the Chief Commissioner has delegated the Judicial function to the Chief Judicial Officer, whom he has appointed f o r t h a t p u r p o s e. In the judicial determination of these cases, the Judicial Officer acts according to his own conscience. There is no pretense of this being the agent conscience of the Chief Commissioner. This is in accordance with the letter and spirit of the rules and conforms with the law. When granted, it is within the power of the Chief Commissioner or Regional Commissioner to revoke such delegated authority not only as to all cases but as it might apply to any individual case. Thus, the judicial conscience which measures a given case must be wholly that of the Chief Commissioner or Regional

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5. The principles above referred to always have been rigorously followed in the Allied Commission and, in fact, in Allied Military Government since the days of their inception. Adherence thereto in no way forecloses the provision of new regulations to be observed by judicial officers in the performance of their functions. Such regulations have been in existence from the beginning and have been added to from time to time. The prime function of courts is to administer the law as they find it, and not as they consider it should be. It is one thing to prescribe rules for a court to observe, it is something else again when it is sought to control the exercise of the judicial conscience in the application of such rules.

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6. In paragraph 5 of his letter the S.C.A.O. states that he is not in agreement with the recommendation made that the principles above announced should be followed in Venezia Giulia. In effect, therefore, he disagrees with the rules promulgated in Consolidated Instructions. It is believed, however, that he might be in full accord in this connection if the rules, as here explained, were understood and abided by on the part of all concerned. Occupational law is not to be confused with Courts Martial law, and they have little in common. Unlike occupational law, Courts Martial law does not deal with rights of property. Even in the matter of review they widely differ. There is no provision in Courts Martial law for the review function to be performed by a judicial officer a p p o i n t e d f o r t h a t p u r p o s e.

7. Not to be confused with revision of sentence on review is the power to pardon an offender (either before or after conviction) or any offense punishable by law (amnesty). This power exists in some manner in every type of government. Generally it is vested in that branch to which is delegated the duty to chart the political course which that government must take. This is so because in most cases in which the power is exercised, there is no question as to the guilt of the accused. In most cases, perdon, or amnesty, is granted for reasons bottomed on expediency rather than to correct an injustice done the accused. Because of this premise, the power of perdon or amnesty is universally an executive and not a judicial function.

8. If further answer is to be made to the letter of the S.C.A.O. it is recommended that he and his legal staff be informed of the distinctions above referred to.

JOHN K. WEBER,
Colonel, Infantry
Chief Legal Adviser

Declassified E.O. 12356 Section 3.3/NND No. 785016

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MEMORANDUM FOR THE EXECUTIVE COMMISSIONER:

1. On the very threshold of this case one encounters the doctrine of law known as "legal fiction". A legal fiction is a principle of law which assumes as true, and will not allow to be disproved, something which, though it may not be strictly true, is yet considered to be so in the interest of the general advancement of justice. Briefly stated, the fiction now referred to is "Everyone is presumed to know the law".

2. When the parties entered into the contract in this case they stood charged with the notice, which the law will not allow to be disproved, that, regardless of the period of time mentioned therein, the contract could never extend beyond the length of time for which military government was authorized to make the contract in the first instance. The life tenant does not dispute the validity of the lease, nor any rights which may have been created thereunder. Her position is simply that:

a. Under international law, of which all parties stood charged with knowledge, the longest time for which the lease would remain effective could not extend beyond the period of Allied occupation;

b. By reason of voluntary relinquishment of rights of occupation by the Allies, the contract of lease came to its natural lawful end;

c. As life tenant, from and after the natural end of the term of lease, she is entitled to receive her property;

d. That full jurisdiction to decide all such questions relating to persons and property was vested by the Allies in the Italian courts upon restoration of the occupied territory concerned to the Italian Government.

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c. As life tenant, from and after the natural end of the term of lease, she is entitled to receive her property;

d. That full jurisdiction to decide all such questions relating to persons and property was vested by the Allies in the Italian courts upon restoration of the occupied territory concerned to the Italian Government.

3. It will be observed that the claimant here is not seeking to abrogate a contract entered into by Allied Military Government, nor is she disputing any rights which may have become vested thereunder during its lawful existence, which, of course, are as valid after occupation as before. All she seeks is a declaration by the Court that the lease contract in question does not exist beyond the time of Allied occupation, and that the pretended right asserted by the tenant to the contrary is unfounded both in law and in fact. The claimant is the life tenant of the property. Neither Allied Military Government nor the lessee dispute this condition. In fact, they tacitly admit good title in the claimant by the execution of the lease in the first instance. Therefore, the only legal point really required to be decided in this case is regarding how long this contract is valid. This is a question of law for a court to determine. If it is held that occupation has not ceased, it follows

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that the tenant temporarily is entitled to remain in possession, as the life tenant does not challenge any rights which may have accrued under the lease. If, on the other hand, it is held that occupation has ceased, then, as life tenant, the claimant is entitled to possession. This would be so not because of any invalidity of the lease, but because by operation of law the term for which it was to run had already expired.

4. Normally, of course, in the exercise of their lawful functions, it is for the Italian courts to pass on all legal questions relating to persons and property within their jurisdiction. This is true whether the legal question is bottomed on internal Italian law or external International law. Where Allied Military Government has relinquished such powers, it would be highly improper for the Allied Commission to re-invade such jurisdiction of the Italian courts by giving an opinion regarding a matter which properly lies within the free exercise of their judicial mandate.

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

10 December 1946

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lies within the free exercise of their judicial [illegible]

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

10 December 1946

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From the enquiries made at the Ministry of Justice and the Secretariate of the Presidency no new legislation has been passed or any draft decree prepared to modify the present legislation in connection with the above.

Therefore in matter of libel and injury against Foreign Sovereigns, Art. 257 of the Penal Code -

"However, in the territory of the State, whoever commits an offence against the honour or the prestige of the head of a foreign State shall be punished with penal servitude from 1 to 3 years"

- still applies.

It is presumed that Italian newspapers are careful not to attack the Pope personally in their articles, but confine themselves to vague formulae such as the Vatican, the Holy See, the Church and the Religion.

However under Art. 402 and 403 libels against the religions of the State are also punishable.

"Whoever publicly insults the religion of the State shall be punished with penal servitude up to 2 years"

"Whoever publicly insults the State religion by means of reviling a person who professes it shall be punished with penal servitude up to 2 years."

A term of penal servitude from 1 to 3 years shall be inflicted on a person who insults the State religion by means of reviling

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and the secretariate of the Presidency no new legislation has been passed or any draft decree prepared to modify the present legislation in connection with the above.

Therefore in matter of libel and slander against Foreign Sovereigns, Art. 297 of the Penal Code -

"However, in the territory of the State, words or offence against the honour of the person of the head of a foreign State shall be punished with penal servitude from 1 to 3 years"

- still applies.

It is procured that Italian pressmen are careful not to attack the Pope personally in their articles, but confine themselves to verse formulae such as the Vatican, the Holy See, the Church and the Religion.

However under Art. 402 and 403 libels against the religion of the State are also punishable.

"Whoever publicly reviles the religion of the State shall be punished with penal servitude up to 2 years"

"Whoever publicly insults the State religion by means of reviling a person who professes it shall be punished with penal servitude up to 2 years.

A term of penal servitude from 1 to years shall be inflicted on a person who insults the State religion by means of reviling a minister of the Catholic faithe"

It seems therefore that the Courts of the Republic of Italy have ample jurisdiction to note adequate punishment to persons who commit these offences.

Under these conditions the matter appears to be more one of procedure than one of law.

It would be up to the Vaticano sporvoloce" as diplomatic envoy of the Holy See at the Quirinale to make representations

Declassified E.O. 12356 Section 3.3/NND No. 785016

to the Italian Government requesting that the Public Prosecutor be instructed to initiate the necessary judicial proceedings.

Italian Government cannot refuse such request under present International Custom and practice.

Nor can the Procuratore della Repubblica (Public Prosecutor) refuse to act on such instructions as his right to do so which existed in the past has been abolished sometime ago.

C.J. HARRAPOND,
Lt. Colonel,
Deputy Chief Legal Adviser.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

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TO:

TO: Exec Comm.

1. Not to be confused with revision and sentence in review is the power to pardon an offender (either before or after conviction) or any offense punishable by law. This power exists in some manner in every type of Government. Generally, it is vested in that branch to which is delegated the duty to chart the political course which that Government may take. There can be no doubt that the power to pardon offenders of occupational law is vested in the Chief Commissioner.

2. In the vast number of cases in which the power is applied, the guilt of the accused is established. In such cases pardon is granted for reasons bottomed on expediency rather than to correct an injustice suffered by the accused. Because of this precise the power of pardon is universally an executive and not a judicial function.

3. In the instant case, it has been recommended that the Chief Commissioner exercise power of pardon. The reasons advanced are extra-legal and not judicial. The success or failure of occupational government is the responsibility of the Chief Commissioner. If the judiciary in the discharge of its duties deems one situation wherein the accusation with the total occupational government may be challenged, the Chief Commissioner is not only authorized, but it becomes his duty to exercise the power of pardon in such manner as will ensure the success of occupational government in all its parts. A sense of discretion determines the boundaries of its use.

4. The facts in [illegible] case [illegible] been reviewed for legal error; conviction and sentence have been affirmed. If pardon is granted it will be a matter of [illegible]. The pardon should recite that the accused was lawfully convicted of an offence against occupational law and was given a sentence in keeping with the [illegible] offense; without according the act of

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c. A pardon does not have to be worded by a particular form. There is attached hereto an instrument in writing which may be used as a pardon in the instant case. If this, or any other form of writing is used in granting a pardon, it is suggested that one original and two copies be executed. This office will attend to the dispatch of these papers.

John A. Wilson,
Colonel, Infantry,
Chief Judicial Officer.
For Chief Legal Adviser.

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1 - 4156/1
1 - 4053/17
1 - 4053/1

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Colonel, Infantry,
Chief Artificial Defense,
War Chief Staff Advisor.

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HEADQUARTERS ALLIED COMMISSION
APO 794
Office of the Executive Commissioner

SECRET

6 December 1946.

REF: 653/27/GC

SUBJECT: Interception of Letters

TO : ALLIED FORCE HEADQUARTERS,

ATTENTION: G-2 Section.

1. Reference is made to your letter G-2: 23450 of dated 5 December 1946.

2. Copy of a memorandum from the Italian Ministry of Foreign Affairs which has just been received under covering letter dated 2 December 1946 is forwarded herewith. The lettered sub-paragraphs of the Chief Commissioner's letter to the Prime Minister were the same as those contained in your letter under reference.

3. The matter is being studied by this Commission and if necessary a further letter will follow shortly.

FOR THE CHIEF COMMISSIONER:

H ALCOM
RECD
hrs 0900
DEC 9 1946
LEGAL DIVISION

/s/ M CARR.
Brigadier.
Executive Commissioner.

Encls: (as above).

Copy to: Poland (A)
Poland (J)
Public Safety Div.
Legal Div.

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COPY

URGENT

MINISTERO DEGLI AFFARI ESTERI

DOUBLE TRANSLATION

D.G.A.P. UFF. IV

39831/124.

MEMORANDUM FOR THE ALLIED COMMISSION

1. With reference to the Allied Commission's note n.6535/23/20 dated November 22nd, 1946 (subject: Alleged Traitors) the Ministry of Foreign Affairs begs to enclose herewith the data sent to the Presidency of the Council to be used in connection with a reply to a letter which Admiral Stone had addressed to the Prime Minister on October 9th, 1946.

2. On the strength of the a/m information the Allied Commission will be in a position to have the necessary data in order that a decision may be taken concerning the request contained in the Ministry of Foreign Affairs' Memorandum n.15/38014/116 dated November 16th, 1946.

3. The Ministry of Foreign Affairs considers the a/m question as extremely urgent.

Rome, December 2nd, 1946.

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MINISTERO DELLA AFFARI ESTERI

MEMORANDUM FOR THE PRESIDENT OF
THE COUNCIL

Paragraphs a) and b) of Admiral Stone's letter.

1. The Aliens refugees in Italy are assembled into camps organized by the Allied Commission and into other camps organized by UNRRA and by the Joint Redistribution Committee, over which camps the Italian Government has still no jurisdiction.

2. There are several foreign nationals who are residing in the Italian territory without authorization and live uncontrolled by the Allied Authorities.

Those of them who happened to be arrested because not in possession of a permit to stay in Italy or because they are responsible of infringements against laws and regulations, are being sent to the Italian camp of Fossoli di Carpi where appropriate investigations are made about their nationality, the motives of their stay in Italy, and so on.

As soon as a certain number of alien refugees belonging to the same nation is assembled in the aforesaid camp, the diplomatic representative of the nation concerned is invited to visit Fossoli di Carpi in order to ascertain their nationality and to make enlightment inquiries as to their intentions of repatriating or not.

Refugees who intend to return to their country are repatriated by the Diplomatic and Consular authorities of the nation concerned or by UNRRA. The others are with-held pending further decisions. About 40 Soviet nationals have been repatriated thus far. Repatriation of a certain number of Austrian and Hungarian nationals is under way.

Paragraphs c), d) and e) of Admiral Stone's letter.

As concerning individuals who are guilty of common crimes, no distinction is being made, of course, between Italian and foreign citizens as far as it concerns procedure regulations. However, the Ministry of Justice is in a position to supply detailed informations on this matter.

Paragraph f) - As is known, the majority of the so-called political refugees, is still held in custody into camps under the Allies' control. The Italian Government wishes to point out that no foreign nationals have up to now being compelled to return to their country against their will, though it is not sure whether all those aliens who refuse to repatriate are to be considered political refugees.

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At any rate the Italian Government, in a note dated October 7th, 1946, addressed by the Ministry of Foreign Affairs to the Embassies of the United States of America, Great Britain, U.S.S.R. and France, has expressed the opinion that for all those alien refugees who refuse to return to their country of origin a final settlement should be found in a territory other than Italy.

With reference to the first part of Admiral Stone's letter, it is to be pointed out that the Italian Government has been requested the extradition of the following individuals:

1) by U.S.S.R.: Forty-eight Soviet nationals who have allegedly fought against the Red Army under General Vlassov's command. At present they are detained at Fossoli di Carpi camp.

2) by Czechoslovakia: - The former Czech Minister of Foreign Affairs Mr. Furchinaldi who, it seems, lives in Rome and is wanted by the Police. The Prague Government considers him as a "war criminal".

3) by Poland: A Henrik Szatkowski, a Polish citizen who, as it appears, live at present in Italy and is considered a "war criminal" by the Polish Government.

The Ministry of Foreign Affairs has addressed to the Allied Commission the following notes on the matter:

note n.6/5368/1312 dated November 12th, 1946;
" n.16/37966/115 dated November 15th, 1946;
" n.Segret. Pol. 1150 dated November 16th, 1946.

The a/m individuals will be handed over to the Russian, Czech and Polish authorities who have formally requested them, unless the Allied Commission suggests otherwise.

Rome, November 16th, 1946.

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HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

2457

GGH/pa.
3rd Dec 1946.

4005/L.

SUBJECT : Spr. WHEATLEY.

TO : HQ 86 Area, C.M.P.

Reference your LO/V/PS/47 of 8 Nov 1946.

1. This Division has been requested to comment on the facts set out in your letter of 8th ult.

2. Two courses of action are possible :

a) Assemble an AMG Court under the Terms of Restoration and try the civilian driver.

b) Appeal from the order of the Giudice Istruttore with a view to obtaining a fresh "Istruttoria" which would lead to trial. (Art.307 of the Code of Penal Procedure)

3. If the second alternative were followed, Allied Authorities would have to appear in the proceedings as "parte civile" representing the family of the deceased.

4. This would constitute the first occasion on which Allied Authorities would take part in proceedings before an Italian Court and this could not be done without being sanctioned by SAC.

5. Finally the evidence produced is very unsatisfactory. Each side throwing the responsibility for the accident on the other. It appears to be insufficient to support a conviction of the civilian driver whether by an Allied Court or an Italian Court.

6. In the circumstances this Division cannot advise that further action be taken in this matter.

2/...

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

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LEGAL

SUBJECT :- Death of 4802335 - Spr WHEATLEY S. (Br) 2524

CJO-CLA
CJO - CLA
CHIEF COUNSEL
ITALIAN SECTION
Recd 12 Nov 1946

Allied Commission
Liaison Office (PS)

HQ 86 Area
C.M.F.

LO/V/PS/47

6 Nov 46

HQ Allied Commission ROME
(attn Chief Legal Adviser)
Info :- HQ 1 Armd Div CMF

1. On 24 October 1945 about 1500 hrs on the main road south of PADUA there was a collision between a British Military motor vehicle driven northwards and an Italian civilian tractor and trailer driven southwards. Subject named was killed as result.

2. On 26 Oct 45 a Court of Inquiry was held by Unit responsible (then 6 Armd Div, now 1 Armd Div) for British vehicle and the opinion was formed that the driver of civilian vehicle - FORTINI UGO - was responsible for the accident.

3. I understand papers were sent then to AMG Region 12 but there is no record with this Group of what action was taken.

4. In March 1946 HQ 1 Armd Div wrote this office - as successor of Public Safety, Region 12 - and the matter taken up with Questura, Padua, assurance being given that inquiries would be immediately conducted and matter reported to Italian Judicial Authorities.

5. In May, Italian translation of statements made at Court of Inquiry were sent to Italian Authority, Padua and in July I was informed the Italian driver would be tried

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5. In May, Italian translation of statements made at Court of Inquiry were sent to Italian Authority, Padua and in July I was informed the Italian driver would be tried during that month.

27.

6. At end of Aug it was ultimately admitted that on 25 July the civilian driver had been " absolved from the fact " by Giudice Istruttore, Padua.

7. Taking up the matter with Dr. L. Erario, Procuratore dello Stato, Padua, he informed me he upheld the judgment of Giudice Istruttore which was based - I was informed - on :-

(a) The civilian vehicle was on centre of road at time of collision.

(b) The driver of Military vehicle made no endeavour to swerve to right to avoid collision. (N.B. Had he swerved to right he would have gone off roadway).

(c) Military vehicle skidded for about 40 paces (CO.RR. report of 24 Oct 45) which differs from measurements - 18,40 metres shown on phase 3 of enclosed plan then swerved to left on application of brakes indicating

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that brakes were not properly adjusted as skid marks indicated only the right side brake held and caused the vehicle to swerve to left. (CC.RR. report of 25 May 1946).(N.B.- If right front brake seized the tendency would be for vehicle to swerve to right but if right rear brake seized the front of vehicle may still have swerved to right as result of rear of vehicle skidding to left).
According to skid mark shown on phase 3 of plan it shows that military vehicle swerved to right.
Further : according to statement of L/Cpl WARHURST the military vehicle (R. hand drive) was struck on " offside cab " by civilian vehicle. This indicates left side of military vehicle was exposed to civilian vehicle, an impossibility if military vehicle had swerved to left. In addition the civilian driver, at Court of Inquiry, stated that when he was about 6 yards from horse and cart (See statement) he saw the military vehicle swerve to edge of road. He then heard a crash. His vehicle carried on for another 15 yards during which time he passed the horse drawn vehicle, then stopped. That statement also opposes CC.RR. report and I am unable to understand how the civilian vehicle could be travelling at about $5\frac{1}{4}$ miles per hour on its proper side of road yet be able - after the crash and the trailer had been torn off - to pull out from behind the horse drawn vehicle - only 6 yards in front - pass and stop in front of the same vehicle.

8. At this stage I am unaware whether or not any action can be taken by HQ Allied Commission but I submit that the Italian attitude strongly indicates a miscarriage of justice and that the carabinieri reports and drawings were prepared and submitted in a fashion biased against the British driver.

9. The mere fact that Giudice Istruttore absolved the

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9. The mere fact that Giudice Istruttore absolved the Italian driver does not preclude the case being reopened and tried by Court of Law, but in event of latter it is almost certain that the Italian driver would be found not guilty or, if found guilty, that on him would be "inflicted" a ridiculous sentence.

10. Pending instruction or decision I have not ascertained whether or not the military witnesses are still available in this Theatre.

(T.G. MACKENZIE Major)
PSLO att. HQ 86 Area.

ENCLOSURES :-

Court of Inquiry proceedings. To 1 Armd Div.
Copy 5 Statements and findings of Court of Inquiry.
Copy translation CC.RR. Report of 24 Oct 45.
Copy translation CC.RR. Report of 25 May 46.
3 Phase plan by CC.RR. Request plans be returned this HQ (not to 1 Armd Div).

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FILE
257A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AC/4005/L

MT/mb
2 December 1946

SUBJECT : Insulating varnish requisitioned by AC

TO : Industry and Utilities Branch
(Attn: Ing. Berluzzi)

Reference your 306/PWU of 23 September 1946.

1. This Division has been requested to advise the above mentioned in regard to the liability of the Allied Commission to pay for goods ordered by the P.W. and Utilities Sub-Commission (Electrical Division) in the following circumstances.

2. On the 15th May the Ernete Sinigaglia firm delivered to P.W. and Utilities Sub-Commission 13,500 kls. of insuleting varnish in compliance with an order for the said goods signed by the Chief of Electrical Division. The goods were delivered to one of the staff of the Electrical Division who gave a formal receipt, a photostatic copy of which is set out in the documents.

3. The fact that the Company Ernete Sinigaglia delayed in claiming payment in no way affects the legal liability to pay for the goods, and is, in fact, irrelevant to the question on which we are asked to advise.

4. We are at a loss to understand why after several demands had been made for payment the Firm Sinigaglia (see letter 306/PWU 2 August 1946) was asked to send its bill to a company which you alleged had received the goods, seeing that you were then fully aware of the order and relative receipt issued by members of your staff. Equally incomprehensible is the statement in Para. 5 of the same letter that "no action will be required by the Allied Commission".

5. From the legal point of view there is really no question that needs to be discussed. The final destination of the goods ordered by the P.W. and Utilities Sub-Commission (Electrical Division) is quite irrelevant to the question of liability to pay for the goods ordered. 2.

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AC/4005/L

2 December 1946

6. In the opinion of this Division the legal position is clear beyond any doubt. There is a valid order with the consequential obligation to pay for the goods ordered. The Allied Commission is responsible for payment for these goods, and the amount of money demanded by the seller as the price of the goods is quite definitely not an A.M.G. expense, and accordingly cannot be charged to the Italian Government.]

MUSGRAVE THOMAS
Italian Branch
for the Chief Legal Adviser

Encl.

Note. Para 6 has been amended by omitting the words in square brackets [ ]. See further correspondence - Inter-office memos from Executive Officer (PB) of 14/12/46
Ref No XOB/168/A
A.T. 19/XII

Declassified E.O. 12356 Section 3.3/NND No. 785016

2072

4005

HEADQUARTERS ALLIED COMMISSION
APO 794
Industry and Utilities Branch

2504

Ref. : 306/PWU 23 September 1946

SUBJECT : Insulating varnish requisitioned by A.C.

TO : Legal Sub-Commission
H.Q. Allied Commission.

1. The enclosed correspondence relates requisition by A.C. P.W.U. S/C. of a certain amount of insulating varnish from Sinigaglia Firm - Via dell'Oca 48, Rome, on 15 May 1945.

2. Claims for payment have been received from the above firm and several attempts were then made in order to locate the Company which had actually received, through A.C., that insulating varnish.

3. Since no successful result has been obtained we would like to have your opinion on this matter, i.e. whether A.C. is responsible for payment and if so, whether the requested amount of money is to be charged to the Italian Government as an A.M.G. expense.

H.M. WALKER
Colonel, CE
Director

11 Enclosures :-
- Invoice & photostatic copy of requisition order (10 April 1946).
- Photostatic copy of receipt.
- Letter from Sinigaglia (16 July 1946).
- Letter from A.C. to Sinigaglia (20 July 1946).
- Letter from A.C. to Cpl. Clarke (20 July 1946).
- Reply from Cpl. Clarke (24 July 1946).
- Letter from A.C. to Sinigaglia (2 August 1946).
- Reply from Sinigaglia (13 August 1946).
- Letter from A.C. to Cpl. Clarke (26 August 1946).
- Reply from Cpl. Clarke (14 September 1946).

LEGAL SUB COMMISSION
CHIEF LEGAL ADVISER
DEPUTY CHIEF LEGAL ADVISER
CHIEF COUNSEL
STAFF OFFICER
ITALIAN SECTION
MEMBERS REVIEW BOARD
SEP 23 1946

2013

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005 ~~4188~~

~~450~~

FILE
1998

Ref: 3643/80/EC

5 December, 1946.

SUBJECT : Registration of Aliens - Venezia Giulia.

TO : ALLIED FORCE HEADQUARTERS
Attention: G-5 Section

1. Reference is made to your letter G-5: 945.04 of 30th October 1946.

2. The Draft Order which proposes to prohibit immigration into Zone A, A.M.G. Venezia Giulia, has been given careful consideration by my Legal and Public Safety Divisions and by my American and British Political Advisers. It is considered that the order should not be published for the following reasons:-

a) The number of Italian refugees from Istria would be a considerable one since the proposed order will be retroactive as of June 12th 1945, and it would be contrary to U.S. Government Policy, which opposes forcible repatriation of political refugees, to deport any of these back to Zone B for violation of an order such as that proposed. In the alternative that the Italian refugees in Zone A express the desire to be transferred into the territory under the jurisdiction of the Italian Government, I believe we cannot justifiably add to the already heavy refugee burden in Italian Government territory by asking the Italian Authorities to accept more refugees.

It is also to be considered that the proposed order will undoubtedly affect many Yugoslavs who at present are in Zone A and who will have to be transferred to Zone B by effect of this order. Under the present circumstances I do not think this should take place without previous consultation with the Yugoslav Authorities.

b) Because of the present state of negotiations in the Council of Foreign Ministers about the statute for the free territory of Trieste I believe that the order is untimely, since the critical date for acquisition of original citizenship of that territory is tentatively set at 10th June, 1940.

c) If the Police enforce Italian Law governing visits and domiciles of foreigners as well as A.M.G. Regulations already promulgated for the control and movement of persons into Zone A within the provisions of the Duino Agreement, I think there should be no necessity for an order of this kind.

NOTAIC... RECD hrs

hrs 1520 DEC 5 1946 GAL

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d) As to para. 4 of Colonel Bowman's letter of 15th October addressed to you on the subject of the proposed draft order, I am informed by my Political Advisers that it is highly debatable whether the order contravenes Appendix 'H' of the Duino Agreement, the critical issue being whether freedom of movement does not imply freedom to change residence as well.

e) With reference to ARTICLE 1 - Section 1 of the proposed Order, it is stated that those who are not legally inscribed as permanent inhabitants since 12th June 1945 shall be prohibited from entering the territory for the purpose of establishing therein their permanent residence. It is not clear however, what is the intention of the Order in respect of those who have been in the territory since 12th June 1945.

3. In my opinion the benefit which will be obtained from this Order will be much less than the undesirable political repurcussions which will result in consequence of its publication.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copies to: Polad A
Polad B
Public Safety Division
Legal Division

LEGAL SUB - C.M.A.G.O.
CIO - CLA
OCLO
CHIEF COUNSEL
[illegible] SECTION 2 [illegible]
Rec'd

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Tout à fait d'accord.

Merci -

Yo-s-Yhet

2 7

2076

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4005

HEADQUARTERS ALLIED COMMISSION
APO 754
LEGAL DIVISION

2904

17 January 1947

AC/4005/L

SUBJECT : French Barge "JOYCE"

TO : Navy Sub-Commission

1. This division disagrees with the views expressed in VG/AMG/LD/192/3944 of 13 Dec 1945 signed by Major P. A. Mathews of the Legal Division of Venezia Giulia.

2. From the facts submitted to this Division, it appears that Barge JOYCE with many others was removed from France to Trieste by the Germans in her original state and that they intended to convert her into a transport of troops and material for the North African campaign.

3. If these facts are correct, the present state of the barge, the amount of work carried out on her, the addition to her superstructure, etc., which may have been effected without the consent of the original owner and either for private profit or on the instructions of the enemy, cannot in any way affect the nationality of origin of the craft nor justify a claim for possession against the original owners.

4. Under the Armistice terms and subsequent agreements, all Allied ships must eventually be returned to their Allied owners, "whether or not their title may have been transferred as the result of prize court proceedings or otherwise (Art. 16 of Armistice terms and Liberated Ships Memorandum refer).

5. FAMT are in exactly the same position as many other Italian firms in Northern Italy who executed contracts for the Germans or the Fascist Republican Government. They have no claims against the Allies. Furthermore, the interpretation of the Armistice terms does not lie within the jurisdiction of Italian courts. It is up to Allied and not Italian authority to decide whether the barge is an Allied ship or not.

6. FAMT may have a claim for damages against their own Government. They cannot refuse, however, to hand over a ship if and when it has been declared of Allied nationality by Allied authority, whatever the conditions under which this craft came in their possession may have been.

G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

2071

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FILE 2890

AC/4005/L

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

LJG/ns
15 January 1947.

Claim of GOLDMANN, Oscar

MEMO for Claims Division.

1. No record has been found in the files of the Legal Division which would substantiate the statement appearing in paragraph 3 of the Memo of the Displaced Persons Division.

2. The opinion is held by the Legal Division in this case that if custody of the property in question was accepted by agents of Allied Commission for the purpose of storage at Bari and subsequent transport to Aversa, as alleged in the attached letter of the claimant dated 28 November 1944, responsibility for the actual loss sustained by him on this account would rest with Allied Commission. In such case the relationship of bailor and gratuitous bailee was created. It is believed that under British as well as American law even a gratuitous bailee is responsible for the safekeeping of property in his possession.

3. It is considered, however, that before final disposition is made of this claim verification of the circumstances related in the letter of the claimant should be obtained from Lt.Col.C.F. Fothergill and/or Major Brown, officers of Allied Commission mentioned by him as persons with whom he had dealings in this connection. In any event alleged monetary loss would seem to be excessive.

L.J. GILBRIDE,
Major, IGD,
Chief Counsel,
for Chief Legal Advisor.

2[illegible]

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HEAD QUARTERS ALLIED COMMISSION
AFO 794
LEGAL DIVISION

AC/4005/L

MT/ns
15 January 1947.

SUBJECT : Additional tax levied on Entrance Tickets for the benefit of an "Orphans Christmas".

TO : Director
Allied Financial Agency.

Decr.'46.

1. Reference your Memorandum of 23rd

2. It appears from the letters enclosed with your Memorandum that A.M.G., Udine, decided that an extra charge of 5 Lire should be imposed on tickets for certain specified forms of entertainment and that the sums so raised should be applied for the benefit of the Orphan Christmas Fund, and further that such sums shall be exempted from the payment of dues to the Treasury and to authors.

3. It is clear that such increases upon the prices of tickets for entertainments are contrary to Art. 5 of Decree Nº 538 of 30 May 1946 cited by you.

4. I fully concur in your suggestions that A.M.G.,Udine, should be informed that the imposition of such extra charges upon tickets is forbidden by Italian law, and that the amounts due to the Treasury and to authors should be paid over.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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2071

ALLIED FINANCIAL AGENCY

Branch of
Allied Force HQ
G-5 Section CMF

Postal Address:
APO 794 US Army
23 Dec 46

MEMORANDUM

TO : Col. Webber
Chief Legal Advisor.

1. I fear the first letter of the 26 Nov 46 went astray. It was, however, dispatched too late to affect the issue.

2. Briefly, it appears that AMG Udine decided to impose an extra charge of L 5 on the price of tickets for theatres, dances, moving pictures and other public shows. The total amount so obtained is to be used for the benefit of an "Orphans Xmas". No doubt a very charitable scheme.

3. However, such "majorations" are expressly forbidden under Italian Law (see translation of Art 5 of Decree N° 538). Moreover, the somewhat complicated tax provisions apply to the price of the ticket so that the authors society (the collection agency) is to recover in addition to the normal tax, part of L 5 which is intended to be devoted to charity.

4. Letter 11 Dec 46 from the Rome office says that Udine Province will foot the bill for the additional amounts due for taxes, if so instructed.

5. I consider AMG Udine should pay over the "dues pertaining to the Public Treasury and those belonging to the Author" (Para 3) as requested by S.I.A.E. and that any similar flights of benevolent fancy on their part, at variance with the Law, should cease.

L. R. BATTERSBY,
Colonel, G.I.,
Director
Allied Financial Agency

4005

284A

MEMO TO THE CHIEF COMMISSIONER:

1. Some weeks ago, announcement was made that "S" Day would occur on 10 February 1947. While it was intimated that "R" Day would thereafter follow, it was apparent that within the realm of possibility "S" Day and "R" Day might both fall on 10 February 1947.

2. Unlike other Branches, the activities of the Legal Division concern themselves with the administration of the law, rather than its operative effect. Under International Law, with the coming of the Peace, the exercise of powers under Occupational Law comes to a natural end. By delegation from the Military Governor, the Legal Division administers much of the penal portion thereof. Any needful exercise of the powers incident thereto must be accomplished on or before "R" Day ere they lapse by operation of law. In order to be prepared for possible eventualities, it was determined by the Legal Division that 10 February 1947 should be fixed as "R" Day insofar as the exercise of powers in the administration of Occupational Law were concerned, and more particularly for our liquidation activities. Like other Branches, the Legal Division is not immune from redeployment, sickness, leaves of absence, furloughs, and participation in Special Service tours. Because of these reasons and of the increase in pace involved in fixing 10 February 1947 as our target date, it was decided to use the services of personnel who might be available to the Legal Division. These were sought without pressure.

3. Additional personnel have been secured. The net increase in the past month, and particularly in the past ten days, was two officers, and two enlisted men, and a War Department civilian stenographer. A loss by re-deployment of one enlisted man may occur this month. Presumably the increase of personnel above described has caused or contributed to cause the concern which is reflected in the letter of 6 January 1947 (see Flag A).

4. The task of reviewing outstanding sentences has come to its natural end. First to be reviewed were sentences of two years and more. When this chore was finished the less than two year sentences were reviewed. In an estimated fifty cases, recommendations of the Review Board have yet to be passed on by me as Chief Judicial Officer. My duties as Chief Legal Adviser are substantial. In dis-

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5. Reviewed, but on which no decision has been rendered, are the sentences of approximately thirty-five defendants now serving time in felon prisons for spy and espionage offenses. Treating these cases as a single problem, two officers are now preparing recommendations on each accused for such action, if any, as higher authority may care to take. These war-treason cases have no counterpart in domestic criminal law.

6. Sentences imposed in Venezia Giulia and Udine were not considered by the Review Board. Functioning actively at present, it would have been unwise to relax the deterrent effect which these sentences carry in the current administration of this area. Colonel

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Carnes is in Trieste canvassing the situation. I have prepared and submitted to the Chief Commissioner a solution of this problem which is not necessarily the solution. I will be guided by the desires of higher authority.

7. It is safe to say that in the initial phases of Occupational Government, little or no thought was given to the problems to be encountered in the liquidation of the Legal Division. In most instances no method entitled to be elevated to the dignity of a system was followed by regions in keeping and preserving case records. The one outstanding exception is the Tuscany records, for which I proudly claim the authorship. When territory was returned to Italy, it was conditioned on recognition of acts done by the Allies during occupation. Presumably under such condition, convictions by Allied Courts must be recognized by the Italians. Under Italian law, a conviction by a court has many consequences after a sentence has been served. Hence case records will be important after occupation has ceased. In its functions, the Review Board was obliged to call up from Archives records of trial on sentences being reviewed. With the authorization to the Italian Government of conditional liberty to be granted in convictions by Allied Courts, information upon which such power might be exercised by the Italian Government had to be gained from records in Archives. It is not exaggeration to say that until recently luck and dogged resolution alone enabled Archives to find a sought-for record. This incredible situation was in need of permanent remedy. This problem was an inherited heartache for Archives. By agreement Archives undertook the task of bringing these records under orderly control, on condition that the Legal Division supervise the task. An officer was loaned for this purpose. When the work was substantially underway and more than 30,000 cases had been processed, this officer was released from this duty and transferred out of the Legal Division. The work continues on under our supervision, being absorbed into our daily routine. If we were relieved of this activity, Archives would lose needed advisory assistance, and the Legal Division would gain time for relaxation. It is considered that voluntary abandonment for such reasons is unworthy of us. Naturally we will do so if ordered. In passing, may I say with emphasis that Archives has done and is doing an impressive job in this behalf.

8. During the battle days of military operations three classes of persons found their way into Italian prisons. One group were those who

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8. During the battle days of military operations three classes of persons found their way into Italian prisons. One group were those who were sentenced to confinement by Allied courts. Another group were those who were detained for security reasons. The third were those who were placed in jail thru ill-advised or unauthorized proprietory exercise of Allied power. Unfortunately for this group, their imprisonment was usually evidenced by a vague order to "hold for the Allies", and thereafter conveniently forgotten by the incarcerating personalities. In the review of cases, persons were found in jail undergoing Allied sentences for whom no record of trial could be found. With the completion of the review, cases remain where the accused should be in jail but are presumably not in jail. Obviously these situations concern not only the Allies but the Italian Government as well. The joint action of each, by agencies having the knowledge and power to act, was vitally essential and imperative. A plan of action mutually agreed upon, involving joint effort, has been in operation for some time. Certain phases, as for example, the listing and location of security prisoners for the information and action of G-2 has been accomplished. The work being performed has been and is impressive. The goal sought by all is the elimination from prison of all persons not required by law to be restrained or detained, under Allied authority.

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9. When this Division more than a year ago foresew the need for a liquidation program and on its own initiation put in motion such that is now accomplished, it was decided that each activity should be a separate and severable one. By this plan, the completion of one activity was not a condition precedent to the completion of another before any benefits would flow from either. Nor was it necessary to complete any one activity before any benefit would be realized therefrom. For example, the prison check was not conditioned on completion of the review of cases. In like manner, the result in the review of one case was not made contingent on the completion of the review of all cases. By reason of this plan, progressively each day sees something done rather than a mere approach to getting something done. As action of some kind on what we are doing ultimately must be taken by someone, as long as the Legal Division is operative and such functions primarily are its problem children, it has elected to perform to the utmost the discharge of its military and professional obligations. When it is borne in mind that its powers in this behalf in any event will come to a natural end on "V" Day, and by operation of law, apprehension concerning its activities might well be reduced to the vanishing point. It follows that our present efforts at liquidation are being directed with emphasis towards the prison check and the wind-up of cases involved therein. The elimination of the spy and espionage cases alone would greatly reduce the burden of correspondence not only of the Legal Division but of others as well. It is not unusual for the family of an accused periodically to write a number of letters to outside sources, such as the Vatican, the King of England, the President of the United States, members of Congress, and the Theatre Commander. These letters require reply. If these cases could be removed from our concern, much quasi non-essential work could be eliminated. Likewise, the servicing of Allied cases by the Legal Division progressively removes case after case from the realm of Allied concern to that of Italian concern. It follows, therefore, that speed and pressure on our part find reward in diminishing irritable concerns. It further serves to ensure the early hoped-for return to civil life to which voluntarily we stand committed.

10. The Legal Division does not promise to achieve completion of all of its work. Progress in the prison check is dependent upon the speed and assistance given by the Italian Government in those activities under the control of the Italian Government. Inasmuch as what we do inures to its benefit, the Italian Ministry has been and is pushing its agencies to the utmost. Thus far the response has been substantial. One other activity remains to be mentioned. The Italian Government has expressed concern on the matter of our records being available for informative

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its powers in this behalf in any event will come to a natural end on "P" Day, and by operation of law, apprehension concerning its activities might well be reduced to the vanishing point. It follows that our present efforts at liquidation are being directed with emphasis towards the prison check and the wind-up of cases involved therein. The elimination of the spy and espionage cases alone would greatly reduce the burden of correspondence not only of the Legal Division but of others as well. It is not unusual for the family of an accused periodically to write a number of letters to outside sources, such as the Vatican, the King of England, the President of the United States, members of Congress, and the Theatre Commander. These letters require reply. If these cases could be removed from our concern, much quasi non-essential work could be eliminated. Likewise, the servicing of Allied cases by the Legal Division progressively removes case after case from the realm of Allied concern to that of Italian concern. It follows, therefore, that speed and pressure on our part find reward in diminishing irritable concerns. It further serves to ensure the early hoped-for return to civil life to which voluntarily we stand committed.

10. The Legal Division does not promise to achieve completion of all of its work. Progress in the prison check is dependent upon the speed and assistance given by the Italian Government in those activities under the control of the Italian Government. Inasmuch as what we do inures to its benefit, the Italian Ministry has been and is pushing its agencies to the utmost. Thus far the response has been substantial. One other activity remains to be mentioned. The Italian Government has expressed concern on the matter of our records being available for informative purposes after the cessation of the Occupation. A number of conferences have been had by the Ministry and this Division. We believe that a request is being formulated by the Italian Government and shortly will be submitted for consideration to those empowered to deal therewith. We recognize this matter is one of post-war concern. Our interest is bottomed on liaison with the Ministry of Justice, and not in the solution. About all that is left for us to do is to transmit the request, if any is made, to higher authority.

11. Should the Allied Commission be abolished at any time before "P" Day, the powers now exercised by the Legal Division can be delegated by the Military Governor to whomever he may designate.

JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
295

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

AC/4005/L — MB/ns — 10 January 1947.

SUBJECT : Società Italo-Tedesca Tabacchi.

TO : The Ministry of Treasury
Ragioneria Generale dello Stato
Ufficio Beni Alleati e Nemici.

1. Reference your Prot. N° 422169 of 10th Oct. 1946.

2. The matter was referred to the Allied Military Government, Venezia Giulia, to ascertain whether it was ready to accede to the requests contained in paras b,b, and 7 of your letter.

3. The Finance Division, Venezia Giulia, has made a full inquiry into the position of the above-named Company, and a copy of its letter setting out the results of that inquiry is enclosed herewith for your information. In this letter the Finance Division states that 60% of the capital is German, that it is not satisfied that the liquidation has been genuine, and that the Treasury should be informed as to the true position of the Company.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

Copy to Col.L.R. Battensby
Director
Allied Financial Agency
(reference his letter F.A./
4.85 of 17 Octr.1946)

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Declassified E.O. 12356 Section 3.3/NND No. 785016

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
VENEZIA GIULIA

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TELEPHONE: Nr 29701/EXT. 18 Property Control

REF : VG/AMG/CP/220 JS/Hb 31 DEC 1946

TO : H.Q. ALLIED COMMISSION APO 794
LEGAL DIVISION

SUBJECT : Società Italo-Tedesca Tabacchi

1. Reference your letter AC/4005/1 dated 19 DEC 1946.

2. Enclosed please find the three original documents which were enclosed in your letter of 25 OCT last.

N.T. BEARD, Lt.Col.
CHIEF FINANCE OFFICER

3 enclosures.

LEGAL SUB - COMMISSION
CJO-GLA
DGLO
CHIEF COUNSEL
ITALIAN SECTION
Recd 7 JAN 1947

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Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

FA/4.85 1st Ind LRB/mfw

ALLIED FINANCIAL AGENCY, APO 794 US Army, 17 Oct 46

TO : H.Q. A.C.
Legal - Sub-Commission.

1. Forwarded to you please as AFA is not in a position to take the action requested by the Ministry.

2. This Agency cannot trace receipt of L 229.896.50 and L 293.510 mentioned in Para 6. It is of opinion that these are not Category A (funds of enemy governments or agencies) subject to seizure and, therefore, should not be paid to us.

L. R. BATTENSBY, Colonel G.L.
Director Allied Financial Agency

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Declassified E.O. 12356 Section 3.3/NND No. 785016

(TRANSLATION)

MINISTRY OF THE TREASURY
State General Bookkeeping Dept.
Enemy and Allied Property Office

Rome, 10 October 1946.

Ref. : no.422169

Subject : German Firms - "Società Italo-Tedesca Tabacchi", Rome, via Ludovisi, 16.

To : Allied Financial Agency, Rome.

1. The firm mentioned in subject having its Head Office in Rome and factories in Trieste and the capital of which belongs to Italian citizens for the 51% and to persons of German citizenship for the 49%, has been put under attachment by this Ministry's decree dated 24 April 1945 and issued further to the war laws with regard to Germany.

2. Successively, as the above firm has no more activity, this Ministry disposed the winding up of same by decree of 9 February 1946 in compliance with analogous request made by the Italian shareholders.

3. The liquidator, lawyer Federico Hollaendere Ogliani, after visiting the factories in Trieste, found much damaged by aerial bombardments and in state of abandonment, has sold all the materials there existing for the amount of 800.000 lire to Mr. Giovanni Bondy with contract stipulated in Rome.

4. Now the above liquidator informs that the Venetia Julia A.M.G. objects that such a sale has been effected without its approval and reserves to itself any future action.

5. Since the above materials are included in the patrimonial mass of a society with its main office in Rome and which was submitted by this Ministry to the provisions of the war laws and since such a society is in winding up and the sale was asked by the majority of the shareholders, we should be much obliged if you would kindly intervene at the Venetia Julia A.M.G. inviting it to suspend any action and recognise as regular the sale itself.

6. Furthermore the liquidator communicated that the sums of 229.896,50 and 293.510 lire pertaining to above firm, respectively deposited with the "Banca Commerciale Italiana", Trieste & the "Banco di Sicilia" also in Trieste, have been transferred for above A.M.G.'s order to the Bank of Italy into an account in suspense headed to the Officer Chief of the Allied Finance Division and then credited to A.F.A.'s account.

(over)

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Declassified E.O. 12356 Section 3.3/NND No. 785016

7. For the above considerations as it needs provide for the payment of the firm's debits in connection with the closing of the winding up it would be much appreciated your intervening for the unblocking of these sums and those of lire 474.635, 377.551,90 and 1.100.000 respectively deposited with the "Banco di Roma", "Banco di Napoli" and "Banca Nazionale del Lavoro" all of them in Trieste.

8. We shall be very grateful to you for a kind reply.

THE MINISTER
Sgd.: BERTONE.

764

10 OTT. 1946 Mod. 33

Ministero del Tesoro
RAGIONERIA GENERALE DELLO STATO
~~ISPETTORATO GENERALE DI FINANZA~~
Ufficio Beni Alleati e Nemici

Divisione
Prot. N.° 422169 *Allegati*

Roma, ottobre *1946*

- Il COMANDO SUPERIORE DELL'AGENZIA FINANZIARIA ALLEATA - APO 794 U.S. Army
R o m a

e, per conoscenza:

- AL LIQUIDATORE DELLA SOCIETA' ITALO-TEDESCA TABACCHI - Via Ludovisi,16

Risposta a nota del

OGGETTO : Aziende tedesche - SOCIETA' ITALO-TEDESCA TABACCHI con sede in Roma - Via Ludovisi n.16.

1. Con decreto 24 aprile 1945 di questo Ministero, emesso in applicazione delle leggi di guerra nei confronti della Germania, è stata sottoposta a sequestro la Società in oggetto con sede sociale in Roma e stabilimenti in Trieste, il cui capitale appartiene per il 51% a cittadini italiani e per il 49% a persone di nazionalità tedesca.

2 Successivamente questo Ministero, con decreto 9 febbraio 1946, dato che l'azienda non svolge più la sua attività, ha disposta la liquidazione della medesima in conformità di analoga richiesta avanzata dagli azionisti italiani.

3 Il liquidatore Avv. HOLLAENDERE OGLIANI Federico, dopo aver visitato gli stabilimenti di Trieste, che ha trovati completamente sinistrati dai bombardamenti aerei ed in istato di abbandono, ha proceduto alla vendita di tutto il materiale esistente per la somma di L.800.000 al Sig. Giovanni BONDY con atto stipulato qui a Roma.

Si trasmette in originale per quanto di competenza nella sua qualità di Ente Federale della Provincia di Roma.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1. Con decreto 24 aprile 1945 di questo Ministero, emesso in applicazione delle leggi di guerra nei confronti della Germania, è stata sottoposta a sequestro la Società in oggetto con sede sociale in Roma e stabilimenti in Trieste, il cui capitale appartiene per il 51% a cittadini italiani e per il 49% a persone di nazionalità tedesca.

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4 Ora il G.M.A. della Venezia Giulia insorge, secondo le comunicazioni fatte dal liquidatore, contro tale vendita che sarebbe stata fatta senza il suo consenso riservandosi ogni libertà di azione.

5 Al riguardo, dato che tale materiale rientra nel plesso patrimoniale di una Società con sede in Roma,

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Declassified E.O. 12356 Section 3.3/NND No. 785016

sta da questo Ministero ai provvedimenti di cui alle leggi di guerra e dato che detta Società è in liquidazione e che la vendita è stata sollecitata dal gruppo di maggioranza degli azionisti, pregasi voler intervenire presso il G.M.A. della Venezia Giulia, invitandolo a soprassedere ad ogni azione, riconoscendo regolare la vendita stessa.

6. Inoltre, il liquidatore ha comunicato che le somme di L.229.896,50 e L.293.510, di pertinenza della suindicata Società, depositate rispettivamente presso la Banca Commerciale di Trieste e presso il Banco di Sicilia, pure di Trieste, sono state trasferite, per ordine del detto G.M.A., alla Banca d'Italia in un conto sospeso intestato all'Ufficiale Capo della Divisione finanziaria alleata e quindi passate al conto A.F.A.

7. Per le considerazioni esposte, poichè occorre provvedere al pagamento delle passività dell'azienda per la chiusura della liquidazione, pregasi voler intervenire per lo sblocco di tali somme e di quelle di L.474.633, L.377.531,90 e L.1.100.000 esistenti in deposito rispettivamente presso il Banco di Roma, il Banco di Napoli e la Banca Nazionale del Lavoro con sede in Trieste.

Si gradirà un cortese riscontro.

IL MINISTRO

Declassified E.O. 12356 Section 3.3/NND No. 785016

6. Inoltre, [illegible]

L.229.896,50 e L.293.510, di pertinenza della suindicata [illegible]
tà, depositate rispettivamente presso la Banca Commerciale di
Trieste e presso il Banco di Sicilia, pure di Trieste, sono sta
te trasferite, per ordine del detto G.M.A., alla Banca d'Italia
in un conto sospeso intestato all'Ufficiale Capo della Divisione
finanziaria alleata e quindi passate al conto A.F.A.

7. Per le considerazioni esposte, poichè occorre provvedere
al pagamento delle passività dell'azienda per la chiusura della
liquidazione, pregasi voler intervenire per lo sblocco di tali
somme e di quelle di L.474.635, L.377.551,90 e L.1.100.000 esi-
stenti in deposito rispettivamente presso il Banco di Roma, il
Banco di Napoli e la Banca Nazionale del Lavoro con sede in Trie-
ste.

Si gradirà un cortese riscontro.

IL MINISTRO

Bertone

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

2093

HEAD QUARTERS ALLIED COMMISSION
A.P.O. 794
LEGAL DIVISION

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AC/4305/1. 19 December 1946

SUBJECT : German Firms
"Societa Italo-Tedesca Tubocaucciu".

TO : S.C.A.O. (Attn: Chief Finance Officer)
A. .F., CASERTA ITALY.

1. Reference your FG/A 8/Gr/ 229 of 3rd December '46.

2. This Division would be obliged if you would return as soon as possible the three original documents enclosed in our letter of 25th October last. Further action in this matter is held up pending the receipt of these documents.

By command of Rear Admiral STONE:

GEORGE THOMAS,
Italian Branch,
For Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
[redacted]
VENEZIA GIULIA

2821 Ho HI

TELEPHONE: Nr. 29701/EXT. 18
Property Control

WGB/j
3 DEC 1946

REF : VG/AMG/CP/220

TO : HEADQUARTERS ALLIED COMMISSION,
APO 794

SUBJECT Società Italo-Tedesca Tabacchi,
Via Ludovisi 16, ROME.

205 H

1. Your AC/4005/L dated 25 OCTOBER 46 refers.

2. This matter has also been the subject of correspondence with you under Files No.13192/F and ES/11/13.

3. According to our information ownership of the shares is not 51% Italian and 49% German as stated in pars.I of letter No. 422169 dated 10 OCTOBER 46 from Ministry of the Treasury but is 40% Italian and 60% German calculated as follows:

Marquis BISLETTI	= Italian	..... 100 shares	
Sig. G. GIUSSANO	= "	..... 100 "	
Sig.Umberto POLIZIO	= "	..2100 sh.	
less sold to Sig. Domenico BRAZZAFOLI, TRIESTE on behalf of H.F.RENTSMA(German) on 1 JUNE 1944		.....550 "	1550 "
Sig.Giue.POLIZIO	= "	..... 250 "	
		TOTAL :	2000 shares
H.F.& Ph.F.REENTSMA, German,original holding		..... 2450 "	
H.F.& Ph.F.REENTSMA, purchased in name of BRAZZAFOLI = 1 JUNE 44		.....550 "	3000 "
		TOTAL :	5000 shares.

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RECD 0900 9/XII/46

Smolars, Trieste 9-1946 — 176640

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
[redacted]
VENEZIA GIULIA

TELEPHONE: Nr. 29701/EXT.

REF : VG/AMG/CP/220

TO :

SUBJECT :

4. BRAZZAFOLI denounced this transaction to the President of Zone, TRIESTE, and the 550 shares were sequestrated by Decree of the Presidente di Zone No. 1137/3212 dated 2 APR. 1946.

5. Throughout the whole sequestration and subsequent liquidation Avv. Federico HOLLAENDER=OGLIANI, ROME, has refused to cooperate with this A.M.G. and it was only after repeated requests made through your Headquarters that a cash statement of sorts was supplied.

6. Such statement is definitely incomplete in that it makes no reference to any funds deposited in Venezia Giulia.

Although Avv. HOLLAENDER=OGLIANI has on several occasions requested the unblocking of funds with the Banca Commerciale Italiana, the Banco di Roma and the Banco di Sicilia, he has never mentioned those with the Banco Nazionale del Lavoro and the Banco di Napoli which have now been referred to for the first time in the letter from the Ministry of the Treasury above referred to.

7. The Società is unquestionably majority German owned and on 8 OCTOBER 45 whilst the Società was still under sequestration only (not liquidation) Avv. HOLLAENDER=OGLIANI offered all the material to Mr. Giovanni BONDY born in VIENNA (Austria) although residing in ROME, for the sum of

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Smolars, Trieste 9-1946 — 176640

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
[redacted]
VENEZIA GIULIA

TELEPHONE: Nr. 29701/EXT.

REF : VG/AMG/CF/220

TO :

SUBJECT :

Lire 800.000.= No regular contract appears to have been drawn up until 31 DECEMBER 45 nearly three months later.

8. According to records held in this office BONDY sold to Ditta Giovanni TRANDOLI, TRIESTE,

on 29 OCT 45, 149.195 cu.metres of timber for ..... L. 747.936.=
and on 1 DEC.1945 the remaining assets including machinery, boilers, equipment, office furniture, type=writers, fixtures, fittings and a FIAT 1500 motor vehicle (without tyres) for..... L. 457.980.=

TOTAL L. 1,205.916.=

From this it would appear that BONDY made a profit of over 400.000.= lire long before the regular contract of sale was drawn up. The materials were withdrawn from the Free Port, TRIESTE, in various lots between 30 NOV.1945 and 23 JAN. 1946.

9. In a letter dated 12 SEPT. 1946 addressed to AC, ROME, srv. HOLLAENDER=OCHIANI states that the property sold consisted mainly of packing material (Jute and paper) packthreads, tarpauling but makes no mention of electrical machinery, boilers, equipment, office furniture and fixtures nor of the FIAT 1500 motor vehicle nor of the 149.195 cu.metres of valuable timber.

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Stabilimento Tipolitografico, Trieste 9-1946 — 176640

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
[redacted]
VENEZIA GIULIA

TELEPHONE: Nr. 29701/EXT.

REF : VG/aMG/CP/220

TO :

SUBJECT

10. The packing materials referred to by Avv. HOLLAENDER=OCLIANI do not appear amongst the items sold to FRANDOLI but were withdrawn from the Free Port on 15 NOV 1945 by a Sig. Giuseppe POLIZIO since deceased but formerly TRIESTE Manager of the Società and also "procuratore speciale" of Sig. Giovanni BONDY, and despatched to an unknown destination. Whether they were paid for and to whom is not known.

11. All local transactions appear to have been carried out by the late Giuseppe POLIZIO and it is locally reported that he bought back a large portion of the furniture from FRANDOLI part of which he subsequently resold, part to Sig. BOSCO, Piazza Goldoni 10, TRIESTE, part to the "Associazione Fra Congiunti dei Deportati in Jugoslavia" via Brunner 7, TRIESTE, and part to Società MODIANO, TRIESTE, keeping also part for himself.

12. Upon enquiries being made into this, Mrs. POLIZIO is reported to have hastily removed and sold the remaining portion to unknown persons. All information is now being withheld.

13. Another inaccuracy supplied by avv. HOLLAENDER=OCLIANI to the Ministry of the Treasury is the balance stated to be at the Banco di ROMA. At his request the sum

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Smolars. Trieste 9-1946 — 176640

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
FINANCE DIVISION
[redacted]
VENEZIA GIULIA

TELEPHONE: Nr. 29701/EXT.

REF : VG/AMG/CP/220

TO :

SUBJECT :

of Lire 136.191.00 was paid from this account to the Tax Office, ROME, on 30 APRIL last, thus reducing the balance by this amount.

14. Due to accumulated interests and bank charges all sums now in the banks vary slightly from those stated.

15. This office is still not satisfied with the genuineness of the liquidation and is continuing its enquiries but feels that before any amounts are released, the Ministry of the Treasury should be informed as to the true position and their wishes ascertained.

16. The position of funds is as follows:

a) In "Special Suspense acct." with Banca d'Italia, TRIESTE :

Transfer from	Banca Comm.Italiana:	Lire	231.094.=	
"	" Banco di Roma .....:	"	335.680.=	
"	" Banco di Sicilia...:	"	293.510.=	860.284.=
b) With	Banco Nazionale del Lavoro..:	Lire		1,103.917.=
"	Banco di Napoli .....:	"		379.549.=
	TOTAL..:	Lire		2,343.750.=

N.T. BEARD, Lt.Col.
CHIEF FINANCE OFFICER.

2 : 3

Smolars, Trieste 9-1946 — 176640

4005

F 12817

MEMO TO THE CHIEF COMMISSIONER:

1. As requested, I have prepared for your approval a reply to the letter of the Vatican, which is enclosed in this file.

2. Oddly enough, this letter came to me as I was preparing a memorandum to you on the matter of policy to be pursued in Venezia Giulia not only with reference to the Italian Amnesty but on Allied Military Government sentences as well.

3. As you know, we have re-examined and adjusted Allied Military Government sentences imposed by us in Italy except those imposed in Venezia Giulia. Being a going concern, it would be unwise to relax the deterrent effect which our sentences carry in the current administration of this area.

4. On the other hand, on R Day, not only will Venezia Giulia Military Government end but the power on our part further to review the cases likewise will end. It behooves us, therefore, to be prepared to act in this behalf before R Day.

5. Anticipating this need, I have dispatched Colonel Carnes to Trieste to canvass the situation with Colonel Bowman and his legal officers. The power to deal with sentences less than two years is vested in Venezia Giulia. The power to deal with sentences over two years is vested in the Allied Commission. Colonel Carnes is bringing back to Rome the records of the sentences of more than two years. These number about twenty.

6. My present idea is as follows: Simultaneously, and in unison, Venezia Giulia will review the two year and less sentences, and I will review the more than two year sentences. No modification will be announced in any sentence, however, prior to a given date.

7. On a given day, - immediately before R Day, - by General Order Venezia Giulia [illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

Allied Military Government sentences imposed by us in Italy except those imposed in Venezia Giulia. Being a going concern, it would be unwise to relax the deterrent effect which our sentences carry in the current administration of this area.

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7. On a given day, - immediately before R Day, - by General Order Venezia Giulia can implement the Italian Amnesty decree. Simultaneous with the issuance of the General Order, an announcement can be made of the decisions determined upon in the review of the Allied Military Government cases. Thus in one announcement, we can tidy up Venezia Giulia to the same extent and in the same manner as we have done elsewhere in Italy.

8. The above is a solution and not necessarily t h e solution.

9. I am setting out in Flag A the data as reflected in our files with regard to the Italian Amnesty decree. I am of the opinion that this decree should be implemented before the curtain is rung down in Venezia Giulia, postponing the issuance of the order, however, until such time as the end of AMG admin-

Declassified E.O. 12356 Section 3.3/NND No. 785016

istration is certain. I am also of the opinion that many of our AMG deterrent sentences should be modified ere we cease our functions. There can be no doubt that they are on the rugged side.

10. In theory at least, as a commissioned officer, I am supposed to use my imagination and talents in meeting the unprecedented problems with which the Legal Division is confronted in the liquidation of the administration of occupational law in Italy. In the instant case I have sought to anticipate a solution of this problem. Since writing this report initially, the letter of A. F. Hqtrs., G-5, dated 6 January 1947, has been received. It calls for the initiation of ruthless tearing down of activities. An exception is made in work that is essential. As opinions may differ on what is essential, I content myself with calling this situation to your attention. I find it embarrassing to make a recommendation that we proceed with the review of these cases, as I want no suspicion that we are seeking to perpetuate ourselves as seemingly is being done by other Branches.

11. In the case of the Legal Division, one point must not be overlooked. Unlike other Branches, the activities of the Legal Division are controlled by law. Under International Law, with the coming of Peace, our powers under occupational law come to their natural end. By delegation from the Military Governor, we administer Occupational Law. Any needful exercise of such powers must be done ere the powers lapse on R Day. Even if the Military Governor ordered the continuation thereof after R Day, the order would fail for want of power. It follows, therefore, that whatever action is to be taken hereon, if any, must be taken before R Day out of necessity of law.

JOHN M. WALTER

Declassified E.O. 12356 Section 3.3/NND No. 785016

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JOHN E. WEBER
Colonel, Infantry
Chief Legal Adviser

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Declassified E.O. 12356 Section 3.3/NND No. 785016

2105

Declassified E.O. 12356 Section 3.3/NND No. 785016

Ref: AC/4073/1/L 19 July 1946

SUBJECT: Implementation of Amnesty Decree in VENEZIA GIULIA.

TO : ALLIED FORCE HEADQUARTERS,
Attention: G-5 Section.

References my letter AC/4073/1/L and in particular para 7.

1. The question of extending all or part of the amnesty decree to VENEZIA GIULIA was discussed in Trieste at a meeting at which Colonels Bowman and Robertson, AMG 13 Corps, and Lt. Col. Hannaford of this HQ were present.

2. It was agreed, for political as well as practical reasons, not to publish a General Order embodying the provisions of the decree pending instructions from your HQ.

3. The Special Court of Assises is still operating in TRIESTE and the consequence of a political amnesty liberating Fascists a few months after their sentences have been pronounced by Courts created by AMG might be prejudicial to the whole jurisdiction thus established.

4. On the other hand, there remains the injustice of a functionary appointed by the Republican Fascist Government remaining in prison just because he was unfortunate enough to be assigned to a locality now in disputed territory.

5. The former Minister of Justice, Palmiro Togliatti, in an interview with Lt.Col. Hannaford expressed the opinion that it would be premature to implement in VENEZIA GIULIA the amnesty decree under some form or other. Togliatti pointed out that the political conditions which justified the promulgation of anti-Fascist legislation, now partly rescinded by the amnesty, had subsided in Italy but still obtained in VENEZIA GIULIA. The implementation, he thought, would at present do more harm than could be justified by the desire to redress a small number of individual cases of injustice.

6. I am of opinion that the amnesty decree of 22 June 1946 should not for the time being take effect in VENEZIA GIULIA.

7. Will you please say if you concur.

(Sgd) HILARY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: Chief Commissioner
Exec. Commissioner
Poland (A)
Poland (B)
AMG 13 Corps.

2.

TO : Executive Commissioner
VP CA Section

The Amnesty decree just issued by the Italian Government was the subject of a conference with Brig. DREW, Cols. Bowman and Robertson and Lt.Col. Hannaford.

It was agreed, until further instructions were received from AFHQ not to publish a general order embodying the provisions of the decree for political as well as practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

11 July 1946

MINUTE 52

VP CA S

Declassified E.O. 12356 Section 3.3/NND No. 785016

the provisions of the decree for political as well as practical reasons.

The Special Court of Assizes is still operating in Trieste and the consequences of a political amnesty liberating fascists a few months after their sentences pronounced by Courts created by AMG might be very serious and the whole jurisdiction thus established considered as a mere farce.

On the other hand, it is obviously extremely unjust that a functionary appointed by the republican fascist government should remain in prison just because he was unfortunate enough to be assigned to a locality situated on the wrong side of the line.

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

11 July 1946

MINUTE 52

VP CA S

We should, I think, follow up our Amnesty letter to AFHQ with a recommendation about VG as recorded above. Would you submit for C.C.?

12/7 ML

MINUTE 53

VP CA

Draft submitted as requested by R.C.

(Sgd) G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Legal S/C
15 June 46

Declassified E.O. 12356 Section 3.3/NND No. 785016

MINUTE 54

Ex. Comm.

Draft of 1A. Any comments please?

(Sgd) M. CARR, Brig.
V.P. C.A. S.

15/7/46

P.S. I am not sure we want to mention Brig. Drew who was really only an observer.

MC

MINUTE 55

CA Section

Letter signed and returned for dispatch. Copies have been withdrawn for CC and EC files.

19/7 J.C.

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannaford.

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannaford's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders.

Declassified E.O. 12356 Section 3.3/NND No. 785016

CA Section

Letter signed and returned for dispatch. Copies have been withdrawn for CC and HC files.

19/7 J.G.

MINUTE 56

Chief Commissioner.

Enclosed letter is submitted for signature.

I have discussed this matter with Col. Hannaford.

His view is that as special courts of assize are still functioning in Venezia Giulia the political implication of releasing Fascist political offenders sentenced by a court, created by order of AMG, after a few months detention would have a serious effect.

Hannaford's original view was that the amnesty if applied at all should apply only to criminal and not to political offenders.

The total number of cases affected, as stated in our letter to AFHQ, is small and estimated to number about 12.

Col. Weber is still in Florence and doubtless you will wish to discuss this matter with him on his return. 2

(Sgd) M. Carr, Brigadier
M. CARR,
Brigadier
A/Executive Commissioner

4 Oct 1946.

MINUTE 57

CA Sec.

Ltr signed and returned for dispatch. Copy for CC files has been withdrawn.

8/10 L.J.S.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

9 JAN 1947

25A
299A

Col. Baker.

After making the attached note on the functions and powers of the Allied Commissioners I had a talk with Col. Hazlewood on the question, and we both agree to the conclusions that I have one reading difficulties involved in the A.C. taking a stand I have) upon what it considers to be its duties.

In the circumstances I think the Government would be, and I believe that it is of the same opinion, to say that the claim in the present case, and a number of similar ones pending, being claims for which the Allied Commissioners consider it inadvisable to refer the Italian Government, the question as to whether or not they should be presented to the Italian Govt for payment should be referred to the Supreme Allied Commander as ex-officio head of the Allied Commission.

Asst

8 Jan.

2

Declassified E.O. 12356 Section 3.3/NND No. 785016

JAN 1947

24 A

Col. Wicker

The Allied Commission was brought into being by Art. 37 of the Armistice Terms:

"There will be appointed a Control Commission representative of the United Nations charged with regulating and executing this instrument under the orders and general directions of the Allied Commander-in-Chief."

Under this Art. the A.C. is the representative of the U.N. and its duties are to regulate and carry out the terms of the Armistice under the directions of Seacomd.

~~Its functions of A.C. were in a directive by~~ Combined Chiefs of Staff stated to be

(1)

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(2)

The purposes in view in setting up the A.C. are stated in a "Draft Outline Plan for Setting up A.C." of 21st Oct. 1943

"The objective in view is to provide for the eventual establishment, at Rome, of the Allied Commission which is to construct and guide the Italian Government"

by 1st Nov. '43 Lieut-Gen. W.B. Smith as Chief of Staff issued General Instructions to the first Exec. President of the A.C. and para 5 is in following terms:

"The Allied Commission is being established to give instructions and guidance to the Italian Govt. on military, political, economic and administrative matters, and to enforce and execute the Surrender. See Administrative Memo. No. 74 dated 2nd Nov 1943."

This Memo is in following terms:

I. Allied Control Com for Italy set up on 10 Nov 43

II. The functions of the A.C.I.C. will be as follows:

(1) To enforce and execute the instrument of

Declassified E.O. 12356 Section 3.3/NND No. 785016

(3)

Surrender under the orders and general directives of the Allied Commander-in-Chief.

(2) To ensure that the conduct of the Italian Govt conforms to the requirements of an Allied Base of Operations, especially transportation and communications.

(3) To be the organ through which the policy of the United Nations towards the Italian Govt is conducted and the relations of the United Nations and the Italian Govt are handled."

Under the Armistice Terms and the directives just cited it is clear that the A.C. is the representative of the United Nations and its functions are to ~~see to~~ regulate and see to the carrying out of the Armistice. It is obvious that it could only achieve the purpose for which it was set up if it were clothed with a very wide discretion. It is subject to the general directions of Caserta which presumably would be chiefly concerned

2/0

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to matters of policy, and, [would not include directions as to how the smaller units of the A.C. should perform their duties.] just as the Legal Division is subject to the general directions of the Chief Commissioner, it could not be supposed that these directions would authorise the C.C. giving instructions as to the how legal questions should be decided.

In the present case the A.C. has stated that the claim for damages arising from the negligence of an Italian soldier serving under the orders of an Allied Unit is not one for which the Italian Government is liable. Whether or not the Italian Govt. should be called upon to indemnify an Allied Unit for a loss sustained appears to be within the functions for which A.C. was set up to carry out - in fact there is no other body but A.C. that could deal with this question vis-à-vis the Italian Govt.

2 ::

[It is even open to doubt whether A.C. is subject to the orders of Second in matters of detail,

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(5)

Lt, Even if A.C. ~~is~~ to be found to comply with orders from Secretd in matters of detail as to how it shall carry out its duties, it is certainly under no obligation to comply with a request from Attorney to call upon the Italian Govt to pay a claim for which in the opinion of A.C. the said Govt has no liability whatsoever.

Amer.

6 Jan.

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23A

copy to HODS

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

2984

AC/4007/L

MT/ns.
24 January 1947.

SUBJECT : Marriages between US and UK nationals.

TO : AFHQ : G-5.

1. Reference your G-5 : 931.11 of 30th Nov. '46.

2. A marriage celebrated in Italy by a British Chaplain between US and UK nationals who are members of their respective Armed Forces is governed by the terms of the Foreign Marriages Act, 1892, Section 22, which runs as follows :

> "It is hereby declared that all marriages solemnised within the British lines by any Chaplain or other officer or person officiating under the orders of the commanding officer of a British Army serving abroad, shall be as valid in law as if the same had been solemnised within the United Kingdom with a due observance of all forms required by law."

3. The principle referred to in para 1(a) of your letter would apply to such marriages in the sense that they are rendered valid by a special statutory provision covering marriages performed by a chaplain of a British army serving abroad, but not in the sense that they are valid because valid in accordance with Italian law, seeing that such marriages are not solemnised under Italian law. Since US accepts

Declassified E.O. 12356 Section 3.3/NND No. 785016

who are members of their respective Armed Forces is governed by the terms of the Foreign Marriages Act, 1892, Section 22, which runs as follows :

> "It is hereby declared that all marriages solemnised within the British lines by any Chaplain or other officer or person officiating under the orders of the commanding officer of a British Army serving abroad, shall be as valid in law as if the same had been solemnised within the United Kingdom with a due observance of all forms required by law."

3. The principle referred to in para 1(a) of your letter would apply to such marriages in the sense that they are rendered valid by a special statutory provision covering marriages performed by a chaplain of a British army serving abroad, but not in the sense that they are valid because valid in accordance with Italian law, seeing that such marriages are not solemnised under Italian law. Since US accepts the principle in question this Division is of opinion that such marriages would be valid as regards Americans.

4. As regards your para 1 (b) Italian law would recognise such marriages as valid upon the principle that an occupying army is not subject to the laws of the country occupied, but are governed by their own law : "a British Army is presumed to carry with it British law."

5. It may be pointed out that, if the persons under consideration wish to abandon their rights of exterritoriality, they can be validly married under the law of the land, i.e. Italian law;

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but, if they take advantage of their exterritorial rights and get married under British or American law, as neither of them is an Italian citizen, nor resident in Italy, Italian law does not enter into the question any more than any other foreign law.

MURGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

In file 311 A

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

NLJ 01-25 By dal NARA Date

3/1/A

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

294A

TO : Navy S/C

SUBJECT: French Barge "JOYCE"

1. This division disagrees with the views expressed in VG/AMG/LD/192/3944 of 13 Dec 1945 signed by Major P. A. Mathews of the Legal Division of Venezia Giulia.

2. From the facts submitted to this Division, it appears that Barge JOYCE with many others was removed from France to Trieste by the Germans in her original state and that they intended to convert her into a transport of troops and material for the North African campaign.

3. If these facts are correct the present state of the barge, the amount of work carried out on her, the addition to her superstructure, etc. which may have been effected without the consent of the original owner and either for private profit or on the instructions of the enemy cannot in any way affect the nationality of origin of the craft nor justify a claim for possession against the original owners.

4. Under the Armistice terms and subsequent agreements, all Allied ships must eventually be returned to their Allied owners, "whether or not their title may have been transferred as the result of prize court proceedings or otherwise (Art. 15 of Armistice terms refers)

2

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5. FAMT are in exactly the same position as many other Italian firms in Northern Italy who executed contracts for the Germans or the Fascist Republican Government. They have no claims against the allies. Furthermore, the interpretation of the Armistice terms does not lie within the jurisdiction of Italian courts. It is up to Allied and not Italian authority to decide whether the barge is an Allied ship or not.

6. FAMT may have a claim for damages against their own government. They cannot refuse, however, to hand over a ship when it has been declared of Allied nationality by Allied authority, whatever the conditions under which this craft came in their possession may have been.

C. G. HANNAFORD

Declassified E.O. 12356 Section 3.3/NND No. 785016

2964 E

HEAD QUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

MF/ns
24 January 1947.

AC/4005/L

SUBJECT : Iscrizione ipotecaria sull'immobile in Trieste della Società Riunione Adriatica di Sicurtà.

TO : Ministero Industria e Commercio.

1. Si fa riferimento a Vs/ nota Nº 143488/Na 166 del 16 Novembre 1946.

2. Questa Divisione è spiacente del ritardo dovuto a un equivoco e prega codesto Ministero di mettersi in contatto con l'Avv. Fiore o, in mancanza, col Sig. Fisaglia (Tel 489-081 interno 541 dalle ore 9 alle ore 12.30).

3. Si resta in attesa di cortese comunicazione.

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

2[illegible]

Ministero dell'Industria
e del Commercio

FILE

Roma, 16 NOV. 1946 194

Prot. N. 142488/Na 165 Riservato

2960

Alla Commissione Alleata
Sottocommissione Alleata Legale APO 794

Risposta al Foglio N.A.C.4005/L
del 27 - 9 - 46

OGGETTO: Iscrizione ipotecaria sull'immobile in Trieste della Società Riunione Adriatica di Sicurtà.-

Con riferimento a quanto codesta Commissione Alleata ha comunicato con la lettera sopraindicata, si informa che malgrado i numerosi tentativi effettuati non è stato possibile mettersi in contatto col Dott. Fiore.-

Questo Ministero resta pertanto in attesa di cortesi comunicazioni al fine di affrettare la definizione della pratica in oggetto.-

IL MINISTRO

GL

Declassified E.O. 12356 Section 3.3/NND No. 785016

Con riferimento a quanto codesta Commissione Alleata ha comunicato con la lettera sopraindicata, si informa che malgrado i numerosi tentativi effettuati non è stato possibile mettersi in contatto col Dott. Fiore.-

Questo Ministero resta pertanto in attesa di cortesi comunicazioni al fine di affrettare la definizione della pratica in oggetto.-

IL MINISTRO

GL

LEGAL SUB - COMMISSION
CJO - CLA
DCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd NOV 18 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

2957

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION.

GGH/ns
24 January 1947.

AC/4005/L

SUBJECT : Requisition of Poggio Adorno Estate by 5th Army for Brazilian troops.

TO : U.S. Claims Service.

1. All the evidence in this case has been submitted to this Division.

2. Please state what procedure the claimant should follow in order to file his claims with US authorities.

3. Both Italian departments at Florence (Claims against Anglo-American forces) and the Ministry of War have given favourable consideration to this claim.

4. To whom should the claimant apply now?

GUY G. HASNAFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

Ufficio Lavoro
Genio Militare
Ministero dei Lavori Pubblici

295B

MEMORANDUM

Requisition of the Poggio Adorno Estate, property of Mr. Luigi BARGAGLI BARDI BANDINI, situated in the Communes of Castelfranco di Sotto, Santa Croce sull'Arno and Fucecchio. (Provinces of Pisa and Florence)

1. The Hqs of 5th Army established in December 1944 in the Poggio Adorno Estate (at the boundary line between the provinces of Pisa and Florence) a Depot for the personnel of Brazilian Expeditionary Corps.

2. After the occupation the requisition was properly confirmed by a Military Requisition Paper N° 00159 Z/III, issued by the Engeneer Corps of 5th Army, dated December 20th 1944, and sugned by Maj. MIRANDA, who authorized the requisition and countersigned by 1st Lt. GRAND KING, for the Real Estate Section of 5th Army Hqs.

3. The requisitioned property, composed of woods and cultivated land, has an extension of 1200 acres.
4. The derequisition occurred on September 1st 1945
5. The requisitioned Zone was marked by an anclosure and sentries, assigned to guard it by the Camp Command, prohibited the entrance to civilians.

6. Since the very beginning, troops of occupation have used for the construction of their barracks, hospitals and other things all the wood already cut, which was found in the occupied Zone, for a total amount of 810 cubic meters; no requisition order was issued for this wood.

7. Subsequently, as the Brazilian troops needed other wood, the Military Units proceeded to cut down all the other aged trees, which were found in the wood.

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2. After the occupation the requisition was properly confirmed by a Military Requisition Paper N° 00159 Z/III, issued by the Engeneer Corps of 5th Army, dated December 20th 1944, and sugned by Maj. MIRANDA, who authorized the requisition and countersigned by 1st Lt. GRAND KING, for the Real Estate Section of 5th Army Hqs.

3. The requisitioned property, composed of woods and cultivated land, has an extension of 1200 acres.
4. The derequisition occurred on September 1st 1945
5. The requisitioned Zone was marked by an anclosure and sentries, assigned to guard it by the Camp Command, prohibited the entrance to civilians.

6. Since the very beginning, troops of occupation have used for the construction of their barracks, hospitals and other things all the wood already cut, which was found in the occupied Zone, for a total amount of 810 cubic meters; no requisition order was issued for this wood.

7. Subsequently, as the Brazilian troops needed other wood, the Military Units proceeded to cut down all the other aged trees, which were found in the wood.

The quantity of wood cut down in this manner amounts to a total of 5860 cubic meters, all pine-wood.

Not even for this wood was any requisition order issued.

2.

8. Moreover, a considerable quantity of trees, which have not become of age, were also cut down in this camp and used for different purposes.

It is therefore pointed out that in this case the damage suffered by the requisitioned farm undertaking is not limited only by the value of trees effectively cut down, but is principally occasioned by the diminution of production of the mentioned woods for the future years.

9. The damage occasioned to the Estate by these latter

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requisitions has to be valued to 9590 cubic meters of wood all used for construction purposes, and in 62390 Quintals of wood, obtained from masses of bit and from branches.

10. Considering that the Estate was regularly requisitioned and that all the felled wood has served for the construction and consumption in the Camp, for which the requisition has been ordered, it is hereby requested that also the requisitions of wood in the above mentioned quantities be regulated.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

2.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Spese

2 Atti

HEADQUARTERS ALLIED COMMISSION
AFG 792
LEGAL DIVISION

4005

16 gennaio 1947.

Chiarissimo Professore,

Il Col. HARRAFORD mi prega di portare a conoscenza il risultato dei nostri passi per quanto riguarda la restituzione del rogito di Lorenzo Adorno di proprietà dei Signori MARCELLI BRUNI MARIOTTI.

Regolare domanda deve essere indirizzata all'Ufficio Civile Militare per la requisizioni anglo-americane, P.za Strozzi No. 2 - Firenze - chiedendo separatamente il pagamento del canone per la requisizione ed il risarcimento dei danni.

In mancanza del verbale di immissione in possesso e di riconoscimento la prova dei danni potrà essere data mediante dichiarazione degli uffici anagrafici, dei Carabinieri, etc.

In assenza di una precisa documentazione il Col. HARRAFORD è ben spiacente di non potersi prendere il piacere di favorirla non potendo, egli Inglese, avviare una soluzione al di fuori della normale prassi burocratica esistente. Nel trasmetterle il più cordiale ricordo del Col. HARRAFORD mi è grato l'occasione per pregarla di gradire i sensi del mio ossequio.

Sempre a Sua disposizione per quanto possa occorrerLe

mi creda molto rispettosamente

Avv. Prof. Filippo MASSARI
Lungotevere Vallati, 19
R O M A

2 Atti

FILE

#121
4005

MEMORANDUM

Requisition of the Poggio Adorno Estate, property of Mr. Luigi ANGARLI DAR'I SANTINI, situated in the Communes of Castelfranco di Sotto, Santa Croce sull'Arno and Fucecchio. (provinces of Pisa and Florence)

1. The Hqs of 5th Army established in December 1944 in the Poggio Adorno Estate (at the boundary line between the provinces of Pisa and Florence) a Depot for the personnel of Brazilian Expeditionary Corps.

2. After the occupation the requisition was properly confirmed by a Military Requisition Paper Nº 40159 Z/III, issued by the Engineer Corps of 5th Army, dated December 20th 1944, and signed by T.J. TIARDA, who authorized the requisition and countersigned by 1st Lt. Chaim KING, for the Real Estate Section of 5th Army Hqs.

3. The requisitioned property, composed of woods and cultivated land, has an extension of 1200 acres.
4. The requisition occurred on September 1st 1945
5. The requisitioned zone was marked by an enclosure and sentries, assigned to guard it by the Camp Command, prohibited the entrance to civilians.

6. Since the very beginning, troops of occupation have used for the construction of their barracks, hospitals and other things all the wood already cut, which was found in the occupied zone, for a total amount of 410 cubic meters; no requisition order was issued for this wood.

7. Subsequently, as the Brazilian troops needed other wood, the Military Units proceeded to cut down all the other wood trees, which were found in the wood.

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firmed by a Military Requisition Paper N° 00159 2/III, issued by the Empereur Corps of 5th Army, dated December 20th 1944, and signed by Maj. MIANDA, who authorized the requisition and countersigned by Lat.Lt. GRAHM KING, for the Real Estate Section of 5th Army Hqs.

4. The requisitioned property, composed of woods and cultivated land, has an extension of 1200 acres.
4. The derequisition occurred on September 1st 1945
5. The requisitioned zone was marked by an enclosure and sentries, assigned to guard it by the Corp Command, prohibited the entrance to civilians.

6. Since the very beginning, troops of occupation have used for the construction of their barracks, cesspools and other things all the wood already cut, which was found in the occupied zone, for a total amount of 810 cubic meters; no requisition order was issued for this wood.

7. Subsequently, as the Brazilian troops needed other wood, the Military Units proceeded to cut down all the other used trees, which were found in the wood.

The quantity of wood cut down in this manner amounts to a total of 5760 cubic meters, all pine-wood.

Not even for this wood was any requisition order issued.

8. Moreover, a considerable quantity of trees, which have not become of age, were also cut down in this camp and used for different purposes.

It is therefore pointed out that in this case the damage suffered by the requisitioned farm undertaking is not limited only by the value of trees effectively cut down, but is principally occasioned by the diminution of production of the next cut woods for the future years.

9. The damage occasioned to the Estate by these latter

Declassified E.O. 12356 Section 3.3/NND No. 785016

requisitions has to be valued to 3590 cubic meters of wood all used for construction purposes, and in 62790 quintals of wood, obtained from masses of bit and from branches.

10. Considering that the Estate was regularly requisitioned and that all the felled wood has served for the construction and consumption in the Camp, for which the requisition has been ordered, it is hereby requested that also the requisitions of wood in the above mentioned quantities be regulated.

Declassified E.O. 12356 Section 3.3/NND No. T85016

Declassified E.O. 12356 Section 3.3/NND No. 785016

PRO MEMORIA

sulle requisizioni effettuate nella tenuta di Poggio Adorno di proprietà del N.H. Luigi Bargagli Bardi Bandini, situata nei comuni di Castelfranco di sotto, Santa Croce sull'Arno e Fucecchia (provincie di Pisa e Firenze).

1. Nel dicembre 1944 il Comando della 5 Armata stabilì nella tenuta di Poggio Adorno (sul confine tra le provincie di Pisa e Firenze) un deposito per il personale delle Forze di Spedizione brasiliane.

2. Dopo l'occupazione la requisizione fu regolarizzata con Military Requisition Paper Nº 001593/III emesso dal Comando del Genio della 5 Armata in data 20 dicembre 1944, a firma Maj. Miranda, per il reparto che procedeva alla requisizione e controfirmata dal 1st Lt. Grand King per la Real Estate Section of 5th Army H.Q.

3. La proprietà requisita, composta di boschi e di terreni coltivati, ha un'estensione di 1.200 acri.

4. La derequisizione avvenne il 1º settembre 1945.

5. La zona requisita fu chiusa da un recinto e sentinelle messe dal comando del campo impedivano l'accesso ai civili.

6. Inizialmente le truppe occupanti utilizzarono, per la costruzione di baracche, ospedali e costruzioni varie, tutto il legname già tagliato che si trovava nella zona occupata, per un totale di 810 mc.; per questo legname non fu emesso nessun buono di requisizione.

7. Successivamente, avendo bisogno le truppe brasiliane occupanti di altro legname, reparti militari procedettero all'abbattimento di tutte le piante giunte a completa maturazione che si trovavano nel bosco.

   Le quantità di legname così abbattuto raggiungono il totale di 5660 mc. di legno dipino.
   Nemmeno per questa requisizione fu emesso alcun buono di requisizione.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Military Requisition [illegible] mando del Genio della 5 Armata in data 20 dicembre 1944, a firma Maj. Miranda, per il reparto che procedeva alla requisizione e controfirmata dal 1st Lt. Grand King per la Real Estate Section of 5th Army H.Q.

3. La proprietà requisita, composta di boschi e di terreni coltivati, ha un'estensione di 1.200 acri.

4. La derequisizione avvenne il 1° settembre 1945.

5. La zona requisita fu chiusa da un recinto e sentinelle messe dal comando del campo impedivano l'accesso ai civili.

6. Inizialmente le truppe occupanti utilizzarono, per la costruzione di baracche, ospedali e costruzioni varie, tutto il legname già tagliato che si trovava nella zona occupata, per un totale di 610 mc.; per questo legname non fu emesso nessun buono di requisizione.

7. Successivamente, avendo bisogno le truppe brasiliane occupanti di altro legname, reparti militari procedettero all'abbattimento di tutte le piante giunte a completa maturazione che si trovavano nel bosco.

Le quantità di legname così abbattuto raggiungono il totale di 5860 mc. di legno dipino.
Nemmeno per questa requisizione fu emesso alcun buono di requisizione.

8. Inoltre furono abbattute e variamente utilizzate nel campo suddetto notevoli quantità di alberi che non avevano ancora raggiunto la completa maturazione.
E' da notare quindi come in questo caso il danno subito dall'Azienda requisita non sia solamente quello rappresentato dal valore delle piante effettivamente abbattute, ma soprattutto dalla diminuzione della produttività dei bosch[illegible]

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in parole negli anni futuri.

9. Il danno subìto dalla tenuta per queste ultime requisizioni può essere calcolato in 8590 mc. di legname da costruzione e in 62390 quintali di legname ricavato da pezzame e ramaglie.

10. Dato che mentre per la tenuta vi fu una regolare requisizione e dato che d'altra parte tutto il legname abbattuto ed asportato fu usato per la costruzione e per il consumo del campo per la costruzione del quale era stata operata la requisizione, si chiede che vengano regolarizzate anche le requisizioni di legname per le quantità sopra indicate.

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Tegelijk met het aanvragen van een legitimatiebewijs dient de aanvrager te worden geïdentificeerd.

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4005

293A

LEGAL DIVISION JEM/zs

22 Jan. 47

FILE REF. : VG/AMG/LD/42/271

SUBJECT : Proposed Orders.

TO : LEGAL SUB COMMISSION
(Attn: Lt.Col. Hannaford)
HQ. ALLIED COMMISSION,
R O M E

Ref. telephone conversation (Lt.Col.Hannaford-Major Hankes).

1. General Order No. 79 is based on the Italian Decree published in the Italian Official Gazette No. 128 of June 4, 1946 P.L.L. 5 May 1946 No. 393.

2. It is felt that this law should be made applicable to "the Territory" and after many consultations between Property Control, Legal and persons affected it was decided to put the matter through. Before doing so however it was considered that the matter should be presented to you for your views.

3. The Jewish Community are anxious for the Order to be published as they consider the full benefits of Italian legislation should be made applicable here. They consider they could straighten out their own affairs if this was done.

4. A news paper report (Radio news published by Allied Information Services, V.G.) on 4 Dec. 1946 in reporting the activities of the Council of Foreign Ministers (CFM) stated "An agreement was also reached that "unclaimed Jewish property in Rumania and Hungary should "be administered by local organisations and not by an "international refugee organisation as previously claimed by Britain and the United States."

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5. By Trieste Area Order No. 3 provision was made for the continued Administration of the Jewish Community of Trieste (A.M.G. Gazette No. 4 dated 15 Oct. 1945) and Area Order No. 41 authorized elections for the Council of the Jewish Community of Trieste (A.M.G. Gazette No. 14 dated 15 March 1946). The Community is recognised and there would seem to be no objection to making full use of it to handle their own affairs. The Jewish Community has a legal personality under Italian Law

6. Certain property still in the hands of the "State" illegally taken away by the Fascist Government must be returned to the rightful owners. These owners will require to prove their right in a Court of Law and for this purpose should make an action against the holder. The Italian Decree for this purpose permits the suing of the "State". This cannot be done in Venezia Giulia nor can A.M.G. permit an action against it. It has been proposed that property Control should divest itself of this property to say the Intendente di Finanza and power be given to raise an action against them. (Art. XII).

7. It is felt that there is no need for delay in publishing this Order but that immediate effect should be given to it.

8. The Jews are principally congregated in Trieste and to publish the Order now would help Property Control and enable a start to be made in returning or getting back of property which had been taken away. The property is, so far as is known in Trieste and the bulk of it belongs to the Jews. There is now little property held for Sale

9. The Order conforms to the Italian Legislation in all respects save Art. V which has been added by this Headquarters. The reason for this addition is that there was German Military Government in Venezia Giulia and a German High Commissioner was appointed who issued Orders while the Germans were in occupation. This German High Commissioner confiscated much of the Jewish property and sold it and it is considered that the Jews should now be given the opportunity of either recovering this property or lodging claims. So far as Venezia Giulia is concerned this is probably the most important and essential clause.

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17. Your views in the matter would be much appreciated. It is regretted that this explanatory letter was not ready when ~~Lt~~ Col. Carnes called at this Headquarters.

For the Senior Civil Affairs Officer:

J. STEWART REARES
Major, R.E.F.
D/CHIEF LEGAL OFFICER

Copy to Property Control (Maj. Beard)

Original in 4188/4
Duplicate in 4188/1

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
292A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
VENEZIA GIULIA

LEGAL DIVISION

JSD/sa
20 Jan. 47

TO:

Col. J.C. [illegible],
G.L.C.
LEGAL SUB COMMISSION,
HQ. ALLIED COMMISSION,
U.C.M.E.

Dear Col. [illegible],

Ref. our telephone conversation I send you draft of Order No. 88 (replacing General Order No. 79 =Expropriation of Profits=). In revising the old Order No. 79 we have taken the opportunity of including the amendments to the original Italian Law as set out in P.I. G.U.G. 19 Nov. 1946 No. 392, translation of which I enclose for your use. We have thus brought the Order up to date. The new passages I have marked with a red pencil for easy reference.

We have also taken the opportunity of including the bulk of the amendments suggested by your Sub Commission. These I have not marked but can easily be checked from the Notes prepared at your Headquarters. I am sending you unofficially a copy of our reply to the points raised in the Notes received from your H.Q. These I do not propose to send out officially nor do I intend anyone else at this Headquarters to see. We made to go over the Notes point by point and did so.

As there is some urgency in the matter this H.

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proposes to get on with the printing word for the next issue of the Gazette on 1st February. If you do not approve of the Order as it stands may we hear from you soon say in four days from receipt either by signal or telephone. I am sorry to ask you to do this but time is getting so short and with so much on hand we should like to hand over in a more or less complete state.

I wish you the compliments of the Season - a bit late but nevertheless sincere. If you do come to Trieste and I hope you do, do come and have dinner with my wife and I.

Kind regards,

Yours sincerely

Richard Stevens Hay.

PS. I am sending this to you by the hands of the Lt.Col. ATKINSON.

Original in file AG/4188/4, Folio 36A

28

EX-CASE.

2910

Case Against Teodor & Co.

This division has received from AMG, Venezia Giulia, the attached report, together with a voluminous file of evidence and a request for instructions. You will read the evidence contained in the report and will no doubt agree with this Division that the alleged criminals should be tried at once and, if found guilty, severely sentenced. However, the question is so involved that to date no legal solution to the points at issue can be recommended.

The position may be summed up as follows. Trieste - Venezia Giulia Police and the local examining magistrate appointed or confirmed in their appointment by the Allied Military Government have carefully investigated this case and have come to the following conclusions:

a. that all the alleged criminals were at the time the offense was committed members of the Yugoslav Army or military police.

b. that the offense took place before the setting up of AMG.

c. that although some of the accused are detained in Trieste, others are still serving with the Yugoslav Forces in Yugoslavia or Zone B.

AMG Venezia Giulia wish to know:

a. Does the offense constitute a war crime?
b. Whether it does or not, under what jurisdiction should the accused be tried.

This Division points out:

a. that although a Commission has been set up by the Allies to investigate and determine war crimes against members of the Allied Nations and lists of enemy war criminals are produced from time to time, no special

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have carefully investigated this case and have come to the following conclusions:

a. that all the alleged criminals were at the time the offense was committed members of the Yugoslav Army or military police.

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AMG Venezia Giulia wish to know:

a. Does the offense constitute a war crime?
b. Whether it does or not, under what jurisdiction should the accused be tried.

This Division points out:

a. that although a Commission has been set up by the Allies to investigate and determine war crimes against members of the Allied Nations and lists of enemy war criminals are produced from time to time, no special organization exists to deal with war crimes committed by Allied soldiers and others against ex-enemies or neutrals.

b. that neither the local Italian courts nor Allied Military Courts in Venezia Giulia have jurisdiction over Yugoslav military personnel.

c. that the Yugoslav Military courts would technically have jurisdiction over all the accused provided the Yugoslav Government declares that they were members of the Yugoslav Armed Forces at the time the offense was committed.

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This Division can go no further considering that although jurisdiction over certain classes of criminals has been withdrawn from regular courts it has not been vested in others (neither in existence or to be established).

This Division considers therefore that the problem, which is more political than legal, should be submitted by Polads to their respective Governments for a ruling, remembering that whatever decision is taken, it will constitute a precedent.

(N.B. See enclosure Vol I for complete document of this case)

C. C. MENNAFORD

Declassified E.O. 12356 Section 3.3/NND No. 785016

Case against Teodoro Zocchi, Pertot etc.

REPORT

1) On 13 August 1945, in the so called "Foiba" of Gropada a 64 meters deep pit situated in the vicinity of the village of Gropada between Orle and Gropada (Zone A) there have been found 5 human corpses of persons kidnapped from and around Trieste and (Longera) in May 1945 or before, by members of political organisations of a military nature belonging to the 4th Jugoslav Army (Guardia Popolare and OZNA).

2) All the accused in this case were members of the above organisation. According to the records Pertot was the Commander of the group concerned.

3) Particularly Pertot was and still is a member of OZNA, serving first in Arpelle (Zone B) and now in Belgrade; he holds the rank of a Lieutenant; Marussi is also an OZNA man with the rank of Lieutenant, lately on duty at Aidussina (Z.B.); Ferluga is also on OZNA's service at Isola d'Istria. All the others are members of the "Guardia popolare" created by the Jugoslav military Authorities, in agreement with OZNA.

Zocchi was a Battalion Commander, and Olavina a Company Commander of the said "Guardia Popolare". Zocchi succeeded in getting into the V.G. Police Force. When arrested, after the discovery of the corpses which started the investigation, he was serving with the said Police.

4) The 5 corpses have been identified as those of :

1) ZARONI Adriano of Adriano and Slobez Santina, born at Trieste on 21/7/1921, living in Via Scala Santa No.34, tramway conductor, former auxiliary guard (guardia ausiliaria di P.S.).

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organization. [illegible]
Commander of the group concerned.

3) Particularly Bertot was and still is a member of O.Z.N.A, serving first in Arpelle (zone B) and now in Belgrade; he holds the rank of a Lieutenant; Marussi is also an O.Z.N.A man with the rank of Lieutenant, lately on duty at Aidussine (Z.B.); Perluga is also on O.Z.N.A's service at la.la d'istria. All the others are members of the "Guardia popolare" created by the Jugoslav military Authorities, in agreement with O.Z.N.A.

Zocchi was a Batelion Commander, and Glavina a Company Commander of the said "Guardia Popolare". Zocchi succeeded in getting into the V.G. Police force. When arrested, after the discovery of the corpses which started the investigation, he was serving with the said Police.

4) The 5 corpses have been identified as those of :

1) ZAROTTI Adriano of Adriano and Globez Santina, born at Trieste on 21/7/1921, living in Via Scala Santa No.34, tramway conductor, former auxiliary guard (Guardia ausiliaria di P.S.).

2) MARNGA Alberto of the late Michele and of the late Erminia Rudolf, born at Trieste on 3 January 1902, residing at Trieste at No.4 via Tor S.Pietro, employee, Fiduciary of Fascio of Cattinara.

3) ZULIAN Rodolfo of Andrea and Suman Giuseppina , born at Trieste on 9 April 1919, living at Longera, 169, labourer.

4) ZERIAL Carlo of Francesco and Maria Cociancich, born at Trieste on 16 March 1917, living at Longera No.206, labourer.

5) CICK Dora of Giuseppe and Emilia Blaisch, born at Trieste on 12 September 1924, living at Longera 406.

5) Zarotti was kidnapped on 11 May 1945 by Teodoro Zocchi and by Glavina Oscar. Delivered to Bertot, he was killed by him, by Perluga Vladislao and Marussi Francesco with a fire arm, robbed of his clothes and money and of a ring they found on

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him: he was then thrown into the "foiba".

Alberto Marage, was abducted on early May 1945 by Pertot Danilo, Perluga Vladislao, Marussi Francesco and Vever Luciano, who took the clothes of the victim according to the Police report. From the examination of the remnants of the corpse, however, there was no evidence that he was killed by a fire arm. There are several parts of the corpse missing. It is probable that the victim was thrown into the "foiba" alive and that the body broke to pieces on the bottom.

Zulian Rodolfo and Zerial Carlo were abducted on January 1945 by Pertot Danilo, Sombac Emilio and by other non identified persons the name of one of whom is "Vinco" and that of another one is "Paolo". The post mortem has shown no sign of wounds caused by fire arms, but the skull of Zulian was completely open. These two have also probably been thrown alive into the"foiba".

Cick Dora, was abducted from her home in Longera on 3 May 1945, by Marussi Francesco and by another non identified person whose name is "Blisk". She was taken to a military barrack of S.Giovanni Trieste and on the night of the 5th taken away in a motorvehicle towards an unknown destination. Her corpse was found naked, the hands bound with a leather belt to her thighs; there were no wounds of fire arms. According the police-report she was kept 5 days in a bunker and badly ill-treated. Her naked body was then wrapped in a military coat and thrown into the "foiba" on Pertot's order. He was her relative and had particular reasons of hatred against her.

6) Three persons missing since May 1945 have also been abducted by the above group of accused.

On 1 May 1945 Bungherli Giuseppe, age 40, was abducted by Gregori Andrea and handed over to Teodoro Zocchi and then conducted towards Basovizza together with other persons, who, according to information given by the Police were undressed and killed. The corpses of the victims were partly buried and partly thrown into the

Declassified E.O. 12356 Section 3.3/NND No. 785016

shown no sign of wounds caused by [illegible]
skull of Sulian was completely open. These two have also probably been thrown alive into the"foiba".

Ciok Dora, was abducted from her home in Longera on 3 May 1945, by Marussi Francesco and by another non identified person whose name is "Blisk". She was taken to a military barrack of S.Giovanni Trieste and on the night of the 5th taken away in a motorvehicle towards an unknown destination. Her corpse was found naked, the hands bound with a leather belt to her thighs; there were no wounds of fire arms. According the police-report she was kept 5 days in a bunker and badly ill-treated. Her naked body was then wrapped in a military coat and thrown into the "foiba" on Pertot's order. He was her relative and had particular reasons of hatred against her.

6) Three persons missing since May 1945 have also been abducted by the above group of accused.

On 3.May 1945 Mungherli Giuseppe, age 43, was abducted by Gregori Andrea and handed over to Teodoro Zocchi and then conducted towards Basovizza together with other persons, who, according to information given by the police were undressed and killed. The corpses of the victims were partly buried and partly thrown into the "foibe".

On 12 of November 1944 Mozzan Luciano, age 20, and Groppazzi Silvia, age 24, were abducted from Longera by Pertot Danilo, Marussi Francesco and Perluga Vladislao. The corpses were undressed. The money and other objects of the victims were taken away.

On 23 May 1945, the merchant Sevi Marcello and Mrs. Dregan Gisella wife of Gian were abducted by Teodoro Zocchi, Marussi Francesco and Vever Luciano, who qualified themselves as "Guardie del Popolo" and took away the two

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victims in a motorcar prepared for the purpose; then they made them disappear. According to the Police reports they acted upon the instigation of Mr.Udovich Francesco who eagerly desired to make them (i.e. Savi and Dragan Gisella who were living with him) disappear in order to take possession of their shop in Via Mazzini, Trieste. After the two victims had disappeared a relative of Savi tried to open the shop, but the three accused ordered her to close it again and tried to kidnap an employee of hers but the latter was warned in time and escaped capture.

7) All the kidnappings were illegal, carried out with violence and threats with fire arms. These abductions and the subsequent murders constitute grave common crimes under any penal law. They were perpetrated for reasons of political hatred or personal vengeance or the expectation of ulterior profit.

(Dr Scalfari)

AMG VG Royal Decree

(N.B. Other pertinent documents contained in wartime file

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subsequent murders constitute grave common crimes under any penal law. They were perpetrated for reasons of political hatred or personal vengeance or the expectation of ulterior profit.

(D' Scalfari)

AMG VG Regol Dorsoni

(N.B. Other pertinent documents contained in War Crimes file
LACAE/4114/5/L Vol I) HW

2.

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4005

HEADQUARTERS ALLIED COMMISSION
(EXECUTIVE OFFICE)
Claims and Assessments Board
APO 794

13 MAR 1947

187A

Tel. 489081
Ext. 522

NJC/ar

27th January 1947

Ref. : G-4/Claims/225

SUBJECT : Claim for payment of salary

TO : Director Legal Division Allied Commission

1. Ref. your letter AC/4005/L dated 26th Sept. 1946.

2. Attached letter from Sig. Fiacca is forwarded for your perusal.

3. As the Prefect of Aquila seems to be taking very little interest in this case will you please inform me of what action you intend to take, or should be taken by me.

for reply see file LAEAB/4005/L, folios 186, 187

For the Chief Commissioner

N. J. Coombs,
Capt. R.T.R.,
Claims Officer.

AFHQ G-5
LAEAB, Rome
REC'D
28 JAN 1947
TO -

Incl. 1

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Castle di Lanzo - 20/1 - 17

Commando Allied Commissione

N.S. Coombe
Capt. R.T.R. Claims Officer
Ref. G-1/Claims/225 -

Dear Sir -

Excuse for the disturb.
As the 5 registered letter to (9 castle
di Lanzo, dated 20th of Nov. they answer
the present letter - what they have -
only lair -
No doubt the Legal Sub Commission
as regulary sent the letter - to Aquila -
Yesterday I went to Aquila myself
personally - those miserable - they
never not have received the
letter - it is only they want not
pay my income -
I wish your kindness to
investigate for this matter
and I remain your respectfull
servant
Piccea Theodosio

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D. S. I must not rob you of valuable time I must close
at present Commencing Commission as #25 Corps Platoon
the P.A.F. Major Prisoner — he as in charge for —
for the Platoon as Sgt, the Prisoner of the rest after
came the Major, was in battle(d) Sanders visiting me
the War Office in London — as Prefers to me Melita
what only 2 or 3 other Platoon as have — during
campaign —
Those miserable fascist — Those are worst the war
are they the are still in carrying place —
brute — and specially when they are in contact
as Sgt's the prisoner — Some one sure to me —
Complaine — they will pass you — Excuse for
but the are a never ever for my memory
from Nov 1943 to Jany. 1944 — in danger every
it not very comfortable to receive a bar
from Platoon what should keep .....
the fascist —

from Regiment
Service
Platoon

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Dear Mrs Churchill

Thank you for your valuable time I wish I were to call on you and convey personally my appreciation of the Parcel — he was in charge of the supervising and packing the parcel of the rest of the 7 Sep. 1943 — and was entrusted to come visiting me — to see — how I am getting on in London — as for those in the Military Detention Barracks I think they are getting on very well — during all the Italian & German campaign — I am very sorry to hear that you have been suffering from a bad cold — I hope you will soon get over it — I am very comfortable to receive a bad treatment from those who should help ..... every one of them — is a fascist — that is the word the men before the war are still in command every place they are employed when they are in contact to some one — prisoners — I have once said to me — well as to treat you — because for those gentlemen we are as we were during the triumph in Italy & June. 1940 — in danger every moment it — is very comfortable to receive a bad treatment from those who should help ..... every one of them — is a fascist —

Yours respectfully

Servus

Pontecorvo

Declassified E.O. 12356 Section 3.3/NND No. 785016

Città di Cast l di Sangro

(PROVINCIA DI AQUILA)

Protocollo N. 5503

Repster. al foglio N.

del

Allegati N.

Castel di Sangro, li 20 novembre 946

OGGETTO: Comunicazione.

Al SIG. FIOCCA DURANTE Di Ludovico

CITTA'

Si porta a conoscenza della S.V. la seguente lettera, pervenuta dalla Prefettura dell'Aquila in data 30.IO.1946 n. 28005 Pag.:

""Pregasi la S.V. di voler comunicare alla persona in oggetto, ed in relazione all'istanza dallo stesso avanzata in data IO corr., che nessuna nota risulta pervenuta a quest'Ufficio dalla Legal Sub Commissione A.C./4005 relativa all'eventuale pagamento di competenze dovutegli per il servizio da interprete prestato presso il Comando Alleato di Castel di Sangro - Il Prefetto f.to illeggibile"

IL SINDACO

H.Q. ALLIED COMMISSION
REF. C/2R/
DATE 1 JAN 1947
SECTION

Declassified E.O. 12356 Section 3.3/NND No. 785016

Copy to 4993

S 164

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

JEW/ns
31 January 1947.

AC/4083/23/L

SUBJECT : Mandato di Cattura.

TO : The Minister of Pardon and Justice.

1. See your letter of 26 November 1946 (Uff VI, 157522/73214).

2. Under procedure followed by Allied Military Government Courts, at the time of sentence of an offender, the trial court issued a "commitment" (MANDATO DI CATTURA) form 6, which was the authority for prison authorities to detain the body of the accused until the sentence was served.

3. Such commitment (MANDATO DI CATTURA) remained in force until the sentence was satisfied. For example suppose a prisoner was sentened to a term of two years. After being in jail for a month, he escapes and remains at large for one year. He is recaptured and returned to prison. Under the commitment by the court he was sentenced for two years. As he has served but one month, he has twenty-three additional months to serve. This is so because the commitment was a valid, continuing order of the court until the full twenty-four months were satisfied.

4. The commitment(MANDATO DI CATTURA) gets its legality from the court. Nothing that the accused can do, as for example escape or obtain release thru forged order, can alter such commitment. Once issued, it remains in force until the accused serves his sentence.

5. The t e r m of the sentence in the commitment may be altered by the reviewing authority. It is here pointed out that the reviewing authority in no way alters the commitment. Merely the t e r m of the sentence is altered.

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4005

6. Pardon or amnesty does not alter the commitment. They simply shorten the term of sentence.

7. From what has been said, once issued by the trial court, the commitment is the continuing order for the accused to be in prison until his sentence comes to its end. Nothing the accused does alters the commitment. If the accused escapes, the order is authority for his re-arrest. Why issue a new order? It is unnecessary. To do so would place it within the power of an accused by his unlawful conduct to cause no end of work for the courts. The law is otherwise.

8. The request contained herein for a new commitment is denied for the reasons here given. The commitment being sufficient without any change is returned.

JOHN E. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Incl. : Commitment

DISTRIBUTION

Copy to 1505

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

C O P Y

315A

HEAD QUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

30 January 1947

SUBJECT : Spy and Sabotage Cases.

TO : The Chief Legal Officer

The following is a report of the Review Board on 29 spy cases involving 59 spies, 2 sabotage cases involving 5 saboteurs, and 2 cases where accused were both convicted of doing an act in aid of the enemy. Although most of the accused are spies, all are guilty of espionage or war treason offences. In the sabotage cases, the accused were caught before they had completed their missions. There is no question about their intent to commit acts of sabotage. They had the necessary explosives etc; in their possession. The sabotage cases are very similar to the spy cases where the spy was caught as he or she was entering our lines and before any work had been accomplished. The offences these named committed, or attempted to commit, are considered as war crimes, in that the acts were acts of war against our armed forces, and the normal punishment for these offences is death. The Review Board is of the opinion that these cases are so similar they should be treated the same. (See Manual of Military Law, 1929 Amendments (p. 12) (British) The Laws and Usages of War on Land,(iii) The punishment of War Crimes par. 441 and 445).

With reference to the spy cases, your attention is called to the fact that International Law recognises the well-established right of belligerents to employ spies and other secrete agents for obtaining information of the enemy. Resort to the practice involves no offence against International Law. Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as difficult, and ineffective, as possible for the enemy. According to International Law, the spy is punished with death whether or not he succeeds in obtaining the information or in conveying it to the enemy. (See F.M. 27-10, War Department, Basic Field Manual, Rules of Land Warfare par. 202, 203, and 204).

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All spies were not sentenced to death by the courts. Some were given prison sentences. In this connection it is interesting to note that under International Law, a spy is punishable by death. (See F.M. 27-10, Par.209, "Rules of Land Warfare" - U.S.; see also, Article 82 Articles of War, "Manual of Courts Martial, U.S. Army, 1928", wherein death is the punishment for a spy.) The framers of the Proclamations assumed that a sentence less than death might lawfully be imposed upon a spy. In deference to such legal authority Allied Military Courts have imposed terms of imprisonment for some persons convicted of being spies. It is with this situation that we are now confronted.

The following table lists all known accused to whom, because of their age, sex, or some other reason, the courts or the reviewing authority gave a sentence less than death :

Nº	Name	Offence	Sentence of Court	Original Review
1	Cichalon, Gaetano	Spy	20 yrs	Affirmed
2	Borelli, Franco	"	20 "	"
3	Farnari, Giuseppe	"	Death	15 yrs
4	Buncheldi, Giovanni	"	Life	Affirmed
5	Chechi, Fernando	"	Death	Life
6	Lecna, Gaetano	"	Death	20 yrs
7	Pellegrini, Carlo	"	Death	20 yrs
8	Alberti, Emilio	"	Death	20 yrs
9	Montelli, Bruno	"	Death	20 yrs
10	Navaro, Valerio	"	Death	20 yrs
11	Racagni, Natale	"	Life	20 yrs
12	Micelli, Silvio	"	Death	Life
13	Mondaio, Francesco	"	Death	Life
14	Borgo, Aldo	"	20 yrs	Affirmed
15	Costa, Carla	"	20 yrs	"
16	Gorgo, Enrico	"	15 yrs	"
17	Del Brentis Anna Maria	"	20 yrs	"
18	Calvagno, Claudio	"	Death	20 yrs
19	Celesti, Vittorio e corso	"	Life	Affirmed
20	Bubbi Arlevido	"	Death	25 yrs
21	Ragiutrelli Adolfo	"	Death	10 yrs
22	Berra Ovodio	"	Death	20 yrs

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No	Name	Offence	Sentence of Court	Original Review
23	Mei, Ugo Enzo di Silvio	Spy	Death	20 yrs
24	Mei, Italo Guido	"	20 yrs	affirmed
25	Pugardi, Francesco	"	15 yrs	"
26	De Santis, Vincenzo	"	20 yrs	"
27	Fuccia, Antonio	"	20 yrs	"
28	Pickmel, Wiselot	"	Death	20 yrs
29	Antoniuccio, Giorgio	"	Death	Life
30	Bardani, Ivo	"	Death	Life
31	Carrali, Mario	"	Death	Life
32	Conca, Domenico	"	10 yrs	Affirmed
33	Angalone, Emilia	"	20 yrs	"
34	Berghiglioni, Carlo	"	15 yrs	"
35	Spera, Olga	"	Death	10 yrs
36	Boni, Vecla	"	Death	10 yrs
37	Bardi, Giovanna	"	20 yrs	Affirmed
38	Bevilacqua, Emilio	"	Death	20 yrs
39	Covella, Federico	Sabotage	Death	20 yrs
40	Bandudi, Leopoldo	"	Death	20 yrs
41	Visconi, Giorgio	"	Death	20 yrs
42	Trifiro, Mario	"	Death	15 yrs
43	Falconi, Dario	"	Death	15 yrs
44	Lo Vasto, Vincenzo	Aiding enemy	Life	Affirmed
45	Pegnotto, Fabio	"	10 yrs	"
46	Bardino, Mario			

In all other cases reviewed, the Board of Review were in a position to adjust the sentences, because the offences were penal in character. Where a deterrent sentence was given, the deterrent factor was removed and a reasonable sentence was recommended as if the offence were committed in time of peace. However, in these war offences, the Review Board cannot logically adjust a sentence which is not penal in nature. It is the opinion of the Review Board that the above accused were properly tried and convicted of war offences. All the above accused could have been put to death had the courts and reviewing officer desired the death sentence to be imposed. However, these sentences are purely deterrent and do not involve anything of a penal nature.

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As pardon is not a function of the Review Board, and as the removal of the deterrent factor becomes in effect full pardon, it is recommended that these cases be referred to competent authority for action.

JAMES J. CARBERY
Colonel, Infantry,
Chief of Review Board.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2164

4005

FILE 314A

21 January 1947

SUBJECT : R-Day Plan re Amnesty and Disposition of AMG Cases in Venezia Giulia

TO : Allied Force Headquarters
Attention: G-5 Section

1. In view of the imminence of the signing of the Treaty of Peace with Italy, and the consequences attendant thereon, it is considered advisable that a definite plan be evolved at this time regarding implementation of the Italian Amnesty Decree, and final disposition of cases of prisoners serving Allied Military Government Court sentences in Venezia Giulia. In this connection it is believed that the procedure outlined in the following may be best suited to the accomplishment of desired results, and its adoption therefore is recommended.

2. As the first step to be taken under this plan, it is proposed that prompt final review be made of all outstanding sentences imposed by Allied Military Government Courts in Venezia Giulia, those of two years and less to be conducted in Venezia Giulia, the greater ones to be handled by the Legal Division of Allied Commission. Cases in the latter category now number twenty two. This procedure is considered necessary to accomplish just modification of the many long-term deterrent sentences of our courts in this area, by the time our administrative obligations there shall have ended. In any event, amnesty would not be extended to include Allied Military Government cases, and decisions reached as a result of such joint review would not be announced until a given date, just prior to termination of Allied Military Government administration.

3. The next consideration would be preparation of a General Order of Venezia Giulia giving full force and effect to the provisions of the Italian Amnesty Decree in that area. For reasons of policy, the Italian Amnesty Decree has not been implemented in Venezia Giulia (see letter AC/4079/1/L, dated 19 July 1946; also letter, G-5 934.43, dated July 1946). This, of course, should be done, in all justice, to allow qualified prisoners there the same privileges and immunities enjoyed by persons of the same standing throughout other parts of Italy.

4. Decision then would be made regarding a date certain, immediately before R-Day, for simultaneous promulgation of the General Order giving effect to the Italian Amnesty Decree and announcement of decisions on review of Allied Military Government cases, referred to in paragraphs 2 and 3 above,

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at which time all of our obligations in these connections thus would be definitely closed out.

5. In contemplation of this plan attention is invited to the fact that under International Law powers now vested in the Military Governor in this behalf come to a natural end with the advent of Peace.

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to file 4029/1 and 4193

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005
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HEADQUARTERS ALLIED COMMISSION
AMG 794
LEGAL DIVISION

313A

30 January 1947

SUBJECT : Spy and Sabotage Cases

TO : The Chief Legal Officer

The following is a report of the Review Board on 29 spy cases involving 39 spies, 3 sabotage cases involving 5 saboteurs, and 2 cases where accused were both convicted of doing an act in aid of the enemy. Although most of the accused are spies, all are guilty of espionage or war treason offenses. In the sabotage cases, the accused were caught before they had completed their missions. There is no question about their intent to commit acts of sabotage. They had the necessary explosives etc. in their possession. The sabotage cases are very similar to the spy cases where the spy was caught as he or she was entering our lines and before any work had been accomplished. The offenses these accused committed, or attempted to commit, are considered as war crimes, in that the acts were acts of war against our armed forces, and the normal punishment for these offenses is death. The Review Board is of the opinion that these cases are so similar they should be treated the same. (See Manual of Military Law, 1929 Amendments (No. 12) (British) The Laws and Usages of War on Land, (111) The Punishment of War Crimes Par. 441 and 446).

With reference to the spy cases, your attention is called to the fact that International Law recognizes the well-established right of belligerents to employ spies and other secret agents for obtaining information of the enemy. Resort to the practice involves no offense against International Law. Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as difficult, and ineffective, as possible for the enemy. According to International Law, the spy is punished with death whether or not he succeeds in obtaining the information or in conveying it to the enemy. (See F.M.27-10, War Department, Basic Field Manual, Rules of Land Warfare Par. 202, 203, and 204).

All spies were not sentenced to death by the courts. Some were given prison sentences. In this connection it is interesting to note that under International Law, a spy is punishable by death. (See F.M.27-10, Par. 209, "Rules of Land Warfare - U.S.; see also, Article 82, Articles of War, "Manual for Courts Martial, U.S. Army, 1928", wherein death is the punishment for a spy.) The framers of the Proclamations assumed that a sentence less than death might lawfully be imposed upon a spy. In deference to such legal authority Allied Military Courts have imposed terms of imprisonment for some persons convicted of being spies. It is with this situation that we are now confronted.

2163

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The following table lists all known accused to whom, because of their age, sex, or some other reason, the courts or the reviewing authority gave a sentence less than death:

No.	Name	Offense	Sentence of Court	Original Review
1	Michelon, Gaetone	Spy	20 yrs.	Affirmed
2	Borelli, Franco	"	20 "	"
3	Ferrari, Giuseppe	"	Death	15 yrs.
4	Menechelli, Giovanni	"	Life	Affirmed
5	Chechi, Fernando	"	Death	Life
6	Acqua, Gaetano)	"	Death	20 yrs.
7	Pellegrini, Carlo)	"	Death	20 yrs.
8	Alberti, Emilio)	"	Death	20 yrs.
9	Montaldi, Bruno	"	Death	20 yrs.
10	Navero, Valerio	"	Death	20 yrs.
11	Bacagni, Natale	"	Life	Life
12	Micoli, Silvio	"	Death	Life
13	Dionisio, Francesco	"	Death	Affirmed
14	Gorga, Aldo)	"	20 yrs.	"
15	Gorga, Enrico)	"	15 yrs.	"
16	Carla, Conte	"	20 yrs.	"
17	Anna Maria DeiBrentis	"	20 yrs.	"
18	Galvagno, Claudio	"	Death	20 yrs.
19	Celesti Letterio Secondo	"	Life	Affirmed
20	Febbi Aristide)	"	Death	25 yrs.
21	Magistrelli Adolfo)	"	Death	10 yrs.
22	Serra Evodio	"	Death	20 yrs.
23	Mei Ugo Enzo di Silvio)	"	Death	20 yrs.
24	Mei Enio Guido)	"	20 yrs.	Affirmed
25	Fugardi, Francesco	"	15 yrs.	"
26	DeSantis, Vincenzo)	"	20 yrs.	"
27	Puccia, Antonio)	"	20 yrs.	"
28	Picknel, Lieslot	"	20 yrs.	"
29	Antoniuccio, Giorgio	"	Death	20 yrs.
30	Bardini, Ivo	"	Death	Life
31	Curreli, Mario)	"	Death	Life
32	Conca, Domenico)	"	Death	Life
33	Ansalone, Emilia	"	10 yrs.	Affirmed
34	Barghiglioni, Carlo)	"	20 yrs.	"
35	Spura, Olga)	"	18 yrs.	"
36	Boni, Teola)	"	Death	10 yrs.
37	Baraldi, Giovanna)	"	Death	10 yrs.
38	Bevilacqua, Emilio	"	20 yrs.	Affirmed
39	Covella, Federico	"	Death	20 yrs.

Declassified E.O. 12356 Section 3.3/NND No. 785016

No.	Name	Offense	Sentence of Court	Original Review
40	Mendandi, Leopoldo)	Sabotage	Death	20 yrs.
41	Vasconi, Giorgio)	Sabotage	Death	20 yrs.
42	Trefiro, Mario	Sabotage	Death	20 yrs.
43	Falconi, Mario)	Sabotage	Death	15 yrs.
44	LoVesto, Vincenzo)	Sabotage	Death	15 yrs.
45	Pagonatto, Fabio	Aiding enemy	Life	Affirmed
48	Bandino, Carlo	Aiding enemy	10 yrs.	"

In all other cases reviewed, the Board of Review were in a position to adjust the sentences, because the offenses were penal in character. Where a deterrent sentence was given, the deterrent factor was removed and a reasonable sentence was recommended as if the offense were committed in time of peace. However, in these war offenses, the Review Board cannot logically adjust a sentence which is not penal in nature. It is the opinion of the Review Board that the above accused were properly tried and convicted of war offenses. All the above accused could have been put to death had the courts and reviewing officer desired the death sentence to be imposed. However, these sentences are purely deterrent and do not involve anything of a penal nature.

As pardon is not a function of the Review Board, and as the removal of the deterrent factor becomes in effect full pardon, it is recommended that these cases be referred to competent authority for action.

JAMES J. CARNEY
Colonel, Inf.
Chief of Review Board

4005

312A

TO THE CHIEF OF BRANCH:

Remaining from the program of review are cases of Spy and Espionage on which no decision has been rendered. Treating these cases as a unity, they are submitted to higher authority for such action, if any, as may be appropriate.

The acts for which these accused are being punished had their origin in war. The moving impulse behind them was a military achievement beneficial to our enemies. Success might have been evidenced by the bestowal of enemy medals. With few exceptions, the mental intent was patriotic, not penal.

Unlike in other cases, as for example, the killing of an Allied soldier, spying and espionage have no counterpart in criminal law whereby the a c t might be measured. These acts were by-products of a state of war. The yardsticks by which they were measured were the Laws of War. But the laws of war are neither moral nor immoral; rather, they are unmoral.

If all these premises be true, and they cannot seriously be denied, experiences gained in the administration of penal law gives scant aid in the solution of what to do in these cases. At best, a solution is as much within the common knowledge of the Supreme Allied Commander as with the Review Board or the Chief Judicial Officer.

The degree of variance in these cases is shadowy. No useful purpose would be served in an attempt at refinement. In making a decision, the Supreme Allied Commander should avoid such pitfall. No rational reasoning can be advanced for the variation in existing sentences. At best these sentences were a convenient stopgap against a pressing evil. What to do from here on out is a bothersome question. Definitely the solution is not judicial.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

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4005

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL DIVISION

311A

LJG/ns
31 January 1947.

~~AG/4007/L~~

SUBJECT : Marriages between US and UK nationals.

TO : AFHQ : G-5.

298A

1. Reference our AC/4007/L of 24 Jan.'47.

2. With reference to paras 2 and 3 of our letter of 24th Jan. regarding marriages celebrated in Italy by a British Chaplain between US and UK nationals who are members of their respective Armed Forces the following considerations must be borne in mind:

a. Laws regarding marriages in the US are matters primarily of State rather than National concern.

b. The laws of marriage in all States are statutory

c. Validity of marriages is governed by the laws of 48 different jurisdictions.

d. As a general principle marriage laws whenever possible are construed by the Courts of all States to uphold the validity of a marriage.

3. In view of these circumstances I am of the opinion that such marriages, being valid according to British law, would be accepted as valid by the Courts generally in the USA.

L.J. GILBRIDE,
Major, IGD,
Chief Counsel,
for Chief Legal Advisor.

298

Declassified E.O. 12356 Section 3.3/NND No. 785016

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CMC/EC

FILE
3104

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
[redacted] CORPS

LEGAL DIVISION

24 January 1947

REFERENCE No.: VG/AMG/LD/1137/292

SUBJECT : Transfer of Prisoners

TO : Chief Legal Adviser, Allied Com.

1. Attached herewith is copy of opinion rendered to SCAO on the above matter, you will recall our phone conversation on this matter.

By Order of Col. BOWMAN :

CHARLES M. MINNICKS
LT. COLONEL,
CHIEF LEGAL OFFICER

Incl.:

ALCOM
RECD
20 JAN 1947
DIVISION

WG/F

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
VENEZIA GIULIA

LEGAL DIVISION

24 January 1947

REFERENCE NO.: WG/AMG/LD/

SUBJECT : Transfer of prisoners - POLA

TO : C.C.J.O.

1. Reference your request this a.m. for an opinion as to the legal authority to transfer prisoners from Pola Prison, I have the following opinion to submit :

(a) A.M.G. prisoners under sentence may be transferred to any prison in the territory on orders of Chief Legal Officer.

(b) A.M.G. prisoners awaiting trial - same as (a).

(c) Prisoners serving sentences imposed by the Local Courts. Normally the Minister of Justice in Rome shall issue the orders. In Venezia Giulia the Chief Legal Officer acts in such capacity and may order the transfer.

(d) Prisoners awaiting trial by Local Courts. The procuratore Generale, with office at Trieste, may order the temporary transfer of prisoners subject to return for trial in Pola on the request of the procuratore di Stato Pola. The Chief Legal Officer exercises control over the Procuratore Generale and may issue the order for the transfer.

2. The above opinion was confirmed by Chief Legal Advisor, Allied Commission by phone today.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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(d) Prisoners awaiting trial by Local Courts. The Procuratore Generale, with office at Trieste, may order the temporary transfer of prisoners subject to return for trial in Pola on the request of the Procuratore di Stato Pola. The Chief Legal Officer exercises control over the Procuratore Generale and may issue the order for the transfer.

2. The above opinion was confirmed by Chief Legal Advisor, Allied Commission by phone today.

Charles M. Minnecke
CHARLES M. MINNECKE
LT. COLONEL,
CHIEF LEGAL OFFICER

196

Copy to:
Chief Legal Adv.
Allied Commission

LEGAL SUB-COMMISSION
CJO-CLA
OCLO
CHIEF COUNSEL
ITALIAN SECTION
ROOM 30 JAN 1947

Declassified E.O. 12356 Section 3.3/NND No. 785016

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4005

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MEMORANDUM TO THE CHIEF CIVIL AFFAIRS OFFICER:

1. Reference is made to letter of the S.C.A.O., Venezia Giulia, Subject: "Coordination between Legal Division of AMG Venezia Giulia and Higher Echelons", received in response to your letter of 7 November 1946.

2. In this connection it is a well settled rule of law that certain acts are so personal in nature as to be incapable of lawfully being done through an agent. For example, a person required to take an oath cannot discharge this obligation by having an agent take it for him. Nor can a judge of a court perform his judicial function by appointing an agent to act for him in this behalf.

3. In recognition of this well-established principle of law, "Consolidated Instructions for Allied Military Courts" wisely provides that the act of Judicial Review (in effect the function of an Appellate Court) should be performed by the Chief Civil Affairs Officer and Regional Commissioners, o r by Judicial Officers appointed by them f o r t h a t p u r p o s e. Under such rules it is entirely within the province of the Chief Civil Affairs Officer and the Regional Commissioners to retain full and final review powers over all cases within their respective fields of operation. Where this situation might exist it would be perfectly proper that the Judicial Officer concerned be required to review such cases and make recommendations regarding them. In these circumstances, of course, final judicial decisions rendered would be those of the Chief Civil Affairs Officer or Regional Commissioner, as the case might be, rather than of such Judicial Officer.

4. Insofar as death penalty cases are concerned the Chief Civil Affairs Officer has thus retained his right of final decision, though in every case of this kind, before exercising it, he has sought the advice of the Chief Judicial Officer. At no time has the Chief Judicial Officer been directed to perform the function of review in such cases as agent for the Chief Civil Affairs Officer. As permitted by the rules, in cases involving punishment less than death, the Chief Civil Affairs Officer has delegated the judicial function to the Chief Judicial Officer, whom he has appointed f o r t h a t p u r p o s e. In the judicial determination of these cases, the Chief Judicial Officer acts according to his own conscience. There is no pretense of this being the agent conscience of the Chief Civil Affairs Officer. This is in accordance with the letter and spirit of the rules and conforms with the law. When granted, it is within [illegible] of the Chief Civil Affairs Officer or Regional Commissioner to [illegible] but as it might

Declassified E.O. 12356 Section 3.3/NND No. 785016

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5. The principles above referred to always have been rigorously followed in the Allied Commission and, in fact, in Allied Military Government since the days of their inception. Adherence thereto in no way forecloses the provision of new regulations to be observed by judicial officers in the performance of their functions. Such regulations have been in existence from the beginning and have been added to from time to time. The prime function of courts is to administer the law as they find it, and not as they consider it should be. It is one thing to prescribe rules for a court to observe, it is something else again when it is sought to control the exercise of the judicial conscience in the application of such rules.

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6. In paragraph 5 of his letter the S.C.A.O. states that he is not in agreement with the recommendation made that the principles above announced should be followed in Venezia Giulia. In effect, therefore, he disagrees with the rules promulgated in Consolidated Instructions. It is believed, however, that he might be in full accord in this connection if the rules, as here explained, were understood and abided by on the part of all concerned. Occupational law is not to be confused with Courts Martial law, and they have little in common. Unlike occupational law, Courts Martial law does not deal with rights of property. Even in the matter of review they widely differ. There is no provision in Courts Martial law for the review function to be performed by a judicial officer appointed for that purpose.

7. Not to be confused with revision of sentence on review is the power to pardon an offender (either before or after conviction) or any offense punishable by law (amnesty). This power exists in some manner in every type of government. Generally it is vested in that branch to which is delegated the duty to chart the political course which that government must take. This is so because in most cases in which the power is exercised, there is no question as to the guilt of the accused. In most cases, pardon, or amnesty, is granted for reasons bottomed on expediency rather than to correct an injustice done the accused. Because of this premise, the power of pardon or amnesty is universally an executive and not a judicial function.

8. If further answer is to be made to the letter of the S.C.A.O. it is recommended that he and his legal staff be informed of the distinctions above referred to.

JOHN E. WEBER
Colonel, Infantry
Chief Legal Adviser

12 Dec 1945

Declassified E.O. 12356 Section 3.3/NND No. 785016

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JOHN K. WEBER
Colonel, Infantry
Chief Legal Adviser

12 Dec 1948

Declassified E.O. 12356 Section 3.3/NND No. 785016

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5184

307A

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 932.00

25 January 1947

SUBJECT: Coordination between Legal Division of AMG Venezia Giulia and Higher Echelons.

TO : SCAO
Venezia Giulia

Reference 16/2/G/A/1225 of 13 January 1947.

1. There must be some misunderstanding regarding the status of the "Consolidated Instructions for Allied Military Courts." The views of this Headquarters are contained in the last paragraph of this Headquarters' letter, G-5: 932.00 of 21 September 1946, which states that

> "these instructions are of the greatest possible value and should be followed by the courts of Venezia Giulia."

The instructions as to review contained in Article 32 have always applied in army areas and equally apply in Venezia Giulia.

2. The only point in the correspondence where there seems to be any allegation of a difference of opinion is para 6 of the Chief Legal Officer's note which says that you are not in agreement with the recommendations made that the above principles should be followed in Venezia Giulia. It is not thought that that is what your paragraph 5 (to which he refers) states. What you there say is that you do not agree that the judicial function for Venezia Giulia should be wholly assumed by yourself or wholly assumed by a judicial officer nominated by you.

Your opinion there expressed does not seem to be at variance with the example given in paragraph 4 of the Chief Legal Officer's memorandum, for it is there stated that while the Chief Commissioner reviews death sentences, he has delegated the review of lesser sentences to the Chief Judicial Officer, so that neither has the whole responsibility.

3. If, on the other hand, the point at issue is whether or not the judiciary should be independent of all control, your para 5

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clearly and correctly defines the position which is that however highly desirable it may theoretically be that the judiciary should be independent; in a military government whose objectives are to serve the needs of the Army, it is consistent with international practice that the Army Commander may from time to time give specific directions to the judiciary as to the degree of severity to be shown to certain types of offences and approve or disapprove its actions. It is therefore not only not illegal but usual in a military government for an occasional direction to the judiciary to be issued. However, as is mentioned in the last lines of your paragraph 5, it is desirable that such directions should be exceptional.

4. The right to grant pardons or amnesties which is referred to is not a function of the judiciary but the sole prerogative of the Supreme Allied Commander to whom the Senior Civil Affairs Officer may make recommendations through the GOC, GHQ.

BY COMMAND OF GENERAL MORGAN:

A.L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

Copy to: Allied Commission
reference AC/4014/13/L of 30 Dec.

LEGAL SUB - COMMISSION
CJO - CLA
OCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd 30 JAN 1947

Declassified E.O. 12356 Section 3.3/NND No. 785016

(4)

No where in the world is the judiciary "independent of all control" . In the U.S. where the judiciary reaches its highest level, it is only e q u a l to the executive and legislative branches but is not s u p r e m e. The law it administers and the procedure it follows are controlled by the legislative and the executive in the rightful exercise of their powers, and by the people, who express their sovereign will in the constitution. It follows therefore, that a judiciary "independent of all control" not only is unknown to Military Government, but to every known government of men. This premise is foreign to the simple proposition here involved. Actually such proposition is not "legal" in character. It is axiomatic in the military that when you give a person a job to do, you then do not try to do it yourself by prescribing the exact details. That is the simple thing here involved. Its solution is singularly free from weighty legal difficulties.

The above statement written by Col Weber 31.1.47 on the back of letter G.S- 932.05 of 25.1.47

Sgt O.T. Wilds
Chief Clerk
Legal Division

copy to 4005

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

3067
U R G E N T

~~AG/4172/L~~ MT/ns.
28 January 1947.

SUBJECT : Jugoslav civilians : jurisdiction of Italian Courts.

TO : The Procuratore Generale Militare, ROMA.

1. Reference your letter N° 245 P.G. of 27 January inquiring whether under the conditions arising from the armistice there are any provisions that would prevent the Italian Military Courts from trying four Jugoslav civilians, who, after escaping from a refugee camp at Trani, have committed robberies on Italian territory.

2. If it is definitely established that the four Jugoslavs in question are civilians, and that they have retained their Jugoslav nationality, then in the opinion of this Division there are no provisions arising from the Armistice regime that prevent the Italian Courts from exercising jurisdiction over such Jugoslav civilians in that they are not subject to the Military law of an occupying power, and they are not within the class of "representatives or agents of the United Nations" excluded from the jurisdiction of the Italian Courts under Art. 12 of the Terms of Restoration of Italian Territory to the Italian Government.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1. Reference your letter N° 215 P.O. of 27 January inquiring whether under the conditions arising from the armistice there are any provisions that would prevent the Italian Military Courts from trying four Jugoslav civilians, who, after escaping from a refugee camp at Trani, have committed robberies on Italian territory.

2. If it is definitely established that the four Jugoslavs in question are civilians, and that they have retained their Jugoslav nationality, then in the opinion of this Division there are no provisions arising from the Armistice regime that prevent the Italian Courts from exercising jurisdiction over such Jugoslav civilians in that they are not subject to the Military law of an occupying power, and they are not within the class of "representatives or agents of the United Nations" excluded from the jurisdiction of the Italian Courts under Art. 12 of the Terms of Restoration of Italian Territory to the Italian Government.

186

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE
3050

4005

C O P Y

DELEGATION OF THE FEDERAL PEOPLE'S
REPUBLIC OF JUGOSLAVIA
TO THE ADVISORY COUNCIL FOR ITALY

22 January 1947

Br.119/47

SUBJECT : Status of ex-officers of the Jugoslav Army.

TO : The Legal Division,
H.Q.A.C.

Reference is made to your letter AG/4132/A dated January 17, 1947, on the same subject.

All Jugoslav Officers in Italy can return to the federal people's Republic of Jugoslavia without any particular proceeding as long as the repatriation period for Italy will not be declared closed. After that date a period of two months will be left to the Jugoslav nationals to repatriate or to request to be registrated for repatriation and to put themselves to the disposition of our authorities abroad for repatriation. If they fail to do so they will loose their citizenship then. This is according to the law of August 23, 1945.

By a recent law the foregoing regulation was extended also to those Jugoslav citizens who left the country unauthorized after the end of the war.

Sgd.:

DR. SLOVAN J. SMODLAKA,
Jugoslav Representative a.i.
Advisory Council for Italy.

ALLIED COMMISSION - LEGAL DIVISION - OFFICIAL

Col. Inf.
Chief Judicial Officer,
for Chief Civil Affairs Officer.

187

Declassified E.O. 12356 Section 3.3/NND No. 785016

Copy to 4085 file

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

30417

JKW/ns
AC/4083/1/L 27 January 1947.

SUBJECT : Review of Superior Court Case N° 216 - 216 a.

TO : S.C.A.O. ANG VENEZIA GIULIA
(Attn: Senior Legal Officer).

1. See your letter ANG/VG/136/209 of 18.1.47.

2. The record of trial in the case STEGAR Lamberto et al, (Venezia Giulia N° 6197, Superior Court Gorizia Nos. 216 - 216 a) has been reviewed. The petitions for review have been carefully considered.

3. We are unable to follow the argument urged by the accused in their behalf. The convictions find support in the evidence, and the sentence finds support in the law.

4. The convictions and sentences are affirmed.

5. In view of the liquidation activities and the review of long term sentences as an incident thereto, we are keeping this record along with those recently returned to this office. It will come back to you with such files.

6. It is here emphasized that in cases wherein an accused pleads to the general issue and evidence is offered by the prosecution to sustain the charge, for failure to prove the case the court should find the accused "Not Guilty". An order dismissing the case does not lie. This is important in connection with former jeopardy.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

8946
1
4005
V

CMG/MF

FILE
F 303A

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
VENEZIA GIULIA

LEGAL DIVISION

24 January 1947

REFERENCE No.: VG/AMG/LD/137/28

SUBJECT : Transfer of prisoners - POLA

TO : S.C.A.O.

1. Reference your request this a.m. for an opinion as to the legal authority to transfer prisoners from Pola Prison, I have the following opinion to submit :

(a) A.M.G. prisoners under sentence may be transferred to any prison in the territory on orders of Chief Legal Officer.

(b) A.M.G. prisoners awaiting trial - same as (a).

(c) Prisoners serving sentences imposed by the Local Courts. Normally the Minister of Justice in Rome shall issue the orders. In Venezia Giulia the Chief Legal Officer acts in such capacity and may order the transfer.

(d) Prisoners awaiting trial by Local Courts. The procuratore Generale, with office at Trieste, may order the temporary transfer of prisoners subject to return for trial in Pola on the request of the procuratore di Stato Pola. The Chief Legal Officer exercises control over the Procuratore Generale and may issue the order for the transfer.

2. The above opinion was confirmed by Chief Legal Advisor, Allied Commission by phone today.

Declassified E.O. 12356 Section 3.3/NND No. 785016

opinion as to the legal authority to transfer [illegible]
Pola Prison, I have the following opinion to submit :

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(d) Prisoners awaiting trial by Local Courts. The procuratore Generale, with office at Trieste, may order the temporary transfer of prisoners subject to return for trial in Pola on the request of the procuratore di Stato Pola. The Chief Legal Officer exercises control over the Procuratore Generale and may issue the order for the transfer.

2. The above opinion was confirmed by Chief Legal Advisor, Allied Commission by phone today.

CHARLES M. MINNICKE
LT. COLONEL,
CHIEF LEGAL OFFICER

Copy to:
Chief Legal Adv.
Allied Commission
P/SCAO.

LEGAL SUB - COMMISSION
CJO - CIA
OCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd 27 JAN 1947

Declassified E.O. 12356 Section 3.3/NND No. 785016

2189

Declassified E.O. 12356 Section 3.3/NND No. 785016

ACC

10000/142/49
(VOL. 3)

Declassified E.O. 12356 Section 3.3/NND No. 785016

10000/142/49
(VOL. 3)

LEGAL OPINIONS (MISCELLANEOUS)
OCT. 1944 – JAN. 1947
(2 OF 2)

Declassified E.O. 12356 Section 3.3/NND No. 785016

file

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

3.9.A

4005/L

25 January 1947

SUBJECT : Officer's Debts

TO : Lt. Col. S. C. Tomlin
Commanding
British Troops in Rome

1. Reference your letter 33A of 25 January 1947.

2. In the case of debts incurred by British officers for hotel bills, money lent, repairs to motor cars, and similar items, the correct procedure would be for the creditor to submit to your Headquarters a bill with full facts and details as to dates, the goods or services supplied, and the amount claimed in respect of each item. The Commanding Officer should then call upon the debtor to pay the bill submitted. If he fails to do so within a reasonable time, say 14 days, it is suggested that you inform the creditor that he has the right to take proceedings in an Italian Court against the officer debtor, provided he obtains the prior consent of the Supreme Allied Commander, Mediterranean Theater, to such proceedings, as provided in Art. 12 of the terms of Restoration of Italian Territory; and further, that if he desires to take such steps he should apply through your Headquarters to the Supreme Commander for his consent.

MUSGRAVE THOMAS
Italian Branch
for Chief Legal Adviser

18

CONFIDENTIAL

Declassified E.O. 12356 Section 3.3/NND No. 785016

5104.

4005 ✓

CONFIDENTIAL

3 of 8 Appl

HEADQUARTERS
ROME AREA ALLIED COMMAND

REF:- [redacted] 23A

25rd January 1947

SUBJECT:- Legal. Officers Debts.

HQ
TO :- Allied Commission

↑

Can you please inform me as to what action a civilian can take in Italy to recover debts owed him by a British Officer.

The debts concerned are such items as hotel bills for accommodation and food, bills for repair of private motor vehicles and refund of money lent.

An officer of this Headquarters has contracted several debts all of which he either refuses to pay on the grounds that they are not in order, or that he has'nt at the moment sufficient money.

Civilians apply for assistance to recover and it is now known how properly to reply.

S.C. TOLL
Lieutenant-Colonel
Commanding
British Troops in Rome

LEGAL SUB - COMMISSION
CJO - CLA
DCLO
CHIEF COUNSEL
ITALIAN SECTION
Recd 24 JAN 1947

18.

4005

file
3000

Memo to Executive Commissioner:

The question of channels of communication is still obscure to me.

As far as I understand, the position should be as follows.

Allied Commission does not act as a channel between the Italian Government and allied countries having even limited diplomatic representation in this country.

However, Allied Commission acts as a channel between the Italian Government and Yugoslavia, who has no representation at all.

Yesterday the Navy Sub-Commission wrote to the Yugoslavia representative to the ACI that the question of obtaining Italian visas for Yugoslavia naval officers was a matter to be taken up directly by them with the Italian authorities.

When this letter was shown to me, I advised that Allied Commission was still the proper channel of communication between the Italian Government and the Yugoslavia representative.

Today Navy Sub-Commission tell me that you consider that their first answer was correct and that Allied Commission should not act as a channel in this case.

Another point I am not quite clear about. If the Italian Government or Italian citizens, seizing the law in their own hands, take unilateral action against Allied nationals or their property in Italy and by such action contravene the Armistice terms, who is supposed to make the necessary representations to the Italian Government, - the Allied Commission or the respective Embassies?

I should be very much obliged if a directive could be given on this point.

G. G. HANNAFORD

Declassified E.O. 12356 Section 3.3/NND No. 785016

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G. G. HANNAFORD
Lt. Colonel
Deputy Chief Legal Adviser

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

FILE

1924

Ref. : 8005/114/MC

23 September 1946.

My dear Mr. Livengood,

With further reference to your letter dated 29 July enclosing a copy of a letter from Mr. Welfson, Director for Mediterranean Area of Sykes Bros Steamship Co., Inc. on the subject of payment of port dues in Italian Ports and your letter dated 4 September on the same subject.

There is nothing in the Armistice Terms which excludes Allied vessels carrying commercial cargoes from paying harbour or anchorage dues, port charges, light dues or for the services of tugs.

The opinion of A.F.H.Q. is that they do not consider Articles 18, 19 and 20 of the Armistice Terms to be relevant as they refer exclusively to occupied territory and do not provide free facilities. Free transit facilities in unoccupied Italy for military equipment and stores arise by virtue of Art. 24 of the Armistice Terms and the Hand back documents e.g. Art. 10 of Document A of 4 Aug. 45. There is no corresponding provision in favor of commercial cargoes.

The payment of the Italian Harbour masters and tug masters by vouchers marked "for the account of the Italian Government" appears to be quite unjustified.

Sincerely yours,

EARLE W. STONE
Rear Admiral, USN
Chief Commissioner

Mr. Charles A. Livengood,
Counselor for Economic Affairs,
The American Embassy,
Rome.

Copy to: C.C.
Polad B
Navy S/C
Legal S/C

LEGAL SUB-COMMISIO
LO
LO
Chief Counsel
LO
talian Section
L RKS
SEP 24 1946
68

Declassified E.O. 12356 Section 3.3/NND No. 785016

2197

FILE

1912

AG/4198/A

DTB/ds

RE Regina Coeli.

Memory of Pay Lieut. Wiele.

Lieut. Wiele, Pay Officer :

1. Will you please forward to the under-mentioned the following information received to-day from Navy Int-Condition :

a) Subject check or bill is spurious and have never been issued by any U.S. Navy agency or personnel

b) Complete record and reports of investigation made by U.S. C.I.C. are available in this office to the Bank of Italy. This report contains confessions and record of a "ring" of Italian operators involving about five hundred thousand dollars.

G. . TIROLE
Commdre, USN
Deputy Chief Navy L/C.

2. In connection this Sub Commission is of opinion that the matter should be dealt entirely with by the Italian authorities, considering that all the offenders are Italian citizens and that no Allied interests are at stake.

E.G. HAMILTON.
Lt. Colonel,
Deputy Chief Legal Advisor.

X8.

Copy to : CC
Navy S/C

Declassified E.O. 12356 Section 3.3/NND No. 785016

7302

HEADQUARTERS ALLIED COMMISSION
APO 394
ECONOMIC SECTION

4005 FILE

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:

16 SEP HQ. ALLIED COMMISSION

No	Date	To	REMARKS	From
3	14/9/46	AFA	We cannot handle this. will you kindly dispose of it?	Finance S/C n.c.
		DEPUTY CHIEF LEGAL ADVISER		
		CHIEF COUNSEL		
		STAFF OFFICER		
		ITALIAN SECTION		
		MEMBERS REVIEW BOARD		
4	16/9/46	Legal S/C.	Will you kindly deal with the legal question raised? I am informed the U.S. authorities are aware that forged "Naval" cheques are in circulation in Italy.	AFA
		Navy S/C.		PTO

SEP 18 1946

FINANCE SUB-COMMN ALLIED COMMN

PAGE .....

Use other side

Declassified E.O. 12356 Section 3.3/NND No. 785016

No	Date	To	REMARKS	From
		Navy S/C	As soon as it can be officially ascertained (as is obvious) that the alleged drills of Public Credit have never been issued by any U.S. Naval Department and are forgeries the whole matter can be handed back to the Italian authorities for action as no allied interests are involved. Would you please put me in a position to do so. E. S. Hammond Lt Col OCLA	Legal S/C
6	24/9/46		Subject check or bill is spurious and have never been issued by any U.S. Navy agency or personnel 2) Complete record and reports of investigation made by U.S. C.I.D. are available at this office to the Bank of Italy. This report contains confessions and exposé of a "ring" of Italian operators involving about three hundred thousand dollars Thos Temple Commodore, USN Deputy Chief Navy S/C.	

DO NOT WRITE BELOW THIS LINE

Declassified E.O. 12356 Section 3.3/NND No. 785016

2705

7302

CONFIDENTIAL AFD

TRANSLATION

FROM: Bank of Italy - Main Office

TO: H.Q. Allied Commission,
Economic Section - Finance Branch.

THEIR FILE: No: 121800 16 August 1946.

SUBJECT : Suspected forgery of foreign bills.

The attached copy of letter, with relative enclosures, from our Como Agency, concerning an attempt of deceit by Mr. Zamarra through sale of some instruments of credit in dollars, under suspicion of forgery, totally worth 450,000 dollars, is forwarded to you for appropriate investigation and action.

The a/m instruments can be considered as "bills of public credit" i.e. bills made legal tender as banknotes and coins or actually substituting banknotes and coins, issued on purposes by Governments or by Institutes (either public or private) duly authorized.

These "bills of public credit" are particularly mentioned in art. 458 of the Penal Code in which they are made equal to the real currency (national or foreign) - Art. 453 - in case of Forgery, counterfeit, or alteration, or in case of attempts to bring them into the Italian Government territory or to detain them with the view of spending or, in any way, uttering them.

They could also, but only eventually, be considered as instruments of credit transferable by endorsement, or to the bearer, in accordance with art. 491 of Penal Code.

178

RECEIVED
6/9/46
FINANCE SUB-
COMMISSION

./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

It is not absolutely proved that the cheques in question are counterfeited, but presumptions of forgery in such case are serious and concordant and proving, at least, the attempt (art.56 of Penal Code and Art. 36 of Penal Proc. Code) of offense mentioned in a/m art. 458 or 491 of Penal Code.

It is deemed advisable that the Italian Judicial Authorities be acknowledged as per Art. 2 of Penal Proc.Code, in accordance with Art. 358 of Penal Code.

Still, before instruction our Como Agency, we would appreciate to know your opinion in this matter.

Sgd.....

Various enclosures

171

19

Banca d'Italia

Capitale versato L. 300.000.000

AMMINISTRAZIONE CENTRALE

SERVIZIO RAPPORTI CON L'INTERNO
E CON L'ESTERO

UFFICIO RAPPORTI CON L'ESTERO

Dr/ 9 № 121800

Riservata

7302

Roma, li 16 agosto 1946

(T)

HEADQUARTERS ALLIED COMMISSION
Economic Section - Finance Branch

R O M A

AFA 16 SET. 46 HG

Per gli accertamenti e i provvedimenti di Vostra competenza, ci pregiamo trasmettere l'unita copia di lettera e relativi allegati, della nostra Filiale di Como, concernente un tentativo di truffa, mediante collocamento, da parte di tale Sig. Zamarra, di determinati titoli di credito in dollari, sospetti di falsità, per l'ammontare complessivo di 450 mila dollari.

I titoli in oggetto possono essere considerati come "carte di pubblico credito", cioè come quelle carte che hanno corso legale come la moneta o sostituiscono di fatto la moneta stessa, all'uopo emesse dai Governi o da Istituti, pubblici o privati, debitamenti autorizzati. Tali carte di pubblico credito sono particolarmente contemplate dall'art. 458 Cod. Pen. che le parifica alle monete vere e proprie, nazionali o straniere (art. 453), quando ne sia stata effettuata la falsificazione, la contraffazione, l'alterazione o quando ci sia stata un'attività rivolta a introdurle nel territorio dello Stato italiano e a detenerle per spenderle poi e comunque, metterle in circolazione. Potrebbero anche - ma in linea subordinata - essere considerate come titoli di credito trasmissibili per girata o al portatore, agli effetti dell'art. 491 Cod.Pen.

Nel caso in questione manca una prova assoluta contro la loro autenticità, ma le presunzioni in proposito sono gravi e concordanti, e tali da far configurare almeno il tentativo (art.56 Cod.Pen. e art. 36 Cod.Proc.Pen.) dei reati contemplati nel predetto art. 458 Cod.Pen. oppure nel su citato art. 491 stesso codice.

Ci sembrerebbe opportuno che del fatto fosse resa edotta l'autorità giudiziaria italiana ai sensi dell'art. 2 Cod.Proc.

Indirizzo telegrafico per l'Amministrazione Centrale e per le Filiali - BANKITALIA

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

Indirizzo telegrafico per l'Amministrazione Centrale e per le Filiali - BANKITALIA

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Ci sembrerebbe opportuno che del fatto fosse resa edotta l'Autorità giudiziaria italiana ai sensi dell'art. 2 Cod.Proc. Pen. in relazione all'art. 358 Cod. Pen.

Tuttavia, prima di impartire istruzioni alla nostra Filiale di Como di provvedere in tal senso, gradiremmo conoscere il Vostro pensiero al riguardo.

Distinti saluti.

PER DELEGAZIONE

1340

Declassified E.O. 12356 Section 3.3/NND No. 785016

~~Top Secret~~

COPY

Very confidential

TRANSLATION

FROM : Director of Bank of Italy - Como Agency.

TO : Governor of Bank of Italy, Rome.

THEIR FILE: No 9422 26 July 1946.

SUBJECT : Suspected forgery of Foreign bills.

I deem it my duty to urgently inform you of a suspected attempt of swindling, by uttering of U.S.A. securities, apparently of the amount of 450,000 dollars, which was lately brought into my knowledge and which could not catch the good faith of anybody so far.

On 16 July 1946 I was informed by an employee of this Agency that a certain Comm. ZAMARRA - an evacuee here living at Villa "La Passalacqua" di Moltrasio, who is said to be a ship-builder residing in Milan - was transacting the sale of some instruments of credit in dollars, of the a/m amount, consisting of cheques to the bearer of 100 dollars each. Such securities were provided with the photocopy of a letter giving evidence of the reasons of issue on the part of presumptive Allied Authorities.

As I thought it advisable to get such lot of foreign bills to our Bank, I instructed the a/m employee to obtain an item of such cheques and of the a/m letter in order to ascertain the nature of the bond and, especially, whether we had to deal with cheques payable abroad according to the money value expressed therein.

The cheque exhibited appeared to have been issued by the General Headquarters of U.S.A. Navy in Italy, but did not bear the indication of the issuing Military Base.

./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

As the letter which accompanied it was dated "Claims & Hirings CRO 345/45 Venice", I sent photo-copies both of the cheque and letter to our Venice Agency for proper enquiries and information.

Aforesaid Agency reported that apparently we had to deal with forgery.

While giving assurance that the results of the investigations have been kept secrete, and the negotiations dropped without revealing any motive, I enclose herewith copy of correspondence sent by the Venice Agency, and photo-copy of the documents in question.

Very truly yours

sgd De Luca

for true copy
the Acting Chief Office

various enclosures

17

RISERVATISSIMA - 2 / 1.

Como 2° luglio 1946

BANCA D'ITALIA

n. 9422

Il Direttore della S.e di COMO

al Governatore

R O M A

OGGETTO:
Presunta falsificazione di divisa estera

Per quanto possa occorrere, mi faccio il dovere d'informare, in via d'urgenza, la S.V. Ill.ma di un presunto tentativo di truffa, mediante spendita di titoli stilati in dollari U.S.A., per l'ammontare, sembra, di ben 450/mila dollari, del quale sono venuto a conoscenza e che fino al momento pare non abbia colto la buona fede di alcuno.

Infatti, il 16 volgente un impiegato della Filiale ebbe a riferirmi che un tale Comm. Zamarra, qui sfollato nella Villa "La Passalacqua" di Moltrasio e che si dice sia costruttore navale residente in Milano si occupava del collocamento di determinati titoli di credito in dollari, per l'ammontare sopra citato, in buoni al portatore nei tagli da $. 100, muniti di fotocopia d'una lettera che ne specificava il motivo del rilascio da parte di presunte autorità alleate.

Volendo fare affluire tale ingente quantità di divida al nostro Istituto diedi incarico all'impiegato medesimo di procurarsi uno di tali buoni e della relativa lettera, al fine di accertare la natura del titolo e particolarmente se si fosse trattato di divisa pagabile all'estero e nella valuta espressa.

Il titolo esibitomi, che figurava emesso dal Comando Marittimo U.S.A. in Italia non recava l'indicazione della base militare sede dell'Amministrazione emittente; poichè la lettera di accompagnamento risultava datata dal Comando Claim Hirings GRS di Venezia, mi rivolsi a quella nostra Sede per avere le notizie del caso, trasmettendo fotocopia del titolo e della lettera di accompagnamento.

Dalla predetta Sede di Venezia mi è stato riferito che dovrebbe trattarsi di falsificazione.

Mentre assicuro che i risultati di tale indagine sono rimasti riservatissimi, e che la pratica è caduta senza farne trapelare i motivi, per fornire alla S.A. Ill.ma maggiori precisazioni unisco copia della lettera della Sede di Venezia, nonchè altra fotocopia dei documenti procuratimi.

Declassified E.O. 12356 Section 3.3/NND No. 785016

bra, di ben 450/mila dollari, del q[illegible]
al momento pare non abbia colto la buona fede di alcuno.

Infatti, il 16 volgente un impiegato della Filiale ebbe a riferirmi che un tale Comm. Zamarra, qui sfollato nella Villa "La Passalacqua" di Moltrasio e che si dice sia costruttore navale residente in Milano si occupava del collocamento di determinati titoli di credito in dollari, per l'ammontare sopra citato, in buoni al portatore nei tagli da $. 100, muniti di fotocopia d'una lettera che ne specificava il motivo del rilascio da parte di presunte autorità alleate.

Volendo fare affluire tale ingente quantità di divida al nostro Istituto diedi incarico all'impiegato medesimo di procurarsi uno di tali buoni e della relativa lettera, al fine di accertare la natura del titolo e particolarmente se si fosse trattato di divisa pagabile all'estero e nella valuta espressa.

Il titolo esibitomi, che figurava emesso dal Comando Marittimo U.S.A. in Italia non recava l'indicazione della base militare sede dell'Amministrazione emittente; poichè la lettera di accompagnamento risultava datata dal Comando Claim Hirings GRS di Venezia, mi rivolsi a quella nostra Sede per avere le notizie del caso, trasmettendo fotocopia del titolo e della lettera di accompagnamento.

Dalla predetta Sede di Venezia mi è stato riferito che dovrebbe trattarsi di falsificazione.

Mentre assicuro che i risultati di tale indagine sono rimasti riservatissimi, e che la pratica è caduta senza farne trapelare i motivi, per fornire alla S.A. Ill.ma maggiori precisazioni unisco copia della lettera della Sede di Venezia, nonchè altra fotocopia dei documenti procuratimi.

Distinti ossequi.

F.to De Luca

P.C.C.
Il ff.Capo Ufficio

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

FROM: Bank of Italy, Venice Agency.

TO: Bank of Italy, Como Agency.

THEIR FILE: No 8368 24 July 1946.

SUBJECT: Cheques in dollars - Information.

I confirm my to-day's cifrer, written in full here at foot, and hasten to give you the following information:

Complying with your letter of 20 July 1946 I soon enquired about the well known 4,500 cheques in dollars, on the basis of the photo-copies both of payment order K-55351 - issued on 10 December 1945 for the amount of 100 U.S.A.dollars- and of the letter accompanying same.

From such enquiries it appeared:

as to the cheque:

- Major "J.Bullit" of Quartier Master General and his signature are thoroughly unknown at the Venice Office of Claims &Hirings;
- the place of issue is missing;
- no cheques of the kind were previously shown to the personnel of said Office;
- on the contrary, some of said cheques had already been presented to the local representative of the American Express Co. who had suspected them to be forged through various elements as quality of paper, print, perforation. He had, however omitted to inform this Agency thereof.

as to the letter:

- There is contrast between the heading "Claims & Hirings" and the initials "GRO", followed by numbers 345/45 (abreviation of "General Routine Order No 345/45) as said Order of the Day

17.

./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

is exclusively pertaining to the High Allied Command and, consequently is beyond the competence of Claims and Hirings; furthermore it concerns authorizations for the use of Allied Military Vehicles on the part of Italian military or civilian personnel working with the Allies, while the letter quoted above deals with expenses for "transportations of freights"; - there is concerned between the initials "W.S.A.", i.e. War Shipping Administration (American Body) on the top of the page and the initials "Q.M.G." i.e. "Quartier Master General"(British Headquarters); appearing under the signature "J.Bullit".

Finally the American Officer in charge, commander Mazzulio, of the Naval Control Service Office of Venice, to whom I applied for enquiries according to advice of other Allied Commands, has steadily declared that we have to deal with actual forgery.

Very truly yours

sgd Martens

"Reference yours 9120 of 20 July I inform you that Allied
"Authorities have stated the well known cheques in dollars
"are forged. Express letter is following"

Como 26 July 1946
for true copy
sgd De Luca.

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RISERVATA
Per espresso

BANCA D'ITALIA
Sede di VENEZIA

Venezia 24 luglio 1946

n. 8368

Il Direttore della Sede di VENEZIA
al Direttore della Sede di

C O M O

OGGETTO:
Notizie su assegni in dollari

Confermo il mio cifrato odierno riportato in chiaro in calce e mi affretto ad informarLa che a seguito della Sua in data 20 corrente n. 9120, ho fatto subito esperire le indagini in merito alla nota partita di 4500 assegni in dollari, sulla base delle fotocopie dell'ordine di pagamento K-55351 emesso il 10 dicembre 1945, per $. 100 U.S.A. e della relativa lettera di accompagnamento, allegate alla citata Sua.

Nel corso dell'indagine è emerso,

quanto all'assegno, che:

-,del maggioredel Quartier Master General "J. Bullit" non è conosciuta nè la perdona, nè la firma presso questo Ufficio Claim & Hiring;

- manca la indicazione della località di emissione;

- buoni della specie non sono mai stati visti dal cennato Ufficio;

- qualche buono del tipo in esame era già stato presentato al locale Rappresentante della American Express Co?, il quale avefa riscontrate diversi elementi che destavano sospetti di falsità (carta, stampa, perforazione, ecc.) ometten do di segnalare la cosa a questa Sede;

quarto alla lettera di accompagnamento è pure emerso che:

- la intestazione "Claims & Hirings" è in contrasto con la sigla che subito la segue "GRO 345/45"; quest'ultima è l'abbreviazione di "general routine order" che vuol dire: "ordine del giorno generale" n. 345/45; quest'ordine del giorno di competenza esclusiva dell'Alto Comando Alleato e non del Claim & Hiring, riguarda l'autorizzazione ai militari e civili italiani, in servizio presso gli Alleati, a valersi degli automezzi militari alleati e non risponde quindi alla traduzione del testo della lettera, che concerne, invece, il pagamento di spese di trasporto;

- la sigla "W.S.A." - War Shipping Administration (organizzazione americana)

Declassified E.O. 12356 Section 3.3/NND No. 785016

in dollari, [illegible] della [illegible]
il 10 dicembre 1945, per $. 100 U.S.A. e della [illegible]
mento, allegate alla citata Sua.

Nel corso dell'indagine è emerso,

quanto all'assegno, che:

- del maggioredel Quartier Master General "J. Bullit" non è conosciuta nè la perdona, nè la firma presso questo Ufficio Claim & Hiring;
- manca la indicazione della località di emissione;
- buoni della specie non sono mai stati visti dal cennato Ufficio;
- qualche buono del tipo in esame era già stato presentato al locale Rappresentante della American Express Co?, il quale aveva riscontrato diversi elementi che destavano sospetti di falsità (carta, stampa, perforazione, ecc.) omettendo di segnalare la cosa a questa Sede;

quarto alla lettera di accompagnamento è pure emerso che:

- la intestazione "Claims & Hirings" è in contrasto con la sigla che subito la segue "GRO 345/45"; quest'ultima è l'abbreviazione di "general routine order" che vuol dire: "ordine del giorno generale" n. 345/45; quest'ordine del giorno di competenza esclusiva dell'Alto Comando Alleato e non del Claim & Hiring, riguarda l'autorizzazione ai militari e civili italiani, in servizio presso gli Alleati, a valersi degli automezzi militari alleati e non risponde quindi alla traduzione del testo della lettera, che concerne, invece, il pagamento di spese di trasporto;
- la sigla "W.S.A." - War Shipping Administration (organizzazione americana) posta subito sotto la intestazione, è in contrasto con la sigla "Q.M.G. - Quartier Master General" (comando inglese) posta sotto la firma J. Bullit.

Infine, l'Addetto Americano, comandante Mazzullo, del Naval Control Service Office di Venezia, presso il quale ho pure fatto estendere le indagini su segnalazione di altri comandi alleati locali, ha senz'altro dichiarato che si tratta di falsificazioni.

Distintamente La saluta.

F.to Mastens

"In risposta alla Sua lettera 20 corrente 9120 La prevengo che Autorità Alleate "asserito noti assegni dollari essere falsi. Segue espresso".

P.C.C.

Como 26 luglio 1946

p. c.c. F.to De Luca

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

BANCA D'ITALIA
AMMINISTRAZIONE CENTRALE

RISERVATA

HEADQUARTERS ALLIED COMMISSION
Economic-Section -Finance Branch

ROMA

Declassified E.O. 12356 Section 3.3/NND No. 785016

CLAIMS & HIRINGS G.O. 345/45

(U.S.A.F.B.D.)

Venice
Jan.10, 1946

The authorities of ships M.M.D. U.S.A. Navy, serial #, have been issued by our U.S. to pay for the transportation of freights for our U.S.

John Bullitt
Major
A.A. & Q.M.C.

U.N.A. NAVY DEP.

Dec. 10th, 1945 K 55351 *

AT SIGHT PAYABLE TO THE BEARER $100.-

$ ONE HUNDRED

10
50
100
500
1000

K 55351 *

AUTHORIZED OFFICERS

NOT GOOD IF DRAWN FOR MORE THAN $ 1000.00

M. M. D. ITALY

M. M. D. ITALY

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1094

AC/4505/L

MP/ru
26 September 1946

SUBJECT : Pagamento di fatture.

TO : Ermete Sirigaglio
Via dell'Oca #8 43
ROMA.

Con riferimento a Vostra lettera in data 13 agosto 1946 diretta allo Public Works Sub-Commission siete invitato a presentarvi a questa Sottocommissione Alleata - Via Veneto - Palazzo delle Corporazioni, V° piano N° 54 per comunicazioni che vi riguardano.

G.F. HAMMOND,
Lt.Colonel,
Deputy Chief Legal Advisor

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2215

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SECTION

AC/4705/2

26 Settembre 1946

OGGETTO : Corresponsione di stipendi al Sig. Umberto PIACCA da parte del Comune di Castel di Sangro.

A : Capo di Gabinetto
Ministero dell'Interno.

Questa Commissione Alleata ha ricevuto un esposto da parte del Sig. PIACCA Umberto, già internato presso il Comune di Castel di Sangro, in provincia dell'Aquila.

Il Sig. Piacca Umberto è creditore di Lire 35.730.= nei confronti di detto Comune per stipendi dovuti.

Non avendo detto Comune ancora provveduto al pagamento, la S.V. è pregata di voler sollecitare il pagamento stesso informando questa Commissione.

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

Declassified E.O. 12356 Section 3.3/NND No. 785016

TLB

HEAD QUARTERS ALLIED COMMISSION
AFO 754
LEGAL SUB COMMISSION

FILE

1874

MP/ma

AC/4005/1

26 September 1946

SUBJECT : Claim for payment of salary.

TO : HQ, AC, Office of C A -
Claims Board.

Reference is made to your letter dated 21st September 1946 F le n° 225 on the same subject.

1. Would you please advise Mr. PIACCA that this Sub-Commission is taking steps with the Prefettura of l'Aquila to ensure the payment of the balance due by the Commune of Castel di Sangro.

2. We think advisable that he presents his claim to the said Prefettura quoting reference to this Sub-Commission's letter AC/4005/1 Dated 26 September 1946.

G.G. HAMILTON,
Lt.Colonel,
Deputy Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

400

FILE

HEADQUARTERS ALLIED COMMISSION

OFFICE OF G-4 (B)

Claims Board
APO 794

Tel. 489081
Ext: 522

1 POA

Subject: Claim for Payment of Salary
Umberto FIACCA - Castel di Sangro File No: 225

To : Director Legal Sub Commission Date 21st September 1946

1. This office has received enquires re the above claim.
2. It would appear that in spite of instructions given by the Prov. Commissioner to the Sindaco of Castel di Sangro - (see enclosure) - the claimant has met with nothing but blank refusal and suggestions that responsability for payments lies on the Allied Commission.
3. May I have your opinion on this please so that I may instruct Sig. FIACCA where and how to present his claim.
4. True copies of Prov. Commissioner's letter to the Sindaco of Castel di Sangro and Fiacca's original application for payment are forwarded herewith.

N. J. Coomb
Capt. R.T.R.
Claims Officer

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Declassified E.O. 12356 Section 3.3/NND No. 785016

I

Ist Lieutenant AGD

ALLIED CONTROL COMMISSION

PROVINCE OF L'AQUILA

24 October 1944

SUBJECT - Payment of services

TO - Il Sindaco di Castel di Sangro

I - In view of the fact that Sig. Umberto FIACCA was employed by il Comune of Castel di Sangro, as an interpreter, and that his legal status as an employee has been recognized by your office through two monthly payments (June and July 1944) to him at Lire 110 per day - you are under legal obligation to pay him - per the terms of his bill presented herewith. Please take care of this payment without further delay.

(Signed) HOMER A. STEBBINS
MAJOR - INF.
PROVINCIAL COMMISSIONER
L'AQUILA PROVINCE

16.

Certified true copies
N. Coombs. Capt.
Claims Officer (Br)
Claims Board.
Allied Commission.

31st. Aug. 1946.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Castel di Sangro

Prov. Dell'Aquila

TO : Il Sindaco di Castel di Sangro

From : Sig. Umberto Fiacca

I rendered services as interpreter -- English - Italian -- to the office of the Sindaco di Castel di Sangro from 23 November 1943 to 22 September 1944 -- a total of 504 days at 110 Lire per day -- making a total of Lire 33,440 earned.

I have been paid for two months (June and July - 1944) by your office -- in the sum of Lire 6710 (61 days at 110 Lire) -- leaving a balance due me from the Comune of Castel di Sangro of Lire 26,730.

(Signed) Fiacca Umberto
24/10 - 1944

Certified true copy
H. Coombs. Capt.
Claims Officer (B)
Claims Board
Allied Commission

31st Aug. 1946.

10

2220

Declassified E.O. 12356 Section 3.3/NND No. 785016

185

185A

Ref. : 5609/327/EC

24 September 1946.

SUBJECT: S/S "REX"

TO : Poled A
Poled B

1. With reference to my letter No. 5609/315/20 dated 10 Sept addressed to the Venezia Giulian War Booty Committee, copy to you, on this subject.

2. An answer has now been received to the effect that the S/S "REX" is lying in some "B" waters and has not been the subject of a claim before that Committee.

3. Do you please agree to the Italian Government being informed that as this vessel is in some "B" waters, the matter should be taken up direct with the Jugoslav authorities.

For the Chief Commissioner:

A. W. Finsch

Brigadier,
Executive Commissioner.

Copy to: C.C.
Legal S/C
Navy S/C

LEGAL SUB-COMMISIO
CLO
DCLO
Chief Counsel
CJO
Italian Sec
CL RKS
SEP 26 1946

FILE

161

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILB

HEADQUARTERS ALLIED COMMISSION
A.C.O. 791
LEGAL SUB COMMISSION

1864

MT/ra

AC/1965/L 25 September 1946

SUBJECT : Right of Italian Authorities to Requisition American owned property in Italy.

TO : Political Adviser (A).

With reference to your letter and enclosure of 6th September raising the question of the liability of houses owned by Americans in Italy to be requisitioned. The Commissariato degli Alloggi takes the view that in the absence of any International agreement between the U.S.A. and Italy houses of Americans are not exempt from requisition. The rules under Decree N° 1711 of 14th August 1940 declare that certain things not capable of being requisitioned including "The goods belonging to foreigners excluded from requisition by virtue of international agreements". It is improbable that there existed any agreement between the U.S.A. and Italy excluding the property of Americans from requisition, but, if there were such an agreement, it would no longer be in force. It is believed that in practice the property of foreigners under sequestration has not been requisitioned by the Italian authorities so long as it remained under sequestration. The requisitioning of the property of an Allied subject that might in any way be harmful to Allied interests could well be considered as coming within the provisions of Art. 22 of the Armistice Terms ("The Italian Government will obtain from all action detrimental to the interests of the United Nations...") and enable action to be taken with the Italian Government through diplomatic channels. Before replying to the inquiry of the Commissariato degli Alloggi of Alano o it would be advisable to consult the records of your Embassy, as other cases similar to the present may have already arisen.

160

HUMPHREY THOMAS,
Italian Branch,
for Chief Legal Adviser.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

1005

1B3A

HEADQUARTERS ALLIED COMMISSION
Office of Political Adviser (A)

September 6, 1946.

MEMORANDUM TO: Director, Legal Sub-Commission

SUBJECT : Right of Italian Authorities to Requisition American Owned property in Italy.

I should be grateful for your opinion on the question raised in the enclosed copy of a letter addressed to the American Consul General at Genoa by the Italian Commissariato degli Alloggi, concerning the right of Italian authorities to requisition houses belonging to Americans in Italy.

Joseph H. Greene, Jr.
Joseph H. Greene, Jr.
Assistant Political Adviser (A).

Enclosure:

As stated above.

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
SEP 9 - 1946	

2-9

Declassified E.O. 12356 Section 3.3/NND No. 785016

Commissariato degli Alloggi

Comune di Alassio

Alassio, 25 Agosto 1946.

Prot. No. 308/P

Oggetto: Requisizione Case

On. Consolato Nord Americano,

Genova.

Questo Ufficio Commissariato per alloggi in Alassio, chiede rispettosamente a codesto on. Consolato, di conoscere se esistano ACCORDI INTERNAZIONALI FRA L'ITALIA ED IL NORD AMERICA (STATI UNITI), in virtù dei quali le case appartenenti ai Nord Americani in Italia siano escluse da requisizioni, ciò a termini dell'art. 2 n. 5 delle Norme annesse al R.D. 18/8/~~1941~~ 1940 N. 1741 (Gaz. Uff. 2/1/1942 n. 1).

Si tratta in concreto di rispondere ad un ricorso in merito a requisizione di casa di proprietà di una signora italiana sposata ad un ufficiale polacco il quale avrebbe avuto successivamente la nazionalità nordamericana (Stati Uniti).

Si prega di voler riferire cortesemente il dato richiesto nell'interesse della detta signora suddita nord americana.

Grazie. dev. ossequi.

Commissariato Governativo Alloggi.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1224

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

1224

FILE

AC/4005/L. GGH/pa.
20 Sept 46.

SUBJECT : Claims addressed to Navy S/C.
a) DORATTI b) ERRERA.
TO : Navy Sub-Commission (through Commerce S/C).

1. If the facts set out in both petitions are correct, compensation is undoubtedly due.

2. It might have been possible to forward ERRERA's claim to the Italian Government, if his boat had been properly requisitioned. However, this does not appear to be the case and the craft having been lost through negligence, the Allied liability cannot"prima facie" be disclaimed.

3. As far as DORATTI's claim is concerned, it is our opinion that the Italian Government can only be made to pay for the 160 tons unloaded at Ancona as a requisition under the Armistice Terms. There again no proper requisition forms appear to have been issued and the Italian Government may rightly refuse to accept liability.

4. It will be necessary to ascertain the ultimate destination of the coal unloaded at BONA before determining whose final liability lies, although the master of the ship having obeyed the orders of the Royal Navy and the owner acts correctly in looking to them for redress.

C. C. HARRAFORD,
Lt.Colonel,
Deputy Chief Legal Advisor.

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4006

FILE

HEADQUARTERS ALLIED COMMISSION
NAVY SUB-COMMISSION APO 794

NSC/6430
16 September 1946

From: Navy Sub-Commission, Hq. Allied Commission.
To: Commerce Sub-Commission (Claims Division).

Subject: Claims addressed to the Navy Sub-Commission.

Enclosure: (A) Ltr. from Eduardo NOLASCO, Trieste, dated 21 August 1946, to FCLI, Rome.
(B) LUCIA Stefano claim, undated.

1. Enclosure (A) and (B) are forwarded herewith for appropriate action.

2. It is requested that enclosures (A) and (B) and copies of correspondence indicating what action is taken will be returned to the Navy Sub-Commission.

G. F. MENTZ,
CAPTAIN, U. S. NAVY,
FOR REAR ADMIRAL,
CHIEF, NAVY SUB-COMMISSION, A.P.O.

LEGAL SUB-COMMISSION
CHIEF LEGAL ADVISER
DEPUTY CHIEF LEGAL ADVISER
CHIEF COUNSEL
OFFICE
SECTION
UMPIRE'S REVIEW BOARD
A
SEP 20 1946

Encl returned Hello
27 SEP 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

file

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1 POA

MF/ns
AC/4005/L 16 September 1946

SUBJECT : Aiuto a prigioniero di guerra.

TO : Ministero di Grazia e Giustizia.

Questa Sotto Commissione è informata che un cittadino italiano ha prestato aiuto nella fuga ad un prigioniero di guerra tedesco, ristretto in un campo Americano.

Vogliate cortesemente informare questa Sotto-Commissione se il fatto descritto costituisce reato e quale sia l'autorità competente.

Vogliate considerare la questione con cortese urgenza.

G.G. Hannaford

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

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1790
MT/nb

16 September 1946

AC/1005/1.

SUBJECT : Cargo of Coal in S.S. "Prometheus" lying sunk in S.Andrea, Trieste.

TO : Egr. Avv. Mario Pavetra
Piazza Oberdan 5 (Palazzo Telve)
TRIESTE.

1. Reference your letter of 3 Aug 1946, regarding a cargo of coal in the holds of the S.S. "Prometheus" lying sunk in the port of S.Andrea di Trieste, claimed to be the property of Sig. Guarrini.

2. We have been advised that you have begun an action in the Courts in Trieste against the Greek Government and Sarron and Coy; further that a receiver has been appointed by the Court and that he has entered into an agreement with Sarron and Coy for the salvage of the vessel and the cargo pending a decision of the Court as to their ownership.

3. In such circumstances no action whatever can be taken by this Sub-Commission as the matter is entirely outside the province of the Allied Commission.

SUBGRAV EDGAR,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

CM/NP

1PA

LEGAL DIVISION

FILE REF.: 13c/AMG/LD/192/2624 Date..6.September.1946..

SUBJECT : SS "Prometheus".

TO : HQ. ALLIED COMMISSION, Legal Sub-Commission

HLT A

1.- Ref. your AC 4005/L, dated 27 August.

2.- Claimant De Guarrini has filed a civil action in Rome against the Greek Government, and in Trieste against the Greek Government and SARROM Co. The case in Trieste has been adjoined to 8 November 1946.

3.- This HQ. has taken the position that the respective rights of De Guarrini, Greek Government and SARROM are within the jurisdiction of the Italian Courts and therefore no interference in behalf of any of the parties will be undertaken by this HQ.

4.- However in the interest of harbor clearance, A.M.G. has made provision for the salvage operations, the property to be held subject to the Court's disposition.

5.- For your information, copies of letters from Director of Industry - 13c AMG n-2/, dated 15 July 1946, and Legal - dated 12 July 1946 are herewith attached. Enclosures of your communication herewith returned.

By Order of Colonel BOWMAN :

CHARLES M. MUNNECKE
LT. COLONEL INFANTRY
CHIEF LEGAL OFFICER

CHIEF LEGAL ADVISOR
DEPUTY CHIEF LEGAL ADVISOR
CHIEF COUNSEL
STAFF OFFICER
ITALIAN SECTION
MEMBERS REVIEW BOARD
SEP 12 1946

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

CM/ZF

LEGAL DIVISION

FILE REF.: 13c/AMG/LL/ Date. 6 September 1946.

SUBJECT : SS 'Prometheus'.

TO : HQ. ALLIED COMMISSION, Legal Sub-Commission

1.- Ref. your AC 4005/1, dated 27 August.

2.- Claimant De Guerrini has filed a civil action in Rome against the Greek Government, and in Trieste against the Greek Government and SARROM Co. The case in Trieste has been adjoined to 8 November 1946.

3.- This HQ. has taken the position that the respective rights of De Guerrini, Greek Government and SARROM are within the jurisdiction of the Italian Courts and therefore no interference in behalf of any of the parties will be undertaken by this HQ.

4.- However in the interest of harbor clearance, A.M.G. has made provision for the salvage operations, the property to be held subject to the Court's disposition.

5.- For your information, copies of letters from Director of Industry - 13c AMG 8-2/, dated 15 July 1946, and Legal - dated 12 July 1946 are herewith attached. Enclosures of your communication herewith returned.

By Order of Colonel BOWMAN :

CHARLES M. MUNNECKE
Lt. COLONEL INFANTRY
CHIEF LEGAL OFFICER

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Declassified E.O. 12356 Section 3.3/NND No. 785016

12230

130/30

LEGAL DIVISION

12 July 1946

Reference No.: 130/AMC/LD

Subject : Claim to cargo Greek ship "Prometheus".

To : Industry Office - A.M.C.

1. Pursuant to oral conversation with you today I submit the following opinion reference to the above.

2. It appears that a Greek ship was loaded with 2400 tons of "Arsa" coal and upon reaching Trieste unloaded 500 tons, apparently consigned to the Germans, when it was sunk 4 January 45. It further appears that one De Guarini claims the coal by purchase, apparently from the Germans, either before or after the ship was sunk. The owner of the ship, a Greek, has a claim for his handling charges. The matter has been litigated in the Italian Courts as between the owner of the ship and the claim of De Guarini and a receiver has been appointed for the property. A salvage contract has been entered into between the receiver and a local concern. The Harbor authorities are desirous of having the ship and cargo salvaged in the interests of cleaning the harbor. Recently you have been advised of the claim of the Greek Government for the cargo as War Booty.

3. I submit for your consideration, the following opinion:

a) The property in question, being in Trieste Harbor, is within the jurisdiction of the Italian Courts to determine ownership thereof.

b) The Italian Courts have proper Authority to appoint a receiver of the property and to authorize him to enter into a salvage contract, make payments for salvage operations, store or sell the coal.

c) Any claim by the Greek Government should be presented to the Italian Courts.

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d) In connection with War Booty, a War Booty Committee has been formed at Trieste to pass upon all such claims. The time limit for filing claims expired last October. Raising the claim of War Booty would open for litigation this cargo before the War Booty Committee of other countries concerned in War Booty claims.

e) It is essential to clear the harbor and the Port authorities may order the salvage operations to be carried out in the interest of commerce.

4. As the time is rather short for successful salvage, it is recommend:

a) that the salvage operations provided under the provisions of the decree of the Italian Courts be carried out;

b) that a suggestion be passed to the Greek Government, that they should advise the Italian Courts of their interest in the litigation.

c) that the Greek Government be advised of the procedure as to War Booty that they may take such a claim if they so desire.

Charles M. MUNNECKE
Lt. Colonel,
Chief Legal Officer

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NP

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 Corps

TELEPHONE No.: 6642 Ext.04 Date 15 July 46

FILE

REFERENCE No.: 13C/AMG/IND/N-2/1

SUBJECT : Salvage of S/S "PROMETHEUS" and cargo.

TO : Naval Technical Adviser to Greek Delegation to A.C.I., c/o HQ. Allied Commission - ROME.

Copy to : Naval Officer in Charge, Navy House - TRIESTE
Port Commandant, Navy House - TRIESTE
SARROM, Via Galatti No. 20 - TRIESTE

1.- Ref. your letters No.ST/755 dated 25 June 1946 and No.ST/766 dated 9 Julu 1946 on the subject of salvage of the "PROMETHEUS".

2.- Your opinion regarding the competence of the Tribunale of Trieste to adjudicate in the matter of the disputed ownership of the cargo of the "Prometheus" has been submitted to the Chief Legal Officer, Allied Military Government, who submits:

a) The property in question, being in Trieste Harbour, is within the jurisdiction of the Italian Courts to determine ownership thereof.

b) The Italian Courts have proper authority to appoint a receiver of the property and to authorize him to enter into a salvage contract, make payments for salvage operations, store or sell the coal.

c) Any claim by the Greek Government should be presented to the Italian Courts.

3.- In regard to your claim to the cargo as War Booty the same authority states :

"In connection with War Booty, a War Booty Committee has been formed at Trieste, to pass upon all such claims. The time limit for filing claims expired last October. Raising the claim of War Booty would open for litigation this cargo before the War Booty Committee of other countries concerned in War Booty claims."

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2.- Your opinion regarding the competence of the Tribunale di Trieste to adjudicate in the matter of the disputed ownership of the cargo of the "Prometheus" has been submitted to the Chief Legal Officer, Allied Military Government, who submits:

a) The property in question, being in Trieste Harbour, is within the jurisdiction of the Italian Courts to determine ownership thereof.

b) The Italian Courts have proper authority to appoint a receiver of the property and to authorize him to enter into a salvage contract, make payments for salvage operations, store or sell the coal.

c) Any claim by the Greek Government should be presented to the Italian Courts.

3.- In regard to your claim to the cargo as War Booty the same authority states :

"In connection with War Booty, a War Booty Committee has been formed at Trieste, to pass upon all such claims. The time limit for filing claims expired last October. Raising the claim of War Booty would open for litigation this cargo before the War Booty Committee of other countries concerned in War Booty claims."

4.- Reverting to earlier consideration of the case the situation then was that on the one hand this Division was desirous of having the wreck removed to clear an obstruction hampering use of the Port facilities but on the other hand was faced with complication arising from conflicting claims to ownership of the cargo already the subject of litigation before the courts. 1.9

5.- Acting on advice of the Chief Legal Officer, Allied Military Government, this Division offered the salvage of the ship and cargo to the firm SARROM of TRIESTE on the terms and conditions stated in this Division's letter ref. 13C/AMG/IND/N-2/, dated 22 June 46. Copy of this letter is attached.

6.- SARROM have intimated their willingness to accept these terms and conditions but in the meantime the general strike during the first half of this month has necessitated the Port Authorities reconsidering the plan for salvage in relation to interference with berthing facilities.

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7.- This has been put to SARROM in letter from this Division dated 15 July 1946 and copy is attached.

8.- This Division has no wish to delay salvage operations and realises that period during which fair weather can be expected is getting short.

9.- It feels that the introduction of a War Booty claim, which may stimulate similar counter-claims from other parties interested in this Territory, may cause further delays.

10.- Furthermore it is of the opinion that if salvage is allowed to proceed under the terms and conditions already stipulated the cargo will remain secure until such time as ownership is determined by the Courts. If you wish to intervene in the Courts then proceedings and salvage can proceed concurrently.

11.- Your observations are awaited.

For the Senior Civil Affairs Officer:

Signed : J.E. FODEN
Lt. Col. G/L
Chief Industry & Utilities Offr.

Encl:

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Avv. MARIO FARENA
TRIESTE
Via Oberdan 5 (Palazzo Telve)
Tel. 60-61

FILE

On. Commissione Alleata

per l'Italia

R O M A

Oggetto : proprietà di un carico di carbone di G. de Guarrini contestato dalla Greek Delegation Naval Tecnical Adviser

Il sottoscritto avv.Mario Farena di Trieste, via Crispi n.61, quale patrocinatore del sig.Giuseppe de Guarrini di Trieste via Saltusri n.2, il quale controfirma la presente, é costretto a ricorrere ai buoni uffici di Cod.On.le Commissione per la seguente pendenze, i cui dati vengono comprovati qui con copie semplici di originali che sono trattenuti per tema di smarrimento e che verranno comunque esibiti a Roma di persona :

Il 26 marzo 1945 il Sig.De Guarrini acquistava dalla Società Mineraria "Arsa" di Trieste un carico di carbone di complessive 2.479 tonn. trovantesi nel piro-

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Naval Tecnical Adviser

Il sottoscritto avv.Mario Fare[illegible] di Trieste, via Crispi n.61, quale patrocinatore del sig.Giuseppe de Guarrini di Trieste via Saltuari n.2, il quale controfirma la presente, é costretto a ricorrere ai buoni uffici di Cod.On.le Commissione per la seguente pendenza, i cui dati vengono comprovati qui con copie semplici di originali che sono trattenuti per tema di smarrimento e che verranno comunque esibiti a Roma di persona :

Il 26 marzo 1945 il Sig.De Guarrini acquistava dalla Società Mineraria "Arsa" di Trieste un carico di carbone di complessive 2.[illegible]79 tonn. trovantesi nel piroscafo "Prometheus" giacente affondato presso la banchina n.61 del porto di S.Andrea di Trieste.

Poiché detta zona é posta sotto il controllo del Governo Militare Alleato, il De Guerrini dovette richiedere il permesso di ricupero ed asporto del carbone alla suddetta Autorità, permesso che venne rilasciato

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nel settembre del 1945. Il De Guarrini aveva già iniziato il ricupero, quando si vide sospendere il permesso perché la Delegazione Greca - Naval Tecnical Adviser di Roma, avanzando pretesa sul carbone, aveva rivolto analogo reclamo al Governo Militare Alleato di Trieste.

Propriamente, come risulta dalla lettera - esposto - dimessa sub.a, della stessa delegazione, la pretesa di quest'ultima era basata sulle seguenti premesse : 1) che il "Prometheus" era greco e venne requisito dai tedeschi in Grecia nel 1943; II) che il carbone fu caricato dalle miniere dell'Arsa per conto della "Mittelmeer Aederei" il 29.12.1944 e questa società era la reale padrona del carico; III) che sembra inspiegabile come sil sig.De Guarrini possa aver acquistato il carbone il 12.4.1945 e cioé poche settimane prima della capitolazione tedesca e comperato proprio dai tedesoni. Pertanto, il sig.De Guarrini non poteva acquistare il carico dall'Arsa e di[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785 [illegible]

Propriamente, come risulta dalla lettera - esposto - dimessa sub.a, della stessa delegazione, la pretesa di quest'ultima era basata sulle seguenti premesse : 1) che il "Prometheus" era greco e venne requisito dai tedeschi in Grecia nel 1943; II) che il carbone fu caricato dalle miniere dell'Arsa per conto della "Mittelmeer Aederei" il 29.12.1944 e questa società era la reale padrona del carico; III) che sembra inspiegabile come sil sig.De Guarrini possa aver acquistato il carbone il 12.4.1945 e cioé poche settimane prima della capitolazione tedesca e comperato proprio dai tedeschi. Pertanto, il sig.De Guarrini non poteva acquistare il carico dall'Arsa e d'altronde il padrone della nave, non essendo stato soddisfatto dall'uso e della requisizione della nave stessa é il primo a dover essere soddisfatto col carico della nave.

La lettera termina coll'affermazione che il sig.De Guarrini per ogni ogni sua pretesa sul carico deve rivolgersi a un tribunale civile..

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Con suo esposto dd.17.4.1946, inviato alla Delegazio-
Greca e per conoscenza del G.M.A° di Trieste, il sig.
De Guerrini faceva rilevare che la prima fondava la
sue pretesa su elementi di fatto del tutto errati,
spiegando e dimostrando che il carico di carbone in
questione non era mai stato venduto dalla Soc.Arsa
alla ditta tedesca "Mittelmeer Rederei" o, peggio an-
cora, all'Esercito Tedesco, ma era stato spedito dalla
Soc. Mineraria Arsa per proprio conto e nome e quindi
da essa venduto al sig. De Guerrini. La Mittelmeer
Rederei era stata semplice noleggiatrice del piro-
scafo "Prometheus". Ad proposito si precisa che duran-
te la guerra e anche durante l'occupazione germanica
la soc; Mineraria "Arsa" conservò sempre la piena pro-
prietà ed il libero possesso del carbone che trasse
dalle sue miniere : unica limitazione era l'obbligo
di vendere il carbone su assegnazioni dell'apposito
ufficio dell'Oberste Kommisar fuer die Operations
Zone Kuestenland. Il carbone veniva, perciò, sempre

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alla ditta tedesca "Mittelmeer Rederei" o, peggio ancora, all'Esercito Tedesco, ma era stato spedito dalla Soc. Mineraria Arsa per proprio conto e nome e quindi da essa venduto al sig. De Guarrini. La Mittelmeer Rederei era stata semplice noleggiatrice del piroscafo "Prometheus". Già pro posito si precisa che durante la guerra e anche durante l'occupazione germanica la soc; Mineraria "Arsa" conservò sempre la piena proprietà ed il libero possesso del carbone che trasse dalle sue miniere : unica limitazione era l'obbligo di vendere il carbone su assegnazioni dell'apposito ufficio dell'Oberste Kommisar fuer die Operations Zone Kuestenland. Il carbone veniva, perciò, sempre fatturato dall'"Arsa" e i compratori dovevano pagare alla stessa il prezzo stabilito dall'ufficio competente. Negli ultimi mesi dell'occupazione germanica, quando la linea ferroviaria era inutilizzabile ed il transito con camion difficile, per avere dei natanti occorrenti al trasporto del carbone l'Arsa aveva pure

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l'obbligo di noleggiarli previo benestare del Comando Germanico, presso la"Mittelmeer Rederei" Società armatrice costituita a Trieste durante la guerra e con la quale l'Arsa ebbe solamente i normali rapporti che corrono fra armatore e noleggiatore. Le autorità germaniche, dunque, imponevano l'uso di natanti fissati da esse e la vendita del carbone su loro assegnazione. La Mittelmeer Rederei veniva pagata dal nolo che pure veniva fissato dal comando tedesco e dell'importo di detto nolo la società Arsa veniva rimborsata dai compratori assieme al prezzo del carbone franco Miniera.

Che il carico del carbone in quistione non fosse stato fatto per conto della Mittelmeer Rederei come é stata erroneamente informata la Delegazione Greca, é provato in modo irrefutabile proprio da un atto di valore internazionale cioé della polizza di carico, che si dimette sub b), riguardante il carbone in quistione e portante la data del 29 dic.1944, cioé proprio quella

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torità germaniche, dunque imponevano l'uso di noli fissati da esse e la vendita del carbone su loro assegnazione. La Mittelmeer Rederei veniva pagata del nolo che pure veniva fissato dal comando tedesco e dell'importo di detto nolo la società Arsa veniva rimborsata dai compratori assieme al prezzo del carbone franco Miniera.

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Mineraria Arsa. Essendo quindi il carbone di proprietà di quest'ultima, essa ne aveva la piena libera disponibilità, per cui con contratto dd.26 marzo 1945 che si dimette sub c), lo vendette al sig. De Guarrino, il quale conseguentemente ne é l'unico proprietario.

Il G.M.A. di Trieste accertate queste premesse di fatto ed in base ai documenti originali, ebbe ad interporre i suoi buoni uffici con foglio dd.28.2.1946 che si dimette sub d), e nel quale, tra l'altro, metteva in evidenza che il carbone fu venduto dall'Arsa al sig. De Guarrini il quale ne é il proprietario ed al quale venne da esso G.M.A. concesso il permesso di ricupero e trasporto del carbone, permesso che si dimette sub e), Termina detta lettera col consiglio alla Delegazione Greca di rivolgersi ad un tribunale civile per le sue pretese sul carico del Carbone. Poiché la delegazione greca insisteva sul suo punto di vista, il G.M.A. con-

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Il G.M.A. di Trieste accertate queste premesse di fatto ed in base ai documenti originali, ebbe ad interporre i suoi buoni uffici con foglio dd.28.2.1946 che si dimette sub d), e nel quale, tra l'altro, metteva in evidenza che il carbone fu venduto dall'Arsa al sig. De Guarrini il quale ne é il proprietario ed al quale venne da esso G.M.A. concesso il permesso di ricupero e trasporto del carbone, permesso che si dimette sub e), Termina detta lettera col consiglio alla Delegazione Greca di rivolgersi ad un tribunale civile per le sue pretese sul carico del Carbone. Poiché la delegazione greca insisteva sul suo punto di vista, il G.M.A. consigliò il sig. De Guarrini a prendere lui l'iniziativa di adire il Tribunale Civile per far accertare la proprietà del carbone. Difatti, esso sig.De Guarrini, chiesto ed ottenuto il sequestro giudiziario del carbone instaurò causa davanti al Tribunale di Roma, nei confronti della Delegazione Greca che si costituì in giudizio per opporsi al riconoscimento del diritto

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dal sig. De Guarrini, sostenendo proprio il contrario di quanto aveva sostenuto presso il G.M.A. di Trieste. Cioé essa delegazione Greca, mentre prima induceva il sig. De Guarrini a rivolgersi ad un tribunale civile, ora gli contesta tale diritto, e, quello che più meraviglia, non sostiene più la tesi della proprietà del carico a favore della ditta tedesca Mittelmee Rederei, ma anzi ammette implicitamente la proprietà del carbone a favore del sig.De Guarrini, ma avanza un diritto di preda sul carbone stesso.

Tale diritto é dalla Delegazione Greca basato sull'art.15 delle condizioni d'armistizio del 29.9.1943 Si riporta qui testualmente la tesi della Delegazione Greca: "Al par.15 di tale condizione si legge testualmente : le navi mercantili, da pesca, ed altre imbarcazioni delle Nazioni Unite, ovunque essi si trovino in mano degli italiani, a prescindere dal fatto che il titolo di proprietà sia stato trasferito o meno in seguito a procedure del Tribunale delle prede, ver-

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lo che più meraviglia, non sostiene più la tesi della proprietà del carico a favore della ditta tedesca Mittelmeer Rederei, ma anzi ammette implicitamente la proprietà del carbone a favore del sig.De Guarrini, ma avanza un diritto di preda sul carbone stesso. Tale diritto é dalla Delegazione Greca basato sull'art.15 delle condizioni d'armistizio del 29.9.1943 Si riporta qui testualmente la tesi della Delegazione Greca: "Al par.15 di tale condizione si legge testualmente : le navi mercantili, da pesca, ed altre imbarcazioni delle Nazioni Unite, ovunque essi si trovino in mano degli italiani, a prescindere dal fatto che il titolo di proprietà sia stato trasferito o meno in seguito a procedure del Tribunale delle prede, verranno consegnate alle Nazioni Unite e verranno radunate nei porti che saranno indicati dalle Nazioni Unite le quali disporranno di esse come crederanno opportuno." La detta Delegazione soggiunge : "Tutte le questioni attinenti alla proprietà della nave e del carico (e qui versiamo solo in tale seconda ipotesi)

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// vengono ad essere sottoposte alla esclusiva amministra-
// zione delle Nazioni Unite, le quali, per la applicazio-
// ne delle clausole d'armistizio, hanno predisposto
// un organo amministrativo specifico e precisamente la
// commissione alleata per l'Italia la cui costituzione
// fu comunicata in data 10.11.1943 dal comandante in ca-
// po delle Forze Alleate. E tale commissione viene in-
// tegrata dal Comitato Consultivo onde commissione e
// Comitato costituiscono gli unici organi competenti
// a decidere insindicabilmente fino alla conclusione del
// trattato di pace di tutte le questioni inerenti alla
// applicazione delle clausole di armistizio."

Ciò premesso, data l'insostenibilità della tesi della Delegazione Greca, cioé, che il carico in questione sarebbe da considerarsi preda bellica, e data l'evidente ingiustizia che si perpetrerebbe nei confronti del sig. De Guarrini, questi é costretto a ricorrere, come suggerisce la stessa delegazione Greca

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// tegrata dal Comitato Consultivo onde commissione e
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Ciò premesso, si fa appello all'alto senso di giustizia di Codesta On.le Commissione perché siano date disposizioni a chi di dovere, affinché il sig. De Guarrini possa disporre del proprio carbone ed al più presto possibile per poter nel comune interesse, sgomberare la nave del carico e rendere così più sollecito lo sgombero

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della banchina, giusta l'interesse del G.M.A. di Trieste.

Il sottoscritto, come già stato accennato, porterà di persona gli originali dei documenti qui allegati in copia ed illustrerà verbalmente quei punti sui quali codesta On.Commissione riterrà di chiederà delucidazioni o prove.

Trieste 3/8.1946

Armando Loretta

Giuseppe de Brossini

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qui quali codesta On. Commissione riterrà di chiederà

delucidazioni o prove.

Arezzo 3/8.1946

Armando Loretta

Giuseppe de Benedetti

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GREEK DELEGATION
TO THE

C O P I A

ADVISORY COUNCIL FOR ITALY

From : Naval Technical Adviser Greek Delegation A.C.I. Roma.
Date : March 12 th 1946
To : HQ Allied Military Government, 13 Corps.

Subject : Greek S/S "PROMETHEUS".

Ho il piacere di informarvi in merito alla lettera I3/AMG/G61/286/28.2
1) La nave Greca Prometheus fù requisita dai tedeschi in Grecia nel 1946
1943 e poi fù usata per trasportare militari in Italia.
2) Il carico di carbone fù caricato dalle miniere di carbone dell'area per conto della Mittelmer Rederai " li 29/12/1944 e questa società era la reale padrona del carico. Il 4/1/45 la nave fù saltata e affondo.
3) Secondo le informazioni note a questo ufficio, il de Guarrini reclama la proprietà del carico. Non possiamo capire come la detta persona diven ne proprietaria del carico il 12/4/45, cioè pochi giorni prima della cap tolazione tedesca. Se il de Guerrini ha comperato il carbone dai tedeschi deve sapere che ne l'area ne le requisizioni furono pagate al padrone del co, legalmente egli è il primo a venir sodisfatto è il padrone della nav Ugualmente dobbiamo affermare che il carbone fù comperato dall'Area: que sto è dubitativo sè il vero proprietario del carbone era il Mittelmeer Rederei.
4) Conseguentemente consideriamo i Greci padroni del carico.
5) Abbiamo ricevuto lettere da Trieste nelle quali affermano che de Guar rini ha ordinato alla Sorrima C? di continuare il recupero del carbone nel Novembre 45 senza approvazione. Realmente furono fatti squarci nella nave. Questa azione rende difficile il ricupero e responsabilità

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2) Il carico di carbone fù caricato dalle miniere di carbone dell'Area per conto della Mittelmer Rederei " li 29/12/1944 e questa società era la reale padrona del carico. Il 4/1/45 la nave fù saltata e affondo.
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4) Conseguentemente consideriamo i Greci padroni del carico.
5) Abbiamo ricevuto lettera da Trieste nelle quali affermano che de Guar rini ha ordinato alla Sorrima C° di continuare il recupero del carbone nel Novembre 45 senza approvazione. Realmente furono fatti scavi nella nave. Questa azione rende difficile il ricupero e responsabile egli ne è per l'intero valore della nave.-
6) Siamo molto dispiacenti di non poter affidare a de Guarrini il ricupe ro della nave.- Speriamo di poterla vendere in questi giorni a una Socie Triestina.
7) Ogni reclamo che il de Guarrini avrà da fare per questa questione ver rà risolta in un Tribunale civile per due ragioni:
A) Lui avanza reclamo il cui beneficio di giudicata requisizione
B) Lo stato Greco è solvente per accettare una sentenza giudiziale

2.2.5.1
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B) Lo stato Greco è solvente per accettare una sentenza giudiziaria, anche sè individualmente non può essere, specialmente quando lui avanza il reclamo o qualcosa in contrario che non può essere accettato.

The
Naval Technical Adviser
P. M. COSTAS, Capitain
Royal Hellenic Navy

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Sub 6/

C O P I A

N. 171

Zona sprovvista di bolli

AIBSA il dì 29 dicembre 1944

Ha caricato col nome di DIO ed a buon salvamento una volta tanto in questo Porto

A SA SOCIETA' ANONIMA CARBONIFERA

per conto e rischio di chi spetta sotto coperta

del piroscafo nominato Prometheus capitano Audrang

per condurre e consegnare in questo suo presente viaggio in Trieste

Arsa Soc. Anonima Carboniera per azioni - v. Squadristi n.4 - Trieste

e sopra di coperta a numerata mezzanile, asciutto, intero e ben condizionato, segnato come di contro e così promette detto capitano al suo salvo arrivo consegnarlo, e di nolo gli sarà pagato dal destinatario

E per fede del vero sarà questa con altre simili da detto capitano ~~e-ASH-sopradetto-sarà-posta-in-essere-presente~~, ed una compita, le altre restino di alun valore

Combust. Lignitifero Sivo

A I B S A
Soc. Anon. Carb. Per Az.
(APPROVATO)

1	Kuni o 0/10	Tonn.	380.-
2	" "	"	450.-
3	Pezzature lavate	"	445.-
4	Kuni o 0/10	"	400.-
5	Noce granitello		425.-
6	Tenero 0/10		450.-
7	Pezzatura lavata		430.-

Totale Tonn. 3.020.-

112

L.S.
f.to Cejkl

Il capitano
f.to Audrang

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2 2 3 5

Ind c)

COPIA

A R S A
SOC.MIN.CARBONIFERA P.AZ.
Tel. 46-56
Ind. Telegr. :ARSA - Trieste

Trieste 26 marzo 1945/XXIII

Da citare nella risposta :
B/nd.

Sig.
Giuseppe de Guarrini

Trieste
v.Settefontane 2

Avarin pfo. "Pramecheur"

In relazione all'autorizzazione del Supremo Commissario nella Zona d'Operazioni Litoranea Adriatica N.VII-B/dr/1/n°u del 10 corr., noi Vi vendiamo e Voi comperate tutto il saldo carico di carbone di ns. produzione e di ns. proprietà, rimasto a bordo del pfo svargnano composto di

Tonn. 1300 carbone Pezzature
" 1179 " Minuto

complessivamente tonn. 2479

Il pfo é stato affondato presso la banchina 61 del Porto S.Andrea per atto di guerra ed il carbone di ns. proprietà Vi viene venduto come sta e giace, visto e piaciuto.

Voi vi impegnate di tenere a disposizione delle competenti Autorità del Supremo Commissario il carbone ricuperato e di venderlo soltanto su assegnazione di detta Autorità.

Il prezzo del carbone é di :
L. 255.- la tonn. per la Pezzatura e
L. 335.- " " per il Minuto
per merce resa franco piranco sponda Area più
L. 4.50 la tonn. f.s.b.
L. 6.- " " spese di palegiamento
L. 135.35 " " nolo noleggiato

Il pagamento é convenuto all'imbarco e entro versamento dell'intera somma.

Per tutto il quantitativo verrà emessa un'unica fattura quietanzata.

Trattandosi di danno di guerra, noi Vi cediamo tutti i diritti da ciò derivanti.

In segno di conferma, Vi preghiamo di trascriverci integralmente il contenuto di questa lettera.

A R S A
SOCIETA' MIN.CARB. P. AZIONI
Il Commissario Ministeriale
f.to Maresso

RACCOMANDATA

Ufficio Delegazione Foreign Office per corrispondenza

Trieste li 23 febbraio 1946

Signor

Giuseppe de Guarrini

Trieste.

I) Considerevole corrispondenza ha avuto luogo tra il V. ufficio Signor de Guarrini Trieste e M. O. L. G. Trieste ecc., intorno al soggetto del ricupero del carico di carbone dal vapore greco affondato Prometheus.-

II°) Sembra che le 447 tonnellate di carbone siano state portate a Trieste originariamente dal Prometheus dalle miniere di carbone dell'Arsa in Istria. Questo carbone era stato ordinato dal Comando Militare Tedesco di Trieste. Mentre durante lo scarico al molo VI° del porto Duca d'Aosta di Trieste, il vapore fù sabotato e in seguito affondò.-

III°) Il carbone della nave affondata fù messo sul mercato dalla Società Carbonifera dell'Arsa e acquistato regolarmente dal Signor de Guarrini il quale sarebbe il legale possessore del carbone, appare perciò chiaro che il Signor de Guarrini è il proprietario del carbone e non il Governo Greco, come risultava dalla Sua lettera 21/1/46 indirizzata a de Guarrini.-

IV°) Come possessore del carico de Guarrini è il più interessato di salvare il carbone, ed in vista della presente mancanza mondiale di carbone, noi siamo desiderosi che il salvataggio sia portato a termine.-

V°) E permesso al Signor de Guarrini di continuare il ricupero, sia però stabilito chiaramente, che egli accetta ogni responsabilità e rischio, per ogni futuro reclamo dal Governo Greco riguardo la nave.-

VI°) Nel caso che il ricupero sia portato a termine dal de Guarrini, l'operazione sarà sotto la supervisione dell'Ufficiale per i ricuperi marini

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Istria. Questo carbone era [illegible]
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VI°) Nel caso che il ricupero sia portato a termine dal de Guarrini, l'operazione sarà sotto la supervisione dell'Ufficiale per i ricuperi marini in Trieste, ma il de Guarrini sarà responsabile per ogni reclamo, come al paragrafo V° .-

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VII°) In vista del lungo tempo che questa questione è stata protratta da quando è apparsa per la prima volta, farete in modo, come rappresentante degli armatori della nave, che questo quartiere generale, riceva immediatamente la V. approvazione, in modo che sia permesso il ricupero da parte del de Guarrini. Ogni reclamo da parte del Governo Greco, contro il de Guarrini in questa questione, sarà necessario che venga risolta in un Tribunale Civile.-

per D. S. Dickestet

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FTLB

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1774

Lp/ns
16 September 1946

AC/4005/L

OGGETTO : Aiuto a prigioniero di guerra.

A : Procura Generale Militare
Via degli Acquasparta 2
ROMA.

Questa Sotto-Commissione è informata che un cittadino italiano ha prestato aiuto nella fuga ad un prigioniero tedesco, ristretto in un campo Americano.

Vogliate cortesemente informare questa Sotto-Commissione se il fatto descritto costituisce reato e quale sia l'autorità competente.

Vogliate considerare la questione con cortese urgenza.

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

Reply from PG Br 2nd Lt Sept

139

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

FILE

FILE
176A
BE/ma

AC/4905/L

16 September 1946

SUBJECT : Aiuto a prigioniero di guerra.

TO : Ministero di Grazia e Giustizia.

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Vogliate considerare la questione con cortese urgenza.

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

FIL.

F.U.

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1757

MF/ns

AC/4005/L

10 Sep 1946

Egregio Commendatore,

l'Ammiraglio Stone ha ricevuto il Suo memoriale e mi incarica di comunicarLe l'avvenuta ricezione.

Avendo Avuto il piacere di leggere il Suo esposto sono a pregarla di accettare i sensi della mia più viva considerazione.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Comm. Giuseppe ALESSI
Via Casilina 31
ROMA.

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G.H.Q. Civil affairs Section:

The attached has been marked "Colonel Doctor" and has come to rest on my hands. Why it was sent to me is not explained. Having read it, the question seems: What am I to do about it? Being sorely in need of sage advice I appeal to you for guidance on this dark difficulty.

174A

Sincerely,
Colonel, Infantry
Chief Legal Advisor

Colonel

I do not know why the paper was marked for. I should tell C.C.'s Staff that you propose to take no action. There is nothing we can do. I do not know if C.C. has seen and if the Staff agree I should destroy the document.

9/9 MCJ

FILED 2866 HEADQ

Ecc.ma Labor

Eccellenza,

Mi permetto inviarLe l'accluso memoriale riguardante la difesa dell'interessae del mio Paese con preghiera di volerlo benevolmente esaminare e dopo di che se ella crede, fissarmi un appuntamento.

Nel mio programma di Cittadino Italiano e a nome dei più grandi gruppi dei partiti d'ordine d'Italia mi è consentito fare un appello ai due grandi Popoli anglo-americani che renderanno giustizia su quanto ho l'onore di chiedere ed esporre all'E.V.

Sempre grato di un cenno di ricevuto in merito, colgo l'occasione per esprimerLe Eccellenza, i sensi della mia più alta stima e della mia più viva considerazione.

Dev.mo

Comm. GIUSEPPE ALESSI
Via Casilina 33 -Tel.71300
R O M A

A S.E. L'Ammiraglio S T O N E
Capo della Commissione Alleata
R O M A

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Via Casilina 33 -Tel.71300
R O M A

A S.E. L'Ammiraglio S T O N E
Capo della Commissione Alleata
R O M A

HA

ALLIED COMMISSION
2766
HEADQUARTERS

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Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

Excellency,

I take the liberty to address the enclosed memorandum to you in the interest of my Country, with the request that you examine it and if you wish arrange an appointment with me.

As an Italian citizen and in the name of the most important political parties of Italy I feel authorised to call on the two great Anglo-American Peoples to render justice on the matter which is the subject of my request.

I will be grateful for an acknowledgement of this letter.

I express, Excellency, my highest esteem.

(signed) Giuseppe ALESSI)

2866

Col Weber

WAR AND INTERNATIONAL

LAW

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Declassified E.O. 12356 Section 3.3/NND No. 785016

U.S. NAVAL INTELLIGENCE

Rome, May 23rd 1946

WAR AND INTERNATIONAL LAW

May I be allowed to recall to everyone and especially to the victors of the Second World War that beside the law of the strongest there exist some International Conventions, signed by all civilized peoples, which tertually establish that in the case of war or invasion, the life and the goods of the populations are to be respected.

Contrarily to this treaty, which was established at Geneva and ho= mologated by the International Tribunal at Haag, this law was never re= spected by the Germans ant the invaded peoples underwent all a system of theft and violence. Among those, the Italian people was chosen as a victim, on account of its having dared to rebel against the Nazist war by the amistice on September 8th 1943.

Germany is responsible for the mostpart of the misfortunes of our people, for the deportations and destructions of its possessions: Ger= many has punished in the way known to everybody thousands of Italians, who had refused their cooperation to the German invader.

The Italians now request that the laws sanctioned by the Interna= tional Tribunal at Haage be applied by Germany.

It is proved that Nazi Germany had premeditated to invade Italy through the alliance with Mussolini. Facts have shown this clearly.

The German Army, under the pretext of studying the offensive plans in Africa, infiltrated first the Italian military Headquarters, inclu= ding the Ministeres, the key to national life, and with the complience

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in Africa, infiltrated first the Italian military Headquarters, inclu=
ding the Ministeres, the key to national life, and with the compliance
of Fascist Government. The monstrousscreation of the Axis made in short
time the Germans masters of Italy.

The Italian people was soon to find out that it had become a priso=
ner to the Germans and the hate which Fascist propaganda had kept down
was soon to produce those effects which brought to the continual under=

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mining of the military forces and to the Internal Front. The reasons of the contrast between ourselves and the Germans had a far-off origin:

First and foremost the 1915-18 war; secondly the Latin mentality of our people who loves Right.

The German's alliance was founded on Mussolini and on that small swarm of fanatical followers who had declared war.

The faults of the Italian people are relatively small: the Anglo-Americans with their propaganda have always encouraged us to shake off tyranny, because they knew that, all considered, we were democratics.

It in false, as Germans have often asserted, that Italy has betrayed them.

Italy was never allied with Nazisand accordingly, as soon as the opportunity presented itself to throw off the Nazi-Fascist scheme, the Mussolinian epopy was closed without any reaction nor a single gun shot on the 23th of July 1943.

The 8 of September then followed, and when Marshall Badoglio announced the Armistice, the Italian People got rid of the leaden weight which had oppressed it for twenty years as well as of the totalitarian slavery.

There were no limits to the rejoicing of the Italian people in having reconquered its freedom, although this was obtained by severe misfortunes to the whole country.

After this Marshall Badoglio declared war to Germany and the whole

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Our connection with the Allied must now be cleared once for all and every promise made by the London Wireless and by those men who dire= ctly represented the Government must now find an equitable and just solution.

Why still punish the Italian people after such a considerable tribu= te given to Liberty's cause ? If it be true that faults are cancelled

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trough the expiation of a penalty, then Italy has most cruelly suf= fered from it.

The peaceful life in common of the people is based on Right and Justice.

Nowadays, after having been given the promise that the integrity of our frontiers was to be kept, it seems that Italy is to be mutila= ted of its National territory. We are nowadays to be divested of e= verything, reparations are asked for, our Colonies are wanted.

Will it ever be possible to attain a real peace through these metods of spoliation ? The Italian people has kept its word to free inself from Fascism, it has fought at the side of the Allied with every effort, se as to return among free peoples. It now avaits that the promises given by the Allied be kept, while it addresses the warmest thanksgivings to Unite States and to England for food and raiment given to Italian populations in this awful scourge which has befallen our Country.

May I be allowed to point out now to the victors that every pro= mise is a debt ? Nothing must be taken from Italians, who will now and always be thankful for the act of justice granted to them.

Our connection with Russia is clear, Russia has no need to take any territory from Italy in order to pass it over to Yugoslavia, when it very well knows that Trieste and Venezia Giulia are Italian and have cost us about 600.000 cas alties and 900.000 wounded in the 1915-18 war.

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Russia has a huge territory belonging to it and so many raw mate= rials as to feed half the world. It might therefore very well allow the Slave Emigration and take advantage of its own riches by its work.

Russians are practical men, thus they will be able to understand the situation of an oppressed people. They ought to conciliate us

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without creating noticeable injustices for strategical aims. Rus= sia has strategical scopes and is making use of Yugoslavia as a pawn; it has not acted rightly in chosing Trieste a town which is Italian by tradition as well as for etnographical ans historyeal reasons.

DESTRUCTION OF ITALY AND ABSURD REQUESTS OF DAMAGES

In this war the International Law about respecting the civilian population living in towns has been violated by all the belligerants, be it through measures of retaliation, be it in order to oblige the Home Front to collapse. The destruction of our country through shel= ling has been mostly effectuated after the Armistice, on account of the war having been transferred from the African territory to the Na= tional one.

The Italian population is by no means in condition of paying the reparations some Powers are asking for, on account of the damages it has suffered.

We, whe have had our houses destroyed and our patrimony absconded by Germans, have now to recur, i order to rebuild what we have lost, to those very same S tates which now have taken up the charge of judges.

It is obvioud that the absurdity of reparations in our behalf cannot find anypractical foundation, and that it would not help the

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It is nevertheless true that United States and England have abstained from these absurdities by defending our poverty. We therefore hope that these countriesnwhich are masters of Democracy and Liberty, will go on working for the appeasement of the world, thus helping with material means our people in their restoration work.

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OUR SHIPS AND SOMEBODY'S PRETENSIONS

Our savors shall never allow that our ships, after having fougat for the ideals they had in common with the United Nations, be now considered as a prey of war and delivered to the merchants of retaliations who have divided among themselves the fruits of a victory gained by the merits of somebody else.

Our savors have sacrificed their lives fotr that common ideal, so as to be able to keep these ship which they had saved with such audacity from the German greed.

As our sailors have known how to gain the esteem and the acknowledgement of their value during the period of co-belligerance, they shall also be albls to defend on the Allied's side Peace's ideals in the next future on the service of O.N.U. My advice would be that the ships were to remain to Italy, it being a naval country, ant that United Nations might control for a five years' period the intentions of the fleet. In this way they would avoid waat would be certain if they were made over as war-prey, that is, their wilful sinking.

ITALY AND ITS COLONIES

Tripolitania; Erytrea, Somaliland are expecting the Italians' return, who have civilized them and granted them their welfare. A proof of this will be that their populations feel themselves to be more

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Tripolitania; Erytrea, Somaliland are expecting the Italians' return, who have civilized them and granted them their welfare. A proof of this will be that their populations feel themselves to be more Italian then we ourselves do.

Italians are interested in the work they have produced, they are attached to the soil as the branches are attached to their own tree.

The Colonies have no strategical aims for Italians, nor do these wish for expension: they have an economical function in the field of work.

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If the Allied were to believe in any strategy about or colonial possessions, we are ready to accept military controls for a five years' period, but it is not rightful to take bread and cork from a population of 45 millions of inhabitants.

EAST AFRICA AND THE NEGUS' ASPIRATIONS

The Abessynian Government's aspirations over Italy are absurd, and this for a complex of reasons not to be discussed now. The Abessynian people hopes in the return of Italians bringing to those primitive folks the signs of a large civilisation and of wellbeing. Italians had begun drainage works to better agricolture, they had built a net of roads worthy of the most advanced nations. Moreover their work to the advantage of those backward populations had a sanitary character, building hospitals, ambulatories and other ways of saving the health of populations undermined by the tropical climate, a very difficult healing.

The Abessynian popilation has some rights, it is true, on account of the Fascist aggression, but it must not be allowed to ask Italy for reparations, our country having already spent some billions in the short period of its occupation.

The pretenses of the Negus on Somaliland and Erytrea have no juridical basis at all.

12

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The pretenses of the Negus on Somaliland and Erytrea have no juridical basis at all.

Both those Italian colonies are so well managed and so civilized that they must not be given over to a State whose conditions are still semi-barbarous.

Abessynia, in order to be able to enter the group of civil Nations, still needs civilisation work, which is done by Italians, a work based on activity, on co-operation and on organising ability.

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GREECE AND DODECANESO

This group of islands has also been made over to Italy by, means of international treaties, as a result of our victory over the Turks.

The United Nations have always maintained that Italy, after the Nazi war, was to lose what had been conquered by violence by the Fascist Dictatorship.

Why must therefore those islands be made over to Greece after the creation of life and welfar for those populations, which have been attained by Italian work and capitals ?

ALBANY AND INTERNATIONAL LAW

Albany has suffered Mussolini's aggression, it has however been bettered by dreinages and industrial works.

The Italians have conquered what was impossible to attain by the Albanese themselves, theu have given prosperity to the land itself.

Which is now the motive for Albany taking advantage of the armistical state to prosecute and rob the Italian citizens who have invested their capitals ant their work in enterprises which are all for the best of Albany itself ?

Why are not those harmless citizens protected by International Law against the misdeeds of the Albanese State ?

Declassified E.O. 12356 Section 3.3/NND No. 785616

Nazi war, was to lose what had been conquered by violence by the Fa=scist Dictatorship.

Why must therefore those islands be made over to Greece after the creation of life and welfar for those populations, which have been attained by Italian work and capitals ?

ALBANY AND INTERNATIONAL LAW

Albany has suffered Mussolini's aggression, it has however been bettered by drainages and industrial works.

The Italians have conquered what was impossible to attain by the Albanese themselves, then have given prosperity to the land itself.

Which is now the motive for Albany taking advantage of the armi=sticial state to prosecute and rob the Italian citizens who have invested their capitals ant their work in enterprises which are all for the best of Albany itself ?

Why are not those harmless citizens protected by International Law against the misdeeds of the Albanese State ?

The Fascist aggression had substantially only strategical aims, but Albany has found some advantage in the deeds of the secalled Regimen.

FRANCE AND ITS ASPIRATIONS AGAINST OURSELVES

The present condition of tension between ourselves and the French

Declassified E.O. 12356 Section 3.3/NND No. 785016

people must cease.

We must lay a stone on the past, so that between the Sister Nations there might be that necessary understanding needed after the misfor= tunes which have befallen the Italian and the French peoples.

The French know that the I alian people had been conquered by Fascist Dictatorship, they must admit that the war declared by the Dictator was not approved of by the Italians.

Every one of us was struck by a sense of woe in thinking that our weapons were to be fatalby pointed against our brethersn.

What force had the people ? None ! How could it manage to avoid what unhappily happened ? That is the reason why to-day we must still preserve hate, when only brotherly forgiveness may create that pe= aceful atmosphere of wellbeing among people belonging to the same race and the samefdmily.

When the Italian People was free and able to express its own tendencies, during the 1915-18 war, it did not hesitate to range itself against Germans in order to save France in danger.

Why must now France punish the Italian people by requesting re= parations which include part of its national territories ?

The present moment requires that justice be the foundation of the connection between civilized and peace-lovinf Nations.

Those are the motives requiring that France, made victorious through the help of the Allied, renounce to snatch with the punishing peace those parts ofterritory which are [illegible]

Declassified E.O. 12356 Section 3.3/NND No. 11850 16

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The present moment requires that justice be the foundation of the connection between civilized and peace-lovinf Nations.

Those are the motives requiring that France, made victorious through the help of the Allied, renounce to snatch with the punishing peace those parts ofterritory which are indiscutably Italian.

Comm. GIUSEPPE ALESSI
Via Casilina 33 - tel. 71.300
R O M A

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

Legal 1426

1738

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 933.11

6 September 45

SUBJECT: Legal Jurisdiction.

TO : Chief Commissioner,
Allied Commission,
APO 794.

1. In a case now under investigation by the U.S. CIC it appears that evidence will be produced which will establish that an Italian citizen aided and abetted a U.S. held German prisoner of war to escape. A CIC representative states that he has learned that there is no existing Italian law under which the Italian suspect may be indicted and tried by an Italian tribunal. In view of the commitments made by the Italian Government in the armistice terms to prevent its citizens from committing acts against the Allies, it is believed that the information received by the CIC must be erroneous. It is the opinion of this section that in spite of the allied policy to the contrary, that trial by AMG court is still permissible. However the undesirability of such action is obvious.

2. While it is possible that the evidence, which is not yet in hand, may show that falsification of documents is involved and that the Italian citizen might be indicted therefor, such indirection to secure punishment for the offense of assisting a POW to escape is an undesirable method of approach. It is recognized that the partial information herein furnished is a meager basis for a legal opinion but it is hoped that it will suffice. The U.S. authorities are most desireous that if and when the suspect is turned over to Italian authorities that he shall not escape trial because of a lack of jurisdiction by Italian courts.

3. Request you report whether in your opinion the Italian courts are prepared to assume jurisdiction in such cases. If jurisdiction does not exist at present it is most desirable that action be taken to assure that Italian courts may assert jurisdiction in cases of Italian citizens who may commit offenses of the nature indicated.

SEP 10 1946

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. HAMBLEN
Colonel, C.S.C.
Assistant Chief of Staff, G-5.

See p. 177A

Declassified E.O. 12356 Section 3.3/NND No. 785016

4006

Ministero di Grazia e Giustizia
GABINETTO DEL MINISTRO

Cons. Pisapia Le trasmetto l'unita copia relativa a Zucca Rita secondo quanto comunicato.

Borelli

(Translation)

Dear Pisapia, herewith attached copy of letter received from in the case of Rita Zucca.

Signed Borelli

123

PROCURA GENERALE PRESSO LA CORTE D'APPELLO
di ROMA

172A

Prot. 17262 Div. Gab. Roma, 27 agosto 1946

AL MINISTERO DI GRAZIA E GIUSTIZIA - Gabinetto -

ROMA

OGGETTO: Esito processo contro ZUCCA Rita.

Di seguito alla odierna richiesta telefonica, manifesto che con nota 20 corrente n.3052, l'Ufficio del P.M. presso la locale Sezione Speciale di Corte d'Assise, già partecipò a codesto On. Ministero (Direzione Generale Affari Penali) che il giorno precedente - 19 agosto - la Sezione speciale suddetta (Seconda) definendo il processo per collaborazione col tedesco invasore a carico della donna in oggetto menzionata, la prosciogliева per amnistia.

La Zucca non venne per altro escarcerata, dovendo rimanere a disposizione del Comando Alleato al quale, come al Procuratore presso il Tribunale Militare in sede, venne partecipato, contemporaneamente, l'esito processuale di che sopra.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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IL PROCURATORE GENERALE DELLA REPUBBLICA
F/to Rubbiani

LEGAL [illegible] COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
AUG 30 1946	

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

T R A N S L A T I O N

"Procura Generale, Court of Appeal - R O M E -"

Reference No. 17282 Div. Gab.

Rome 27 August 1946.

To : The Ministry of Pardon and Justice
R O M E

SUBJECT : Trial against Rita ZUCCA (Axis Sally).

Pursuant to our telephone conversation of today, I inform you that the Prosecutor of the local Special Section of the Court of Assize has advised your Ministry (General Director of Penal Affairs) with letter No. 3053 of 20 August 1946, Section No. 2 of the Special Court of Assize has acquitted on 19 August 1946, the above mentioned accused, in view of the amnesty decree.

The accused, who is at disposal of the Allied Authorities has not been released.

The Allied Authorities as well as the Procuratore Generale of the Military Tribunal have been accordingly informed.

Signed

Il Procuratore Generale
della Repubblica

f/to RUBBIANI

Translator's note:

Letter does not state which Allied Authorities were informed.

12

Declassified E.O. 12356 Section 3.3/NND No. 785016

ILB

Legal S/C

4005

141A

Ref. : 5609/315/SC 10 September 1946.

SUBJECT: S/S "ROX".

TO : The Venezia Giulia War Booty Committee,
c/o A.M.G.
XXXI Corps.

1. I enclose for your information a copy of communication No. 6/3037/1192 dated 4 September 46 from the Italian Ministry of Foreign Affairs to this Commission on this subject.

2. I would be grateful if you would advise me if this vessel has come up before your Committee for disposal and if so, with what result.

For the Chief Commissioner:

M. S. LUSH

Brigadier,
Executive Commissioner.

Encl : as above.

Copy to: U.S. Embassy
British Embassy
Navy S/C
Legal S/C.

LEGAL SECTION ALLIED COMMISSION
CHIEF LEGAL ADVISER
DEPUTY CHIEF LEGAL ADVISER
CHIEF COUNSEL
STAFF OFFICER
ITALIAN SECTION
MEMBERS REVIEW BOARD
SEP 11 1946

12

2289

Declassified E.O. 12356 Section 3.3/NND No. 785016

Copy

Copy

MINISTRY OF FOREIGN AFFAIRS
6/3057/1192

RESTRICTED FOR USE OF ALLIED OFFICIALS ONLY

1. The "ITALIA" Shipping Company has informed the Italian Government that the Yugoslav Government have announced through the Belgrade Official Gazette n.90 dated June 21st, that the liner "REX" is to be considered a warprize and therefore requisitioned.

2. The m/n liner lies aux in waters east of the Morgan line, off Cape Kiritin. However, owing to the fact that all waters around Venezia Giulia are Italian, whoever the temporary occupant of the land may be, it appears that the Yugoslav claim should be considered illegal.

3. It is to be pointed out that for some time the Yugoslav have been systematically stripping the liner "REX".

4. The Italian Government wishes to make it clear that they reject any admission of such groundless claims, and denounce any past, present or future direct action on the part of the Yugoslav Authorities. The Ministry for Foreign Affairs would be grateful if the Allied Commission could take up the question with the A.M.G. Authorities in Trieste.

Rome, September 4th, 1946.

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

FILE
110A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

AC/4005/L. GGH/rm.
9 September 1946.

SUBJECT : S.E.C.I. & C.N.S.I.E. etc.

TO : Civil Affairs Branch M.E.L.F.
(Attn. Major T.D.E. KIMPTON).

1. Reference your 11144/A/28/6A of 2 September.

2. This matter will take a certain amount of investigation before the actual position of S.I.E.N. can be accurately ascertained.

3. As you are aware the status of concerns similar to that of S.E.C.I. and even of foreign firms created with Italian capital is sometimes difficult to establish, even through the channels at our disposal.

4. However we expect to be in a position to give the information you require before the end of the month or early in October.

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

No.11144/A/28/9A

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

2nd September, 1946.

H.Q. Allied Commission,
Legal Sub-Commission,
A.P.O. 794,
ROME.

SUBJECT:- Societa Elettrica Coloniale Italiana -
Societa Nazionale per le Svilluppo delle
Impresse Elettriche.

I am directed to seek your assistance in the re-consideration by this Branch of a decision taken by it that Societa Industrie Elettriche Rode (S.I.E.R.), a company with a monopoly for the supply of electricity in the Dodecanese was a para-statal institution.

2. It was held so to be because over 81% of its issued shares were held by Societa Elettrica Coloniale Italiana (S.E.C.I.) a concern which had itself after some dubiety been considered para-statal.

3. The Italian Representative in London has now raised with the F.O. the question of the correctness of our decision about S.I.E.R.

4. He states

(a) S.E.C.I. is controlled by Societa Nazionale per lo Svilluppo delle Impresse Elettriche (S.N.S.I.E.)

(b) S.N.S.I.E. is in its turn by Societa Adriatica di Elettricita of Venice (S.A.E.V.)

5. It is contended on behalf of S.I.E.R. that both S.N.S.I.E. and S.A.E.V. are private concerns and that accordingly S.I.E.R. has been improperly ruled to be para-statal.

6. I understand that S.N.S.I.E. has its seat in Milan, Via Diaz No.1.

I should be grateful if you would let me know

Declassified E.O. 12356 Section 3.3/NND No. 785016

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6. I understand that S.N.S.I.E. has its seat in Milan, Via Diaz No.1.

7. I should be very grateful if you would let me know whether either S.N.S.I.E. or S.A.E.V. has been or should be deemed to be para-statal in order that we may either confirm or reverse the previous decision on S.I.E.R.

8. I should perhaps mention that it has been suggested to us that S.N.S.I.E. is not in fact absolutely controlled by S.A.E.V. but jointly is with the Banque pour Entreprises Electriques of Zurich. Should, therefore, you have any information to suggest that this latter is not a bona fide Swiss concern I should be grateful if you would let me know.

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
SEP 5 - 1946	

T. D. B. Kimpton

(T.D.B. KIMPTON)
Major,
for CHIEF SECRETARY.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

2293

1007

HEADQUARTERS ALLIED COMMISSION
APO 794
Office of the Executive Commissioner

169A

Ref. : 3609/309/22 4 September 1946

SUBJECT: M/V 'Nitta' di Varnola'.

TO : The Venezia Giulian War Booty Committee
c/o MG
13 Corps.

1. I enclose for your information a copy of memorandum No. 6/2309/1472 dated 27 August 1946 from the Italian Ministry of Foreign Affairs to this Commission on this subject.

2. As this vessel is in Zone "A" it cannot be claimed as War Booty by the Yugoslav Authorities unless it has been awarded by your Committee.

3. I do not know whether the Yugoslav Authorities, during their occupation of Trieste, took any steps in accordance with Maritime International Law to take over this vessel or whether they, at that time, declared it officially a War Prize.

4. I would therefore be grateful if you will advise me if this vessel has come up for disposal and if so with what result.

FOR THE CHIEF COMMISSIONER:

W. S. [illegible]
Brigadier,
Executive Commissioner.

Encls. as above.

Copy to: U.S. Embassy
Br. "
Navy S/C
Legal S/C

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	
DEPUTY CHIEF LEGAL ADVISOR	
CHIEF COUNSEL	
[illegible] OFFICER	
[illegible] SECTION	S.C.
MEMBERS REVIEW BOARD	

2294

Declassified E.O. 12356 Section 3.3/NND No. 785016

ANNEX 4

AIDE-MEMOIRE DELLA AMBASCIATA D'ITALIA

AIDE-MEMOIRE FOR THE ALLIED COMMISSION

SUBJECT: M/S "Città di Marsala".

1. According to a report received from the Ministry of Merchant Marine, the Steamship Company "Tirrenia", owner of the M/S "Città di Marsala", has informed that Yugoslav Authorities have declared that the ship is to be considered a war prize. This is confirmed by the enclosed excerpt of the Belgrade Official Gazette dated June 7th, 1946.

2. It is to be pointed out that the ship in question is out of the Yugoslav territorial waters as it has been docked for repairs in Trieste since October 1942. The same is registered in the naval register of Palermo and is the property of a company whose offices are out of Venezia Giulia's territory.

3. As the capture of the ship implies a taking of possession on the part of the Yugoslav forces, it is not understood on what grounds is based the Yugoslav claim. The fact that Trieste was first occupied by Yugoslav forces is of no relavent importance in as much as the territory of the "A" Zone has been evacuated and subsequently occupied by the Allies. The Yugoslav authorities, therefore, can in no way claim a symbolic seizure of the ship.

4. The M/S "Città di Marsala" has been, moreover, uninterruptedly owned by the Tirrenia Company and this is proved by the fact that the Company so far has been effecting the necessary repairs on the ship.

5. The admission of such a preposterous claim is to be rejected by the Italian Government not only because groundless, but also because, should the claim be recognised by the Allied Authorities, it would constitute a dangerous precedent for all Italian vessels which were in Trieste at the moment of the Slav occupation.

6. Herewith enclosed is a translation of copy of letter dispatched by the "Tirrenia" to the Ministry of Merchant Marine.

7. The Ministry for Foreign Affairs would be much obliged to the Allied Commission for all the urgent steps they may deem necessary to take on the matter.

Rome, August 27th 1946.

fol 77

1:5

Encl:

2295

Declassified E.O. 12356 Section 3.3/NND No. 785016

COPY

Translation

COPY

"ZINGONIA"
Soc. Anonima di Navigazione

Napoli, 3 agosto 1946.
Via S.Maria in Portico,58

Oggetto: M/n "C.MARSALA" Preda bellica.
No. 757/SA/171

Spett. Direzione Generale - Marina Mercantile
Div.III - Uff.Noleggi
ROMA

e per conoscenza:

ISPETTORATO SERVIZI MARITTIMI
ROMA

Our Branch-Office in Trieste has advised us that the Jugoslav Government, with sentence passed by the Tribunal for Maritime War Prizes, have declared the S/S "Citta di Marsala" a war prize.

Herewith enclosed the translation of an excerpt of the sentence which appeared in the Official Gazette of Belgrade No.46 of June 6th 1946.

As you are aware, the s/n ship is docked for repairs in Trieste since October 17th 1942. Such repairs, which were suspended owing to circumstances, are now to be resumed.

The following repairs are now to be undertaken:

1) repairs to the hull to be effected in dry-dock, repairs which are already under way;

2) installation of the main engine, which is now en route from Legnano;

3) general overhaul of all auxiliary engines and fittings.

We beg to submit therefore the following suggestions:

1) to effect those repairs necessary for the floating of the ship;

2) send the main engine to Venice instead of Trieste;

3) examine whether is convenient to fit up the ship into seaworthy conditions.

Declassified E.O. 12356 Section 3.3/NND No. 785016

COPY

Translation

COPY

EXCERPT FROM THE OFFICIAL GAZETTE OF BELGRADE
No. 46 - June 7th 1946

SHIPS DECLARED WAR PRIZES		DATE AND NUMBER OF SECTION
Vessel type		
"C.MARSALA" passenger	16/5/46	25/46/4

Representative of the Ship

Dr.Bruno Jelicich-Split

Declassified E.O. 12356 Section 3.3/NND No. 785016

File
4005

168A

OGGETTO : Importazione di orologi dalla Svizzera da parte dell' "Army Exchange Service, United States Army".

AL : Ministero delle Finanze, R O M A.

1. Si certifica, con la presente, che gli orologi di cui alla sottoelencata lista, importati dalla Svizzera, da parte dell'Army Exchange Service, United States Army, sono di proprietà di detta forza armata americana e sono destinati esclusivamente all'uso degli appartenenti alla forza di cui sopra.

2. La persona incaricata per il ritiro della partita in questione sarà munita di delega rilasciatagli dal suddetto Ente e di un apposito documento di riconoscimento.

3. Si prega pertanto di volere impartire nelle sedi competenti disposizioni affinchè l'operazione di sdoganamento venga effettuata senza l'addebito di alcun diritto doganale.

(Marche)	(Quantità)	(Peso)		(Fr.Sv.)	(Valore)
Art. No. Marking	Quantity	Weight Kg N/G		Swiss Francs	VALUE Lire
10010 [illegible] 5000/1	2 cases(1400 watches)	121.0	.230	113100	5652825
10011 JI 12801	1 case (50 watches)	15.4	.050	1183	52640
10012 VC 10720	1 case (50 watches)	14.3	.0917	2274	177200
10013 IS 3241	2 cases (100 watches)	18.0	.164	6600	341550

C.O. HAMMARSKJOLD,
Lt. Colonel.
Deputy Chief Legal Advisor.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE 167A

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

MT/ns
27 August 1946

AC/4005/L

SUBJECT : Cargo of Coal in S.S. "Prometheus" lying sunk in S.Andrea, Trieste.

TO : S.C.A.O. (Attn: Chief Legal Officer)
AMG, XIII Corps.

1. I enclose herewith a letter, together with its four original enclosures, from Avv. Mario Faretra of Trieste regarding a cargo of coal in the holds of the ship S.S. "Prometheus" at present lying sunk at quay N° 61 in the port of S. Andrea di Trieste, and alleged to be the property of his client Sig. de Guarrini.

2. From the enclosed documents it appears that the Arsa Mining Company consigned a cargo of 2479 tons of its coal to Trieste in the S.S. "Prometheus", and that during the unloading at a wharf in Trieste the ship was sunk. The owners of the cargo, the Arsa Company, on 26 March 1945 sold 2479 tons of coal in the ship to Sig. Giuseppe de Guarrini of Trieste who received authority from A.M.G. to recover the coal and take it away. The recovery of the cargo had begun when a claim to it was made by the Greek Delegation.

3. Before taking any action in the matter it would be appreciated if this Sub-Commission could be supplied with all the information in your possession regarding the whole transaction, and particularly relating to anything done by AMG' authorities (See enclosure 2, letter from A.M.G. to Sig.Guarrini dated 28 February 1946.)

4. Please return the original letter and four enclosures with your reply.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

167B

Col. Hannaford.

These papers were brought to me by Mr Pesapia on 20 Sep on the instructions of Jean the day he left.

I have looked carefully into all the documents AMG have clearly recognised Mr Guarnieri as the legal owner of the cargo (Instr. d. of 28/2/46)

x
The copy has been sent

Unfortunately there is a x Court Order preventing the recovery of the cargo. The claim by the Dutch Bank of ... has held up the removal of the cargo for a year: the ships at work at one of the quays, & it is obvious that there is an urgent need to take out the coal, and remove the ships so that the quay can be made use of.

Declassified E.O. 12356 Section 3.3/NND No. 785016

AMG have [illegible]

owner of the cargo (Inst. d. 28/2/46)

x
No copy but been sent

Unfortunately there is a Court Order preventing the recovery of the cargo. The claim by the Greek Delegation has held up the removal of the cargo for a year: the ship is sunk at one of the quays, & it is obvious that there is an urgent need to take out the coal, and remove the ship so that the quay can be made use of.

I think AMG in Trieste should take immediate steps to remove the vessel to allow the quay to be made use of; they can do this by allowing De F. to remove his cargo, subject to an undertaking that he will abide by any future decision of a Court (if any) as to the ownership of the coal. The Greek Govt. can prefer a claim in a Court, if they think fit. They have behaved in a truly Greek manner, forcing De F. to go to Court and then turning round and denying the right of

Declassified E.O. 12356 Section 3.3/NND No. 785016

of the Court to adjudicate.

The question involves certain difficulties in view of an existing order in the nature of a sequestration, & requires careful consideration.

Would you kindly read the documents. I would like to discuss the matter with you.

Yours

27 Aug.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

2306

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1660

AC/4065/1 27 August 1946

SUBJECT : Black Market in Sicily.

TO : Navy Sub Commission.

1. Reference your R° F.O.L.I. 944/7 of 20 August 1946.

2. This Sub-Commission will be happy to advise on the question raised in para 3 of the Minute enclosed in your letter, but, as the matter relates to territory already restored to the administration of the Italian Government, further information is necessary. This Sub-Commission would like to be informed, with as much detail as is possible, of the facts and circumstances under which the Service articles in question have come to be confiscated, and in particular whether or not the confiscation has taken place pursuant to an order of an Italian criminal or civil Court.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

x 805

BLACK MARKET IN SICILY.
(Rear Admiral, Malta's Minute II No.633/, dated 11th August, 1946).

III.

No.F.C.L.I.944/7.

THE LEGAL SUB COMMISSION,
H.Q. ALLIED COMMISSION.

Your remarks on paragraph 3 of Minute I would be appreciated.

for REAR ADMIRAL.

CHIEF OF STAFF
20th August, 1946.
DEPUTY CHIEF OF STAFF
POLITICAL ADVISER
LEGAL COUNSEL
FINANCIAL OFFICER
ITALIAN SECTION
ARMISTICE TERMS REVIEW BOARD
AUG 23 1946

27

Declassified E.O. 12356 Section 3.3/NND No. 785016

BLACK MARKET IN SICILY.
(The Resident Naval Officer, Taormina's No. 279/GB of 25th July, 1946).

II.

Malta No. 633/
FLAG OFFICER LIAISON, ITALY.
(Copy to:-
The Resident Naval Officer, Taormina).

I should be grateful for your remarks on paragraph 3 of Minute I.

2. Under the customs regulations current in the United Kingdom such items would normally be destroyed on confiscation and it would in any case appear that the Service authorities can claim no say in the disposal of articles confiscated from civilians under local civil laws.

3. It is possible, however, that similar cases may have come to the notice of the Allied Commission previously, and that instructions may have been issued already to cover this eventuality.

(M.H.A. KELSEY)
REAR ADMIRAL.

11th August, 1946.

FLAG OFFICER LIAISON ITALY
Date 16 AUG 1946
No. M. 3/54/44
ROME

SUBJECT ... BLACK MARKET IN SICILY.

FROM ... RESIDENT NAVAL OFFICER, TAORMINA.
DATE ... 25th July 1946. Ref. 279/CB.
TO ... THE REAR ADMIRAL, MALTA.

165A

The Naval Patrol have reported to the Resident Naval Officer, Taormina, that a large quantity of Service articles such as tobacco, clothing etc., has over a period of time been confiscated by the civil police in Messina.

2. As such information was not volunteered by the civil police, it is considered desirable that they should be instructed to hand over such articles to the Resident Naval Officer, Taormina, after taking civil action in accordance with their laws.

3. The Resident Naval Officer, Taormina, requests instructions as to the disposal of such confiscated goods, and points out that it is understood that the quantities are too great to issue to ratings as amenities.

4. A full report as to how such articles reach Sicily will be made on confirmation of suspicions.

633/

LIEUTENANT R.N.V.R.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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633/
31 JUL 1944
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RESIDENT NAVAL OFFICER
LIEUTENANT R.N.V.R.
TAORMINA

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Declassified E.O. 12356 Section 3.3/NND No. 785016

1004 Telex re Rita Zucca ? File

164A

INFORMATION RELATING TO THE CASE OF RITA Z U C C A

Rita ZUCCA was convicted by an Italian Military Tribunal on 29 September 1945 to 4 years and 5 months imprisonment for collaboration.

On appeal the Supreme Military Tribunal of Rome has declared that it had no jurisdiction over the case which was therefore referred to Section Nº 2 of the Special Court of assize Rome for re-trial. (Date of Decision: 8 March 1946.)

Section nº2 of the Special Court of Assize Rome acquitted ZUCCA for Amnesty on 19 August 1946. (see attached memo)

The accused is at present being held at the disposal of the Allied authorities in the REGINA COELI PRISON, - WOMEN SECTION, via DELLE LONGARA, ROME. ORDER to keep ZUCCA at the disposal of the Allies was given by G-2, RAAC, telephone Nº 56402.

Copy of Amnesty Decree in English is attached as well as the translation of the following legislation :

1. Art. 58 of the Military Penal Code of War.

2. Arts. 152 and 479 of the Code of Penal Procedure.

3. Art. 5 of D.L.L. 159 of 27 July 1944.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Section nº2 of the Special Court of Assize Rome acquitted ZUCCA for Amnesty on 10 August 1946. (see attached memo)

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2. Arts. 152 and 479 of the Code of Penal Procedure.

3. Art. 5 of D.L.L. 159 of 27 July 1944.

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ORDERS OF THE COURT FOR APPLYING THE PROVISIONS OF THE AMNESTY DECREE

Having considered Arts. 3 and 11 of Presidential Decree No. 4 of 22 June 1946, Arts. 15 and 151 of the Pen l Code, Art. 5 of .L.L. No. 159 of 27 July 1944, Art. 56 of the Military Penal Code of War; Arts. No. 152 and 479 of the Code of Penal Procedure

THE COURT

quashes the previous sentence imposed against the accused for collaboration with the enemy and orders that the offence in the case of Pesa LUCCA Luisa di Costantino be extinguished by virtue of the Amnesty Decree.

The prisoner is to be immediately released if not held by any other lawful cause.

Rome, 19 August 1946.

Signed

Salvatore GALLETTI
President of the
Section of the Special
Court of Assize.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Rome, 19 August 1946.

Signed

Salvatore GALANTI
President of the
Section of the Special
Court of Assise.

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MILITARY PENAL CODE OF WAR
Art. 58

Assisting the enemy in his political plans.

Any person who, in any part of the State territory, invaded or occupied by the enemy, favours the political plans of such enemy, or commits an act intended to lessen the loyalty of the citizens towards the Italian State, shall be punished with penal servitude from ten to twenty years.

CODE OF PENAL PROCEDURE
Art. 152

Obligation to declare immediately certain causes of non-punishability.

At every stage and in every degree of the proceedings a Court which finds that the facts charged never took place or that the accused did not do it, or that the law does not regard it as an offence, or that the offence is extinguished, or that a criminal action cannot be begun or cannot be continued must of its own motion so declare in its judgement.

When a cause of extinction of the offence appears, but there is also evidence which makes it clear that the fact never took place or that the accused did not do it, or that the fact is not regarded by the law as an offence, the Court gives judgment on the merits, acquitting the accused in the form prescribed.

Art. 479

Discharge for other reasons.

Apart from the case envisaged in the last preceding article, if the act never was done, if the accused never committed it,

Declassified E.O. 12356 Section 3.3/NND No. 785016

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When a cause of extinction of the offence appears, but there is also evidence which makes it clear that the fact never took place or that the accused did not do it, or that the fact is not recorded by the law as an offence, the Court gives judgment on the merits, acquitting the accused in the form prescribed.

Art. 479

Discharge for other reasons.

Apart from the case envisaged in the last preceding article, if the act never was done, if the accused never committed it, or if the person concerned is not chargeable, or not punishable because the act does not constitute a crime or for some other reason, the Court pronounces judgment of acquittal, giving the reasons therefore in the operative part.

The Court pronounces judgment of acquittal for non-existence of the fact or because the accused never committed it, as well in the case where there is evidence that the act never was done or that the accused never committed it, as in the case where evidence is wholly wanting that the act was ever done or that the accused committed it.

If there is not enough evidence to convict, the court pronounces judgment of an acquittal because of insufficiency of evidence.

If the offence has been extinguished, if criminal proceedings could not have been initiated, or if criminal proceedings could not have continued, the Court pronounces judgment whereby it

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Declassified E.O. 12356 Section 3.3/NND No. 785016

declares that the case ought not to proceed, setting out the reason in the operative part.

When necessary, the Court orders the release of the person acquitted and the cessation of accessory punishments provisionally applied.

By the judgment there is ordered the cessation of measures of security already applied provisionally and which have to be revoked in consequence of the acquittal, and there are applied those which the court thinks it should order under the Penal Code.

Article 5 of D.L.L. 159 of
27 July 1944

Any person who, after 8 September 1943, has committed or shall commit crimes against the safeguard or military defence of the State, by giving aid or assistance to the German invader, in any form of intelligence, correspondence or collaboration, shall be punished in accordance with the provisions under the Military Penal Code of War.

The penalties established for members of the Armed Forces shall apply also for non military personnel. Members of the Armed Forces shall be tried by Military Tribunals.

Non military personnel shall be tried by ordinary Courts.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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12 -

Roma, 7 AGO. 1946 1634

Presidenza del Consiglio dei Ministri

UFFICIO STUDI E LEGISLAZIONE

77477/30512/1.1.26

Caro Colonnello,

mi riferisco alla Sua cortese comunicazione del 30 luglio scorso (AC/4005/L), riguardante la entrata in vigore dei decreti legislativi del Governo italiano nel territorio della provincia di Udine.

L'inconveniente da Lei prospettato nasce dal fatto che, per la provincia di Udine, le Autorità Alleate hanno introdotto al riguardo un sistema opposto a quello accolto per le altre provincie a suo tempo soggette al Governo Militare Alleato. In queste ultime i provvedimenti italiani entravano in vigore per effetto delle apposite ordinanze di esecutorietà, emesse, di volta in volta, dall'A.M.G.; ed in relazione a tale congegno, venne concordata con la Commissione Alleata la nota clausola da inserire nei singoli provvedimenti per distinguere la entrata in vigore di essi nei territori già restituiti all'Amministrazione italiana ed in quelli ancora soggetti all'A.M.G. Nella provincia di Udine, invece, l'A.M.G. interviene unicamente per modificare o sospendere, in tutto od in parte, le disposizioni del Governo italiano

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Ora, quando nei provvedimenti italiani venga ancora inserita la clausola surricordata, può sorgere il dubbio, attraverso

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Al Sig.
G.G. Hannaford
Lt. Colonel
Deputy Chief Legal Advisor
Headquarters Allied Commission
A.P.O., 794
Legal Sub Commission = R o m a =

Declassified E.O. 12356 Section 3.3/NND No. 785016

una interpretazione puramente letterale, che essi non entrino in vigore nella provincia di Udine, in mancanza della ordinanza di esecutorietà, che la clausola stessa espressamente prevede. Sarebbe, peraltro, agevole sostenere che tale non è l'intenzione del legislatore e che il generico riferimento ai territori non ancora ritornati all'Amministrazione italiana non riguarda la provincia di Udine, per la quale vige la disposizione contenuta nel n. 2 della Ordinanza Alleata 19 gennaio 1946 (pubblicata nella Gazzetta Ufficiale n. 21, del 25 gennaio 1946). Tale ordinanza, infatti, stabilisce, per tutti i decreti pubblicati nella Gazzetta Ufficiale del 1° dicembre 1945, n. 144, e nei numeri successivi, la stessa data di entrata in vigore prevista per i territori amministrati dal Governo italiano, senza che l'A.M.G. debba emanare un'apposita ordinanza in tale senso.

Tuttavia, convengo pienamente con Lei che in un campo così delicato, come quello che investe la efficacia stessa delle norme giuridiche, si rende indispensabile eliminare ogni possibile incertezza.

A mio avviso, la soluzione più semplice consisterebbe nel=

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vigore nella provincia di Udine, in mancanza della ordinanza di esecutorietà, che la clausola stessa espressamente prevede. Sarebbe, peraltro, agevole sostenere che tale non è l'intenzione del legislatore e che il generico riferimento ai territori non ancora ritornati all'Amministrazione italiana non riguarda la provincia di Udine, per la quale vige la disposizione contenuta nel n. 2 della Ordinanza Alleata 19 gennaio 1946 (pubblicata nella Gazzetta Ufficiale n. 21, del 25 gennaio 1946). Tale ordinanza, infatti, stabilisce, per tutti i decreti pubblicati nella Gazzetta Ufficiale del 1° dicembre 1945, n. 144, e nei numeri successivi, la stessa data di entrata in vigore prevista per i territori amministrati dal Governo italiano, senza che l'A.M.G. debba emanare un'apposita ordinanza in tale senso.

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A mio avviso, la soluzione più semplice consisterebbe nell'astenersi, per l'avvenire, dall'inserire nei decreti la clausola in questione. Penso, infatti, che non sussistano attualmente le ragioni che a suo tempo determinarono l'adozione di detta clausola, inquantochè, mentre nella provincia di Udine i provvedimenti entrano automaticamente in vigore per effetto della loro pubblicazione nella Gazzetta Ufficiale (salvo diversa disposizione dell'Autorità Alleata), per la Venezia Giulia non hanno applicazione le disposizioni della Commissione Alleata e dell'A.M.G. concernenti la

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Presidenza del Consiglio dei Ministri

UFFICIO STUDI E LEGISLAZIONE

esecutorietà dei provvedimenti del Governo italiano.

Per quanto riflette i decreti già pubblicati dopo il 1° dicembre 1945 e contenenti la clausola anzidetta, potrebbe provvedere lo stesso A.M.G. a precisare con apposita ordinanza, da pubblicarsi nella Gazzetta Ufficiale, che essi sono da considerarsi in vigore nella provincia di Udine dalle stesse date in cui entrarono in vigore nelle altre provincie italiane.

In attesa di un Suo cortese cenno di conferma al riguardo, colgo l'occasione per chiederLe ogni possibile elemento informativo sul regime giuridico del territorio della Venezia Giulia soggetto all'A.M.G., in relazione al fatto che l'Avviso del Governo Militare Alleato in data 26 giugno 1945, pubblicato nella Gazzetta Ufficiale n. 80, del 5 luglio 1945, non contiene precisazioni al riguardo.

Mi rivolgo pure alla Sua cortesia per conoscere se per le ordinanze del Commissario provinciale di Udine, per la eventuale sospensione o modifica dei decreti italiani, sia prevista la pubblicazione nella Gazzetta Ufficiale. In proposito, sono indotto

Per quanto riflette i decreti già pubblicati dopo il 1° dicembre 1945 e contenenti la clausola anzidetta, potrebbe provvedere lo stesso A.M.G. a precisare con apposita ordinanza, da pubblicarsi nella Gazzetta Ufficiale, che essi sono da considerarsi in vigore nella provincia di Udine dalle stesse date in cui entrarono in vigore nelle altre provincie italiane.

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Mi è gradito, caro Colonnello, esprimerLe i sensi della mia più viva considerazione.

Suo

A. Tomasini

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

FILE 2nd FLOAT 1624 F

MEMO to Colonel FISKE.

The question of liability of the Italian Government for the acts of the guard de Rubertis is passed on in the attached opinion by Judge Thomas which has been approved by the Legal Sub Commission. It is hoped it will be of some value in the other cases.

If we can of further assistance, please command us.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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OPINION of JUDGE THOMAS.

Owing to the shortage of Military Police a number of Carabinieri were transferred for service with the R.A.A.C. for the purpose of guarding the motor-vehicles at the Message Centre. They were duly instructed by the O.C. of the Signal Service Company that each carabiniere was to guard the particular vehicle to which he had been assigned as guard and allow no one else to touch it except its appointed driver.

In the particualr case under consideration a jeep returned to the Message Centre; its driver went inside for fresh orders, leaving the vehicle in the charge of its guard, Carabiniere de Rubertis. A few minutes later an American soldier, not the driver of the vehicle, came out of the office into which the driver had gone, told the guard he had spoken to the driver, said he would be back immediately, drove the jeep away, and never returned.

It is clear that the theft of this jeep was the direct result of the negligence of the guard de Rubertis in acting contrary to the specific orders he had received by allowing a person other than the allotted driver to take the vehicle, and for the loss occasioned by his negligence the guard is undoubted personally liable.

The 14 carabinieri, with a Brigadiere in [illegible] transferred for duty with the Signals;

Declassified E.O. 12356 Section 3.3/NND No. 785016

to guard the particular vehicle to which he had been assigned as guard and allow no one else to touch it except its appointed driver.

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It is clear that the theft of this jeep was the direct result of the negligence of the guard de Rubertis in acting contrary to the specific orders he had received by allowing a person other than the allotted driver to take the vehicle, and for the loss occasioned by his negligence the guard is undoubted personally liable.

The 14 carabinieri, with a Brigadiere in charge, when transferred for duty with the Signal Service Company were billetted by that unit and carried out their duties in obedience to its orders. Being under the control and subject to the orders of the Signal Coy their acts became those of the Allied Forces. The question arises as to whether the negligence of the guard can be extended to the Italian Government so as to make it liable in addition to the guard. If such liability can be extended, it must be by operation of law, by the fiction of agency, or by contract.

We are unaware of any provision of law or any regulation that imposes a liability on the Italian Government in the circumstances.

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On the question of agency there is nothing in the facts submitted that would justify holding that the guard de Rubertis was acting as an agent of the Italian Ministry of War; on the contrary the facts indicate that he was an agent of a unit of the Allied Forces under whose control and orders he was carrying out his duties.

As regards liability under cintract this could not arise if there were an obligation in the nature of a guarantee by the Ministry of War that the carabinieri transferred for guard duties were reasonably fit for such duties. There is nothing in the documents to show that there is any such obligation resting upon the Italian Government, and, even if there were, the sworn statement of the Brigadiere in command of the detachment that "De Rubertis is honest and conscientious and has always been one of my best men" conclusively negatives any breach of such hypothetical obligation.

only

This Sub Commisaion is unaware of any legal ground other that those mentioned above upon which the liability of de Rubertis could be extended so as to render the Italian Government liable also, and no such further ground of liability has been put forward.

In the opinion of this Sub Commission the Italian Government is not liable to pay the value of a jeep stolen as a result of the negligence of the carabiniere who was guarding it.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Government, and, even if there were, the sworn statement of the Brigadiere in command of the detachment that "De Rubertis is honest and conscientious and has always been one of my best men" conclusively negatives any breach of such hypothetical obligation.

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In the opinion of this Sub Commission the Italian Government is not liable to pay the value of a jeep stolen as a result of the negligence of the carabiniere who was guarding it.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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Declassified E.O. 12356 Section 3.3/NND No. T85016

Declassified E.O. 12356 Section 3.3/NND No. 785016

FROM: Lt.Col. G.G. HANNAFORD

HQ ALLIED COMMISSION
LEGAL SUB COMMISSION
APO 794

14 August 1946.

Egregio Consigliere,

mi riferisco alle Sue lettere 774777/30512/I.I.26 del 7 agosto 1946.

La ringrazio per la Sua cortese comunicazione e Le confermo che la questione è allo studio presso questa Commissione sulle linee che Ella ha suggerito.

Mi permetto di farle osservare, in ogni modo, che l'omissione dell'articolo in questione e la pubblicazione di un'ordinanza di questa Commissione non risolverebbe completamente la questione. Infatti apparirnno nella Gazzetta Ufficiale provvedimenti legislativi approvati in precedenza e recanti ancora il detto articolo. Come provvedere per questi?

Le sarei ben grato di un suggerimento.

Gradisca i sensi della mia migliore considerazione,

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

Dott. Antonio Sorrentino
Presidenza del Consiglio
Ufficio Legislativo

ROMA

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1607

AC/4005/L

7 August 1946.

OGGETTO : Carico di carbone.

A : Avv. Mario Furetra
P.za. Oberdan 5, TRIESTE.

Con riferimento a Sua memoria in data 3-8-1946 questa Sotto Commissione si pregia informare che la questione da Lei esposta è sotto esame presso questa Sotto-Commissione Legale cui Ella potrà indirizzare eventuali ulteriori esposti.

Si riservano ulteriori comunicazioni.

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

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Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL SUB COMMISSION

1591?

FILE

C O N F I D E N T I A L

AC/4005/L

GGH/ns
30 July 1946

SUBJECT : Courts in Zone A and B.
Enforcement in Zone A of Jugoslav judgments.

TO : Polad (3).

1. The opinion of this Sub Commission in reply to queries made by SCAO Venezia Giulia, are forwarded to you as requested.

2. I personally feel that no political advantage could justify such an "entorse" to existing International Law and custom as suggested in Col. Bowman's letter.

3. Furthermore it is reasonable to expect that the setting up of the new international status of Trieste will not be long delayed and therefore until this is achieved all solutions to the existing problems would be of a temporary nature only.

4. Finally Jugoslav authorities being more interested in arraigning political opponents than in punishing common offenders and the yardstick by which crime is measured being of a very different length and shape on each side of the line, further complications would certainly arise when endeavouring to ascertain who is a criminal and who is a national hero.

5. I should like to know if you concur with the opinion expressed by this Sub Commission.

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6. I understand that both Polads have copies of Col. Bowman's letters.

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

Copy to: Polad (A)
: AFHQ.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1233

PTLB

PTLB 15874

ALLIED MILITARY GOVERNMENT
AEO 754
LEGAL SUB-COMMISSION

AF/rm.
30 July 1946.

AC/4005/L.

OGGETTO : Esclusione dalla esecutorietà di leggi italiane nel territorio sottoposto al Governo Militare Alleato.

A : Dott. MORANDINO
Presidenza del Consiglio dei Ministri
Ufficio Legislativo.

Egregio Consigliere,

le sottopongo con questa mia una questione di ordine generale della massima importanza.

Come Ella sa, per un complesso di ragioni che è inutile ricordare, durante l'Amministrazione del Governo Militare Alleato nel Nord Italia i provvedimenti legislativi emanati dal Governo Italiano non trovavano di principio applicazione nel Nord Italia ed entravano in vigore solo dal visto di esecutorietà di questa Commissione Alleata. Al 1 Gennaio 1946 solo la Venezia Giulia e la provincia di Udine restavano, e sono attualmente, sotto l'Amministrazione Alleata.

Con comunicato pubblicato nella G.U. 25 Gennaio 1946 No. 21 si disponeva che i provvedimenti legislativi emanati dal Governo Italiano entrassero in vigore in Udine alla stessa data senza visto di esecutorietà. Per la Venezia Giulia vige ancora il regime particolare di spetto con avviso in data 26 Giugno 1945 pubblicato nella G.U. 5 Luglio 1945 N. 80.

Questo Ufficio ha notato che molti provvedimenti legislativi portano come ultimo articolo la seguente disposizione:

"Nei territori non ancora ritornati all'amministrazione italiana, il decreto stesso entrerà in vigore alla data in cui esso divenga esecutivo con ordinanza del Governo Militare Alleato". (V. ad es. D.L.L. 8 Maggio 1946 No. 428 pubbl. in G.U. edizione speciale 10 Giugno 1946 No. 133-2).

Non essendo Udine ancora restituita al Governo Italiano

Declassified E.O. 12356 Section 3.3/NND No. 785016

ne consegue che detti provvedimenti non trovano applicazione.

Questa Sottocommissione riceve spesso dagli stessi Ministeri interessati sollecitazioni per l'emanazione del visto di esecutorieta' per l'entrata in vigore della legge.

Mi permetto di far notare che la mancata entrata in vigore di questi provvedimenti e' dovuta esclusivamente a un atto del Governo Italiano evidentemente in contraddizione con i desiderata delle singole Amministrazioni.

Mi ritengo obbligato di portare a Sua conoscenza questa situazione per i provvedimenti del caso.

Con la migliore considerazione.

G.G. HARTFORD,
Lt. Colonel,
Deputy Chief Legal Advisor.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

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[illegible]

OGGETTO : Importazione di orologi della Tiranna da parte dell'Army Exchange Service, United States Army.

AL : Ministero delle Finanze, Roma.

1. Si autorizza, con la presente, che gli articoli di cui alla sottoindicata lista, importati dalla Tiranna da parte dell'Army Exchange Service, United States Army, siano di proprietà di detta Forza Armata americana e siano destinati esclusivamente all'uso degli appartenenti alla Forza di cui sopra.

2. La persona incaricata per il ritiro della merce in questione sarà munita di delega rilasciatagli dal suddetto Ente e di un esemplare dichiarato di riconoscimento.

3. Si prega pertanto di voler impartire nelle vie disposizioni alle autorità doganali di Chiasso, affinchè venga effettuata e le relative bolle vengano firmate.

Art. No.	Marking	Weight Kgs.	N.W.	Value Francs	PAESE Lire
10007	N/7	1(750 watches)	45	0,111	25370	1.251.922
10008	CHY/1987	1(150 watches)	16	0,056	14850	779.846
10020	TOK/295	1(150 watches)	24	0,061	33750	1.770.104

O. G. HAZELWOOD.
Lt.Colonel,
Deputy Chief Legal Adviser.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
AFO 794
LEGAL SUB-COMMISSION

AG/4005/1. 87/pa.
29 July 1946.

SUBJECT : Italian Courts : Zone "A" and "B".

TO : S.C.A.C., 13 Corps.

1. Reference your No. 132/330/130/1940/ID of 11th July 46, addressed to AFHQ.

2. This Sub-Commission does not concur in the view expressed in para 3 that because Italy is still the Sovereign in the two Zones, there should be free intercourse between the Courts. The principles upon which justice is administered in Zone "B" are so divergent from those applying in Zone "A" that we have consistently refused to hand over persons for trial in Zone "B" in the belief that they would not receive a fair trial. A state of war is still existing between Italy and Yugoslavia, and Zone B has technically the status of enemy occupied territory. The request that the records of a certain case heard by the Tribunals of Trieste should be sent for inspection to the Tribunals of the People of Postumia in Zone "B" does not rest upon any right whatever, is contrary to the universal practice which prohibits under any circumstances the removal of original Court Records from the building in which they are preserved, and should not be in our opinion entertained.

3. Requests such as those mentioned in para 2 of your letter and similar requests would be better dealt with seperately as and when they arise. In the opinion of this Sub-Commission the Joint Legal Committee would not achieve the purposes for which it is proposed. Its functions could be only advisory, and it would still be necessary for AFHQ to consider and decide for itself each question in this particular sphere that might arise from time to time.

4. Therefore the answers to both questions submitted in para 6 (a) and (b) are in this Sub-Commission's opinion : No.

[illegible] TICHAS,
Italian Branch,
for Chief Legal Advisor.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

LEGAL

4005

1544
12 Aug

AILIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 933.12

23 July 1946

SUBJECT: Italian Courts - ~~Territories~~ Zone "A" and "B".

TO : Chief Commissioner
Allied Commission
APO 794

1. Herewith are copies of 13 Corps letters 180/1980/LD and 180/1981/LD both of 11 July requesting advice on technical legal matters for necessary action by you.

2. Will you please send copy of your respective replies to this Headquarters.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. I. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

Incl:
as above.

LEGAL SUB COMMISSION	
CHIEF LEGAL ADVISOR	←
DEPUTY CHIEF LEGAL ADVISOR	←
CHIEF COUNSEL	
STAFF OFFICER	
ITALIAN SECTION	
MEMBERS REVIEW BOARD	
JUL 25 1946	

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Declassified E.O. 12356 Section 3.3/NND No. T85016

C-O-P-Y

HEADQUARTERS, ALLIED MILITARY GOVERNMENT, 13 CORPS

Office of the Senior Civil Affairs Officer

REFERENCE No.: 13C/AMG7180/1980/LD Trieste, 11 July, 1946

SUBJECT : Transfer of legal evidence between Zone "A" and "B"

TO : A. F. H. Q. - APO 512
Attention: ACOS G - 5

1.- This Headquarters has been requested by the First President of the Court of Appeals of Trieste for instructions regarding requests for implementation and enforcement of certain judicial acts of the Civil Courts of Zone "B".

2.- Our Civil Courts have been requested for example, "to send for inspection to the Tribunals of the People of Postumia (Zone "B") all the records in a certain action for separation tried by the Tribunals of Trieste".

3.- The legal position appears to be that since Italy is still the juridical sovereign here, there should be free intercourse between the Courts of Zone "A" and "B", and the request should be granted.

4.- However, due to the political situation in Venezia Giulia and the unlikelihood that the Courts of Zone "B" would reciprocate in similar cases, a policy decision by your Headquarters seems to be indicated. Your earlier decision, in the matter of extradition, does not appear sufficiently determinative.

5.- It is conceived that if the above request and similar matters are to be effectively handled it will be necessary to establish and operate a Joint Legal Committee composed of representatives of the Jugoslav Military Government of Zone "B" and of the Allied Military Government, similar in operation to the present Joint Economic Commitee. The function of the Committee would be to consider and act upon all matters of legal intercourse between the two Zones. It seems clear that the formation of such a Committee would have to be directed by a high military, or Governmental level.

6.- The following questions are therefore submitted:

a) shall the request cited in par 2 above be granted?

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b) shall steps be taken to constitute a Joint Legal Committee?

c) if this answer to (b) above is affirmative shall jurisdiction of the Committee be limited to civil matters?

7.- It is appreciated that the events of the last few days may have considerable effect on your views as to the necessity for the action suggested. The questions prescribed are of a long-term nature, have been pending for some time, and it is felt should be presented, considered, and decided early, regardless of the current prospectus for the termination of Allied Military Government here.

/s/ Alfred C. Bowman

ALFRED C. BOWMAN
CCOLONEL J.A.G.D.
SENIOR CIVIL
AFFAIRS OFFICER

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Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

1534

29 July 1946

AC/4005/L.

SUBJECT : Enforcement in Zone "A" of judgments and other process of Courts of Yugoslavia.

TO : S.C.A.O., 13 Corps.

1. Reference your No. 13C/SAC/16Q/1981/LD of 11th July 46 addressed to AFHQ.

2. The questions submitted for opinion must be considered with regard to the present relations between Italy and Yugoslavia and in the light of prevailing conditions in the territories concerned. A state of war still exists between the two contries, and Zone "B" has the status of enemy occupied territory. The Courts in Zone "A" have no power to put into effect an order for the confiscation of the property of a person convicted by a Yugoslav Court. According to the rules of Criminal Procedure now in force in Italy the judgments of the Yugoslav Criminal Courts would probably not be recognised by Italian Courts, and in no case whatever would they be put into effect.

3. It is suggested in para 5 (d) that an order by a Yugoslav Criminal Court for the confiscation of property might be recognised and enforced in Zone "A" "if diplomatic relations existed between the two countries and if the foreign conviction were for a crime analogous to the Fascist or German collaboration offences as recognised by Italian law and by Orders in Venezia Giulia." In the first place diplomatic relations do not exist between the two countries; and secondly, the fact that Italian law allows confiscation of property for the above-mentioned offences is not relevant to the question, seeing that the Italian Courts have no jurisdiction to put into effect a judgment of a criminal court of another state.

4. In the opinion of this Sub-Commission the answers to the questions submitted in para 5 are : "Yes" to 5 (A), and "No" to 5 (B) and (C).

[illegible] TIGLAS,
Italian Branch,
for Chief Legal Adviser.

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N.B. Under International law, when no Treaty of reciprocity exists all Foreign judgments must receive the "exequatur" from the Local Courts before they can be enforced in the country concerned.

Declassified E.O. 12356 Section 3.3/NND No. 785016

COPY

HEADQUARTERS, ALLIED MILITARY GOVERNMENT, 13 CORPS

Office of the Senior Civil Affairs Officer

152A

REFERENCE No.: 13C/AMG/190/1981/LD Trieste, 11 July, 1946

SUBJECT : Enforcement in Zone "A" of Judgments and other process of Courts of Jugoslavia.

TO : A. F. H. Q. - APO 512
Attention: ACOS G-5

1.- This Headquarters has been asked by the First President of the Court of Appeal of Trieste, for instructions concerning implementation and enforcement of certain judicial determinations by the Civil Courts of Jugoslavia and of the Jugoslav Military Government of Zone "B".

2.- The Civil Courts of Zone "A" have been requested to give effect to a sentence imposed by the Tribunals of the People of Pozarevac (Jugoslavia) against one Luigi Valentinoic, by which the accused was sentenced for "crimes against the people" to 20 years imprisonment and confiscation of his property. The request states that the accused has property in the Area of Gorizia which the Tribunals of Gorizia is asked to confiscate in accordance with the sentence.

3.- This request presents problems of both law and policy. The legal position appears to be as follows:

a) Treaties regarding intercourse between the Courts of Italy and Jugoslavia existed prior to the War, and became part of the Law of Italy by R.D., 13 December, 1923, No. 3182. These treaties covered the extradition of persons accused of crime, and the recognition and enforcement of civil judgments and other civil process.

b) The treaties did not include the recognition and enforcement of judgments in criminal cases. This was provided for generally as to all foreign countries by Articles 672 and 675 of the Code ofCriminal Procedure. Briefly, these Articles provide for the recording of foreign criminal judgments upon application to the Court of Appeal. The applications are sent from the Ministry of Justice who receives them through diplomatic channels.

c) Italy is still technically at War with Jugoslavia and so far as is known diplomatic relations have not yet been resumed. Neither

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the treaties nor the provisions of the Code of Criminal Procedure referred to above can, therefore, be applied under present circumstances as principles of law.

d) The confiscation of property as an additional penalty upon conviction of crime has never been recognized in Italy until recently and then only in connection with Fascist and German collaboration offenses. It is definitely contrary to the philosophy and policy of Italian Law. Therefore, even assuming that the above request of the Jugoslav Court had been made while Italy and Jugoslavia were still at peace, it is perfectly possible that the Italian Courts would have refused to give recognition to the sentence.

It is felt that recognition and enforcement might now be given if diplomatic relations existed between the two countries and if the foreign conviction were for a crime analogous to the Fascist or German collaboration offenses as recognized by Italian Law and by Orders in Venezia-Giulia.

e) It must be added, however, that such an arrangement, unless consented to by the Italian Government, would be of very doubtful legality since Italy is still juridically the sovereign in both Zones.

4.- From a strictly legal point of view, it would seem that AMG on behalf of the Italian Government and with their approval could grant the request.

5.- With a view to obtaining a policy decision for guidance in the instant and future cases, the following questions are submitted for your consideration:

A) Shall the Courts of Zone "A" be directed to inform the Courts of Zone "B" and Jugoslavia that the present request cannot be granted during the period of Allied occupation?

B) Shall an order of confiscation of the property in Corizia be enforced by the Courts of Zone "A" based solely on the judgment of Zone "B" of Jugoslav Courts, irrespective of Italian Law?

C) Shall the Courts of Zone "A", as a condition to granting the order of confiscation, satisfy themselves that the case comes within the purview of the collaboration cases referred to in 3 (d)?

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D) If the immediately preceding question is answered in the affirmative, will the final decision require the approval of the Italian Government?

/s/ Alfred C. Bowman

ALFRED C. BOWMAN
COLONEL J.A.G.D.
SENIOR CIVIL
AFFAIRS OFFICER

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

1519

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

AC/

26 July 1946.

AC/4005/1.

SUBJECT : Private Pierre CIRIBILLI.

TO : Allied Force H.Q., G-5 Section
(Attn. A-3) - APO 512.

1. Reference is made to your letter G-5 953.73 of 26 July 1946.

2. According to art. 528 of It. Civil Code the "Pretore" of the place where private CIRIBILLI died, should appoint an administrator to take charge of his estate in Italy and to whom the sum referred to in paragraph 2 of your letter should be handed over.

3. The winding up of the estate should be carried out according to English Law, although the procedure followed here must be Italian.

For the Chief Commissioner :

G.J. LAMBERTON.
Lt. Colonel,
Deputy Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Note file
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ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 953.73

18 July 1946

20 LUG 1946

SUBJECT: War Office Letter.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Herewith copy of WO letter D 178839/6/Effects of 28 June.

Will you please send to this Headquarters (attn: A-3) the information to enable them to answer the last paragraph of the letter.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5

Incl:
as above.

78
ALLIED COMMISSION
2450
FRENCH SECTION

2344

Declassified E.O. 12356 Section 3.3/NND No. 785016

THE WAR OFFICE,

EFFECTS BRANCH,

EDGE LANE,

LIVERPOOL, 7.

D/178839/6/Effects.

27 June, 1946.

Sir,

The late No. BNA/13301959 Private Pierre Ciribilli,
Pioneer Corps.

The above-named deceased soldier was born in Perugia, Italy, on 17th July, 1919, enlisted at Maison Correa, North Africa, in the Pioneer Corps, and died on 5th March, 1945, in Italy.

The sum of £ 28 12s. 5d. is due from Army Funds to the estate, and according to a Form of Declaration completed by the late soldier's eldest brother, in the presence of the British Consulate General, Nice, the following facts regarding the relatives have been ascertained.

Parents deceased.

Abdon Ciribilly,	brother	residing in Nice.
Dante "	"	
Roger "	"	
Joseph "	"	addresses unknown in Italy.
Angelo "	"	
Anna Anguli,	sister	

The late soldier died intestate and with a view to the disposal of the amount due from Army Funds, I am to ask that you be good enough to inform this office of the normal procedure regarding the disposal of Estates, in accordance with Italian laws of Intestacy.

I am, Sir,
Your obedient Servant,

The Chief Accountant,
Allied Forces Headquarters,
Italy.

P450 77

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149A

HEADQUARTERS ALLIED COMMISSION
APO 794,
LEGAL SUB-COMMISSION

AC/LSC/L.

22 July 1946.

CONCERNING : Casi in dibattito.

Con riferimento alla Sua lettera in data 18 Luglio 1946 questa Sottocommissione si pregia far osservare che allo stadio dell'attuale lavoro non e' possibile ottemperare alla Sua richiesta che implicherebbe una lunga ricerca da parte del nostro Ufficio.

Con perfetta osservanza.

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

Sig. Lorenzo L. Franceschini
Casa Piccola - Predoni (Bergamo)

148A

18 July 1946

To : Allied Commission, Rome.
Att.: Legal Division.

The undersigned is an Italian Naval Reserve Officer, released from active service, desiring to accomplish his high-school law studies by performing a thesis concerning legal military regulation in occupied territory, with a special regard to the constitution and procedure of Allied Military Courts which operated in Italy during the Italian campaign.

Kindest request is hereby forwarded to you in order to obtain the necessary legal material which can only be supplied by your office according to the information given by the British Press & Information Office, Milan.

Publications of the main importance to the above purpose are the following :

a) Procedure of Military Occupation Courts.

b) Constitution of Tribunals.

c) Jurisdiction in Penal &Civil affairs.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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Publications of the main importance to the above purpose are the following :

a) Procedure of Military Occupation Courts.

b) Constitution of Tribunals.

c) Jurisdiction in Penal &Civil affairs.

d) Regulation issued by A.M.G. concerning the subject.

e) Some chronological data on the activity performed by Military Courts.

I should be very much obliged if you could supply me by some of the above mentioned material, thus allowing me to carry out my research on a matter which is an important contribute of Allied legal system to the Italian jurisprudence. 75

Declassified E.O. 12356 Section 3.3/NND No. 785016

The following is my address:

Lorenzo L.Francoschini

" Casa Piccola"

Predore (Bergamo)

Very sincerely yours

Lorenzo Francoschini

Declassified E.O. 12356 Section 3.3/NND No. 785016

Very sincerely yours

Lonnie Thomas

Declassified E.O. 12356 Section 3.3/NND No. 785016

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4005

Ref. PH/P/003/40

BRITISH EMBASSY,
ROME.
1947

9th July, 1946.

Dear Colonel Hannaford,

With reference to your AC/4005/L AP/ns of 27th June, I have made enquiry into the present state of the Italian law relating to the acquisition of real estate in Italy by foreigners and find it to be as follows.

2. There is a Law No. 807 of 1942 still in existence on the Statute Book which forbids the acquisition of real estate by foreigners. This Law is, however, regarded as obsolete and I am given to understand that its revocation is pending. In the meantime, any foreigner desirous of acquiring real estate in Italy may make application to (a) the "Direzione Generale Valuti" of the Ministry of the Treasury and (b) the Ministry of Industry and Commerce, for a permit to acquire the real estate in question. It appears that such permits are issued almost automatically.

3. There is no distinction made between ex-enemy nationals and nationals of any other foreign country; nor is it material whether the applicant for a permit is a member of the armed forces of a foreign country.

Yours sincerely,

M.C. Adams

M.C. ADAMS.
Property Adviser to
H.B.M. Ambassador.

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Lt.Col. G.G. Hannaford,
Deputy Chief Legal Adviser,
HQ. AC.,
ROME.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1464

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

/cda.

MC/4505/L. 18 July 1946.

SUBJECT : German citizens carrying on business in Italy.

TO : Col. Henry Chief Financial Officer
MERRIA GIULIA.

I enclose copy of a memorandum on the above subject by the Ufficio Studi Legislazione of the Council of Ministers. I regret the delay in forwarding this document, but there was no indication on our files indicating from where the inquiry for information on the above subject came.

MARGARET THOMAS,
Italian Branch,
for Chief Legal Advisor.

Encl.

Fo. 4005

Presidenza del Consiglio dei Ministri

UFFICIO STUDI E LEGISLAZIONE

N. 71494/13999/5/15.2
Risposta al Foglio del 28-5-1946
N. AC/4005/L

URGENTE

Roma, 30 GIU. 1946 - 24

ALLA COMMISSIONE ALLEATA
-Sottocommissione Legale-
ROMA

SUB-C
DCLO
Chief Counsel
CJD
Italian Section
CL RKS
JUL 1 - 1946
FIEP

OGGETTO *Cittadini tedeschi che compiono atti di commercio in Italia.*

La posizione dei cittadini tedeschi che compiono atti di commercio in Italia continua ad essere regolata, a sensi dell'art.2 del D.L.L. 8 febbraio 1946, n.49, dalle disposizioni del testo della legge di guerra approvato con il R.D. 8 luglio 1938, n. 1415, (modificato dalla legge 16 dicembre 1940, n.1902), relative al trattamento dei beni nemici ed ai rapporti economici con lo stato nemico e le persone di nazionalità nemica, nonchè dalle successive disposizioni emanate in materia con la legge 19 dicembre 1940, n.1994 e con il R.D. legge 4 febbraio 1942, n.11, convertito nella legge 17 luglio 1942, n.1100.

Il caso più importante è quello delle aziende commerciali, appartenenti a persone di nazionalità nemica o nelle quali queste abbiano interessi prevalenti. Tutte le aziende

Declassified E.O. 12356 Section 3.3/NND No. 785016

Risposta al Foglio del 28-5-1946
N.° AC/4005/L

CL RKS
JUL 1 - 1946

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Il caso più importante è quello delle aziende commerciali, appartenenti a persone di nazionalità nemica e nelle quali queste abbiano interessi prevalenti. Dette Aziende possono essere sottoposte a sequestro, e con ciò la gestione dell'azienda passa nelle mani del sequestratario ed il titolare dell'azienda viene impedito di compiere validamente qualsiasi atto di commercio.

Al di fuori del caso dell'azienda sottoposta a sequestro non esiste nel nostro ordinamento una disposizione che preveda espressamente l'interdizione dal commercio dei sudditi nemici; ma le limitazioni poste al libero esercizio dei diritti sono tali

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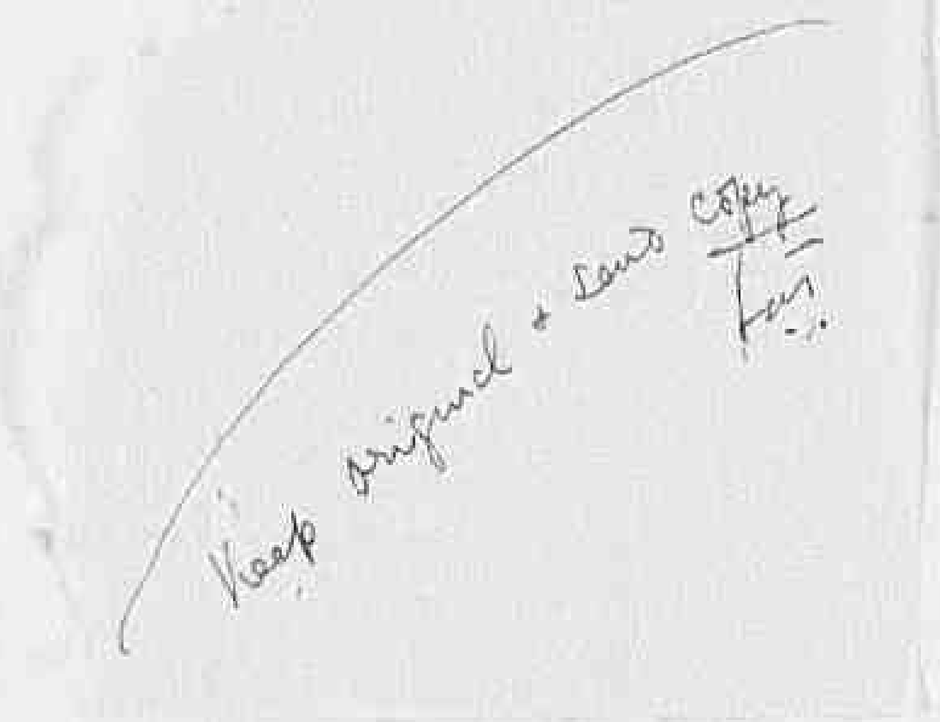
Declassified E.O. 12356 Section 3.3/NND No. 785016



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cne la possibilità dell'esercizio di un'attività commerciale, da parte dei sudditi nemici, risulta in linea di fatto, enormemente ostacolata, se non addirittura impedita. Si richiamano in particolar modo gli artt.324 e segg. della legge di guerra e gli artt.2 e segg. della legge 19 dicembre 1940, n.1994: tutt sono stati dilatti il divieto di pagamenti a favore di persone di nazionalità nemica, il deposito di somme o valori, dovuti a sudditi nemici, il blocco di conti bancari, l'indisponibilità di valori contenuti in impianti fissi di sicurezza ecc.; salvo derogne o autorizzazioni a pagamenti ed a prelievi dalle somme e valori depositati (art.336 della legge di guerra e art.15 della legge 19 dicembre 1944, n.1994).

Una discriminazione anche completa dalle restrizioni suindicate è possibile a norma dell'art.7 della legge di guerra (testo modificato dall'art.2 della legge 16 dicembre 1940, n.1902), che dà facoltà al Presidente del Consiglio dei Ministri di ordinare che le disposizioni concernenti le persone di nazionalità nemica non siano applicate a determinate persone ovvero a determinate categorie di dette persone.

Per effetto di tale provvedimento l'interessato più continua= re nell'esercizio del commercio senza sottostare alle limita= zioni inerenti alla sua qualità di suddito nemico, ottenendo an= che, se del caso, la revoca delle misure restrittive eventual=mente adottate sui proprii beni o sulla ricchezza stessa.

il blocco di conti bancari, l'indisponibilità di valori contenuti in impianti fissi di sicurezza ecc.; salvo deroghe o autorizzazioni a pagamenti ed a prelievi dalle somme e valori depositati (art.336 della legge di guerra e art.15 della legge 19 dicembre 1944, n.1994).

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Per effetto di tale provvedimento l'interessato più continuare nell'esercizio del commercio senza sottostare alle limitazioni inerenti alla sua qualità di suddito nemico, ottenendo anche, se del caso, la revoca delle misure restrittive eventualmente adottate sui propri beni o sulla propria azienda.

La legge non determina i casi nei quali il Presidente del Consiglio dei Ministri può esercitare la suddetta facoltà e quale documentazione debba essere fornita dall'interessato. 70

Quest'ultimo è libero di esporre tutti gli elementi che ritenga utili e necessari, salvo al Presidente del Consiglio dei Ministri di valutarli nel suo potere discrezionale ai fini della emanazione o meno del provvedimento discriminativo.

La discriminazione è stata sinora accordata a favore dei sudditi tedeschi che erano stati privati della citta-

Declassified E.O. 12356 Section 3.3/NND No. 785016

dinanza germanica per motivi razziali e di coloro che dalle leg= gi razziali tedesche erano stati definiti misti ebraici 50%.

Per casi singoli la discriminazione è stata accordata soltanto eccezionalmente nei confronti di persone che avevano precedenti anti-nazisti o che, essendosi astenute da ogni attività a favore del regime nazista, risiedevano da lungo tempo in Italia o aveva= no contratto matrimonio con cittadine italiane.

IL SOTTOSEGRETARIO DI STATO

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

IL SOTTOSEGRETARIO DI STATO

anti-nazisti o che, essendosi astenuto da ogni attività a favore del regime nazista, fosse stato per lungo tempo in Italia o avesse no contratto matrimonio con cittadine italiane.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4005 Cpl. Wells

FILE

I would keep this if you, or make a note of it in the Folder containing the Letter we wrote a few days ago to Col. Hastings.

Ans

JUL 1815
4414

Declassified E.O. 12356 Section 3.3/NND No. 785016

Lt Col Eberhart P. Deutsch
2600th Spec. Detch.
U.S.F.A.

Left March 26, 1945

A-17580
EXT 132

230
20 LANNER STR
VIENNA

Control Com. for Austria
American Element
Vienna

FILE

JUL 1 1945

68

2541

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

143A
/mdh.

AC/4005/I.

16 July 1946.

SUBJECT : A.M.G. Court trial held at Santo Stefano di Camastra (Sicily) in August, 1943; Restitution order.

TO : Lt.Col. Eberhart F. Deutsch
Allied Control Commission for Austria
(American Element) Vienna.

1. I enclose herewith translations of a letter from the Minister of Justice and one from the Procuratore Generale of the Court of Appeal of Messina regarding a trial held in August 1943 at Santo Stefano di Camastra in Sicily over which you are believed to have presided. It is stated that the Court made an order for the restitution of the stolen jewels to their owner, Baroness Baritelli, but the judicial authorities have been unable to learn to whom the jewels were given in order to carry out the restitution.

2. This Sub-Commission would be obliged if you would kindly make a declaration, as requested by the Ministry, which will show (1) in whose custody the jewels were when the order for restitution was made; (2) upon whom lay the duty of restoring them to their owner; and (3) which will answer generally the questions raised in the enclosed letters.

HUNGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

67

Declassified E.O. 12356 Section 3.3/NND No. 785016

23 6 2

40/1400

Ministero di Grazia e Giustizia
DIREZIONE GENERALE DEGLI AFFARI PENALI DELLE GRAZIE E DEL CASELLARIO

Roma, 4 Luglio 1946

Uffizio T° A.P.
Prot. N° 131.917.1999/46

Risposta al foglio
Div. Sez. N°

Alla COMMISSIONE ALLEATA
Sottocommissione Legale
R O M A

OGGETTO Maggiore americano DEUTSCH.-

Chief Counsel
War Crimes Branch
Italian Section
CLERKS
JUL 8 1946

e per conoscenza:
ALL'UFFICIO COLLEGAMENTO
S E D E

AL PROCURATORE GENERALE
presso la Corte di Appello di
(Risp. nota 15.6.1946 n. 1681)
M E S S I N A

Nel comunicare in copia la nota 15 c.m. n° 1681 della Procura Generale presso la Corte di Appello di Messina si prega codesta On.le Sottocommissione di voler cortesemente fornire a questo Ministero le notizie domandate dal predetto Ufficio in merito all'attuale recapito del maggiore americano DEUTSCH.-

Ove non sia possibile l'esame diretto del DEUTSCH da parte dell'Autorità Giudiziaria, code-

././.

Declassified E.O. 12356 Section 3.3/NND No. 785016

sta On.le Sottocommissione dovrebbe farsi rilasciare dal medesimo una dichiarazione scritta vertente sulla consegna dei preziosi sottratti, a suo tempo, alla baronessa BERITELLI ed in seguito recuperati e sottoposti a sequestro, inviandola a questo Dicastero.-

Si resta in attesa di riscontro, possibilmente, sollecito.-

Per il MINISTRO

Mod. 1347 MG.

FILE

Ministero di Grazia e Giustizia

COPIA

PROCURA GENERALE DEL REGNO
di MESSINA

Prot. 1681 Messina 15.6.1946

OGGETTO: Per a dizione maggiore americano Deutech.-

On.le MINISTERO DI GRAZIA E GIUSTIZIA Direz.Gen.Aff.Pen.

ROMA

^^^^^^^^^^^^^^^^

Nellagosto 1943, la baronessa Giovanna Beritelli, da Palermo, subì un furto di preziosi per il valore di L. I.700.000.-

La refurtiva fu recuperata e sottoposta a sequestro in attesa del giudizio, che fu celebrato a Santo Stefano di Camastra, nello stesso mese di agosto 1943, davanti alla Corte Alleata, presieduta dal maggiore americano Deutsch.-

La Corte suddetta emise ordine di restituzione dei preziosi alla derubata, ~~xxxxxxxxx~~ ma non si riesce a sapere a chi consegnò il compendio (che fu portato in udienza), per eseguire la restituzione.-

Nessuno dei comandanti dell'Arma dei CC.RR. della circoscrizione ammette di averlo ricevuto, mentre la baronessa BARITELLI, forte dell'ordine suddetto, ne reclama la consegna con insistenza.-

Un procedimento, per indagini in merito, è stato aperto presso la Pretura di Santo Stefano di Camastra, senza che finora si sia venu-

Declassified E.O. 12356 Section 3.3/NND No. 785016

R O M A

^^^^^^^^^^^^^^^^

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La refurtiva fu recuperata e sottoposta a sequestro in attesa del giudizio, che fu celebrato a Santo Stefano di Camastra, nello stesso mese di agosto 1943, davanti alla Corte Alleata, presieduta dal maggiore americano Deutsch.-

La Corte suddetta emise ordine di restituzione dei preziosi alla derubata, ~~xxxxxxxxx~~ ma non si riesce a sapere a chi consegnò il compendio (che fu portato in udienza), per eseguire la restituzione.-

Nessuno dei comandanti dell'Arma dei CC.RR. della circoscrizione ammette di averlo ricevuto, mentre la baronessa BARITELLI, forte dell'ordine suddetto, ne reclama la consegna con insistenza.-

Un procedimento, per indagini in merito, è stato aperto presso la Pretura di Santo Stefano di Camastra, senza che finora si sia venuti a capo di nulla.-

La necessità di sentire il maggiore Deutsch è, pertanto, palese.

E poichè non si è riusciti a potere avere notizie di lui, pur avendo interessato per l'oggetto la cortesia dell'ufficio di collegamento Alleato di Catania, avvuso all'ultimo rimedio possibile: quello, cioè, di rivolgermi a codesto Ministero, a cui devevo, peraltro, la presente informativa, affinchè voglia riferire il fatto allo ufficio legale della Commissione Alleata, per avere le informazioni che occorrono circa il recapito del sommentovato maggiore Deutsch.-

66

IL PROCURATORE GENERALE
F.to Illeggibile

PER COPIA CONFORME
IL DIRETTORE CAPO DELL'UFFICIO I° A.P.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2365

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

1497

/mdn.

AC/4005/L. 16 July 1946.

SUBJECT : Major DEUTSCH of U.S.A. Forces.

TO : The Ministry of Pardon and Justice.

1. Reference your Prot. No. 131.917. 1999/46 of 4 July 1946.

2. Efforts are being made by this Sub-Commission to trace the Major (or Lt.Col.) DEUTSCH who presided over the trial court in qestion at Santo Stefano di Camastra in August 1943. It is believed that he was transferred to Austria over a year ago. Application is being made at once to the British Authorities in Vienna to ascertain the present whereabouts of Lt.Col. DEUTSCH. When located he will be asked to make a statement which will be forwarded to you as soon as possible in the circumstances.

NIGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

FILE

AC/4000 EJLB

Subject: American Major DEUTSCH.

To: Procuratore Generale, Court of Appeal, Messina,

and for information

To: Liaison Office, Rome.

The Ministry of Pardon and Justice forwards on the 4th of July 1946 copy of letter of the Procura Generale in Messina and asks that the requested informations relative to the actual residence of Maj. Deutsch be sent to said Ministry.

In case that Mr Deutsch could not be directly questionned by the Judicial Authority, the Ministry asks that this Legal S/C obtains a written declaration from said officer, relating to the jewels, which were taken away from Baroness Beritelli and were later recovered and sequestrated, and that copy of said [illegible] to the Ministry.

Declassified E.O. 12356 Section 3.3/NND No. 785016

on the [illegible] Generale in Messina and asks that the requested informations relative to the actual residence of Maj. Deutsch be sent to said Ministry.

In case that Mr Deutsch could not be directly questioned by the Judicial Authority, the Ministry asks that this Legal S/C obtains a written declaration from said officer, relating to the jewels, which were taken away from Baroness Beritelli and were later recovered and sequestrated, and that copy of said declaration be forwarded to the Ministry.

An urgent reply is requested.

For the Minister:

Signature illegible

Maj Courteau

64

Declassified E.O. 12356 Section 3.3/NND No. 785016

2362

Declassified E.O. 12356 Section 3.3/NND No. 785016

ALLIED MILITARY GOVERNMENT

PROVINCE OF .....

Sentences of imprisonment of over 1 year imposed during month of.....

Sentenza di reclusione superiore ad un anno durante il mese di.....

COGNOME	NOME	Paternità e Maternità	ETÀ	Luogo e data di nascita	REATO

Declassified E.O. 12356 Section 3.3/NND No. 785016

FORM. No. 13

ALLIED MILITARY GOVERNMENT

PROVINCE OF .....

g of imprisonment of over 1 year imposed during month of..... 194.....
di reclusione superiore ad un anno durante il mese di..... 194.....

	Paternità e Maternità	ETÀ	Luogo e data di nascita	REATO	Sentenza e Data	DISPOSIZIONE

Subject: Questioning of the American Major
DEUTSCH

Jewels for the value of 1.700.000 lire were stolen in August 1943 from Baroness GIOVANNA BERITELLI.

The stolen jewels were recovered and put under sequestration until the trial, which was heard at Santo Stefano of Camastra, in August 1943, by an Allied Court presided by an American Major, named Deutsch.

Said Court issued an order providing for the restitution of the jewels to the above mentioned owner, but it is unknown, to whom the package and the relative documents (which had been exhibited at the hearing), were consigned.

No one of the Commandery officers of the local

Declassified E.O. 12356 Section 3.3/NND No. 785016

The stolen [illegible]
sequestration until the trial, which was
Santo Stefano of Camastra, in August 1943, by an Al-
lied Court presided by an American Major, named
Deutsch.

Said Court issued an order providing for the restitution of the jewels to the above mentioned owner, but it is unknown, to whom the package and the relative documents (which had been exhibited at the hearing), were consigned.

No one of the Commanding officers of the local Carabinieri admits having received them, while Baroness Beritelli, relying on said order of her possession, claims with insistence that the jewels be returned to her.

t. o. p.

63

Declassified E.O. 12356 Section 3.3/NND No. 785016

Investigations were made by the Pretura of Santo Stefano di Camastra, but without any success.

The necessity of questioning Maj. Deutsch is therefore obvious.

As he could not be traced, notwithstanding the courteous intervention of the Liaison Officer of Catania, we request the Ministry that the facts be referred to the Legal Office A.C., in order to get the informations relative to the residence of the above named Major Deutsch.

The Procuratore Generale
of Messina:

Signature illegible.

Declassified E.O. 12356 Section 3.3/NND No. 785016

the courteous intervention of the Prefect
of Catania, we request the Ministry that the
facts be referred to the Legal Office A.C., in
order to get the informations relative to the
residence of the above named Major Deutsch.

The Procurator Generale
of Messina:

Signature illegible.

62

Declassified E.O. 12356 Section 3.3/NND No. 785016

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AC/A005/L

MT/ms
12 July 1946

SUBJECT : Claims by Italian Civilians against U.S. Forces.

TO : The Ministry of War,
ROME.

1. I enclose copy of a letter with accompanying documents from the Asst.Adjutant General, Peninsular Base Section, regarding a claim made by Lt.Colonel Salvatore Mossa.

2. From the enclosed documents it appears that certain property belonging to Lt.Col. Mossa was taken and used by an American Unit, the 57th Bombardment Wing Headquarters.

3. Col. Mossa made a claim to the United States Claims Service for the return of his property or payment of its value. The Claims Service informed Col. Mossa that since 1st January, 1946, claims by civilians should be sent to the Italian Government "which had designated the Genio Militare of the War Ministry to receive, investigate, adjust, and cause to be paid all claims made after 1st January, 1946, by Italian civilians against the United States Forces." The Claims service further advised Lt.Col.Mossa to present his claim to the regional office of the Genio Militare in Firenze. This office has not accepted the claim on the ground that it has not received any orders from the War Ministry to deal with the matter.

4. If it is correct, as stated in para 2 of the enclosed A/Adjutant General's letter, that

Declassified E.O. 12356 Section 3.3/NND No. 785016

there has been an agreement between the Allied Forces and the Italian authorities, for claims such as the present one to be examined and settled by the Italian Government, this Sub Commission would be grateful if the Ministry would instruct the Genio Militare in Firenze to receive, examine, and adjust Lt.Col. Mossa's claim.

5. Please return the enclosed documents with your reply.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

Incl.

Declassified E.O. 12356 Section 3.3/NND No. 785016

13866

JUL 3 RECD

HEADQUARTERS
PENINSULAR BASE SECTION
APO 782

27 JUN 1946

AG 150 BPSNG

SUBJECT: Unsettled Claim.

TO : Chief Commissioner, Headquarters Allied Commission, APO 394, U. S. Army.

1. The attached claim papers contain statements therein which indicate that the Genio Militare office of Florence will not receive claims such as the enclosed for proper consideration and adjustment.

2. It is understood here that the proper function of the Genio Militare is to adjust such claims as arranged on high levels between Allied Forces and Italian authorities.

3. It is requested that the position be clarified to the Genio Militare office at Florence and to this Headquarters attention: Major Steckroth, Engineer Section.

FOR THE COMMANDING OFFICER:

GORDON W. GILLAM
Captain, A.G.D.
Assistant Adjutant General

Incls:
Claim papers
mentioned above.

LEGAL SUB COMMISSION
CLO
DCLO
Chief Counsel
CLO
Italian Section
CLERKS
JUL 3 - 1946

59

2378

Declassified E.O. 12356 Section 3.3/NND No. 785016

AC 886

HEADQUARTERS
PENINSULAR BASE SECTION
APO 782

AG 150 BPSEC

SUBJECT: Unsettled Claim.

TO : Chief Commissioner, Headquarters Allied Commission, APO 394, U. S. Army.

1. The attached claim papers contain statements therein which indicate that the Genio Militare office at Florence will not receive claims such as the enclosed for proper consideration and adjustment.

2. It is understood here that the proper function of the Genio Militare is to adjust such claims as arranged on high levels between Allied Forces and Italian authorities.

3. It is requested that the position be clarified to the Genio Militare office at Florence and to this Headquarters attention: Major Steckroth, Engineer Section.

FOR THE COMMANDING OFFICER:

GORDON W. GILLAM
Captain, CAC
Assistant Adjutant General

Incls:
Claim papers
mentioned above.

58

Declassified E.O. 12356 Section 3.3/NND No. 785016

18866

HEADQUARTERS
PENINSULAR BASE SECTION
APO 782

AG 150 BF/MC

SUBJECT: Unsettled Claim.

TO : Chief Commissioner, Headquarters Allied Commission, APO 394, U. S. Army.

1. The attached claim papers contain statements therein which indicate that the Genio Militare office of Florence will not receive claims such as the enclosed for proper consideration and adjustment.

2. It is understood here that the proper function of the Genio Militare is to adjust such claims as arranged on high levels between Allied Forces and Italian authorities.

3. It is requested that the position be clarified to the Genio Militare office at Florence and to this Headquarters attention: Major Steckroth, Engineer Section.

FOR THE COMMANDING OFFICER:

GORDON W. GILLAM
Captain, A.G.D.
Assistant Adjutant General

Incls:
Claim papers
mentioned above.

57

Declassified E.O. 12356 Section 3.3/NND No. 785016

1866

HEADQUARTERS
PENINSULAR BASE SECTION
APO 782

27 JUN 1945

AG 150 BP/NG

SUBJECT: Unsettled Claim.

TO : Chief Commissioner, Headquarters Allied Commission, APO 394, U. S. Army.

1. The attached claim papers contain statements therein which indicate that the Genio Militare office of Florence will not receive claims such as the enclosed for proper consideration and adjustment.

2. It is understood here that the proper function of the Genio Militare is to adjust such claims as arranged on high levels between Allied Forces and Italian authorities.

3. It is requested that the position be clarified to the Genio Militare office at Florence and to this Headquarters attention: Major Steckroth, Engineer Section.

FOR THE COMMANDING OFFICER:

GEORGE W. GILLAM
Capt., A.G.D.

Incls:
Claim papers
mentioned above.

56

Declassified E.O. 12356 Section 3.3/NND No. 785016

1384

HEADQUARTERS
PENINSULAR BASE SECTION
APO 782

AG 130.7 [illegible]

SUBJECT: Unsettled Claim.

TO : Chief Commissioner, Headquarters Allied Commission, APO 512, U. S. Army.

1. The attached claim papers contain statements therein which indicate that the Genio Militare office at Florence will not receive claims such as the enclosed for proper consideration and adjustment.

2. It is understood here that the proper function of the Genio Militare is to adjust such claims as arranged on high levels between Allied Forces and Italian authorities.

3. It is requested that the position be clarified to the Genio Militare office at Florence and to this Headquarters attention: Major Sheldrett, Engineer Section.

FOR THE COMMANDING OFFICER:

Incls:
Claim papers
mentioned above.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Col. Hannaford.

A U.S.A. Unit in Florence took certain property from the flat of Lt. Col. Mozza and used it in their H.Q. Col. Mozza put in a claim to the U.S.A. Real Estate Office for the articles taken or their value.

The U.S. Claims Service advised Col. M. that since 1st Jan. '46 - Claims by Italian Civilians against U.S. Forces would be dealt with and paid by the Semi Militare in Florence. The latter will not entertain the claim, alleging that they have not received authority from the War Ministry.

The P.B. Section in effect ask us to tell the Semi in Florence that they must examine and adjust this claim.

I should like to know whether you think that in the circumstances we can write to the Min. of War and ask that, in view of the agreement between the Allied Forces and the Italian Govt. that any claims made by Civilians against the U.S. Forces should after 1st Jan. '46, be examined & paid by the Semi Militare, instructions be given to the Semi Militare in Florence to investigate and settle the claim.

54

11 July '46

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

1434

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

AC/4005/L

AP/ns
27 June 1946

SUBJECT : Real Estate.

TO : Chief Liaison Officer
VERBAL.

1. Reference is made to your CLO/V/MISC/50 of 24 June 1946.

2. Copy of your letter has been forwarded to the British and American Embassies for ruling.

3. It doesn't seem to exist any possibility for an Allied citizen to purchase Italian property without special permission. As far as we are aware the "Trading with the Enemy Act" is still in force as foolish as it may sound.

By command of Rear Admiral STORY:

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

53

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

1424

AC/1005/L

AJ/ma
27 June 1945

SUBJECT : Real Estate.

TO : British Embassy
American Embassy

1. Copy of letter from Chief Liaison Officer, Venezia is herewith enclosed for ruling.

G.G. HAMMAFORD,
Lt.Colonel,
Deputy Chief Legal Advisor.

Incls.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Legal 4/c - Jok - 25/6.

46805

CMS

8654
1/41A
24 GIU. 1946

ALLIED COMMISSION
OFFICE OF CHIEF LIAISON OFFICER
VENEZIE

Villa Tavema
Preganziol
Near Treviso

21 June 1946

TO : H.Q. Allied Commission APO 794

SUBJECT : Real Estate

FILE N° : CLO/V/MISC/50

ALLIED COMMISSION HEADQUARTERS 2255

What are the existing regulations covering the purchase of Italian Real Estate by an Allied Officer.

The proposed transaction involves about 1000 sq. meters of mountainous area in Italian controlled Italy.

The property is now owned by the Commune and they are willing to sell to the Officer providing such transaction is permissible.

Could we have a ruling on this matter.

F.O. Mavis

F.O. MAVIS, Lt.Col.
Chief Liaison Officer.

SUB-COMMISSION
Chief Counsel
CLO
Italian Section
CLERKS

26 June 46

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

P404

AC/4005/L SFC 92 GGH/ng
SFCR.52 June 1946.

SUBJECT : Arrest in Rome by French Secret Police of Italian Citizen accused of supplying information to the detriment of France.

TO : Capitaine de Vaisseau
Henri de Villefosse
French Liaison Officer AC.

Conferming our conversation I beg to enclose copy of the letter addressed to the French Chargé d'Affaires, which you have kindly agreed to forward.

G.G. HAMMOND,
Lt.Colonel,
Deputy Chief Legal Advisor.

51

Declassified E.O. 12356 Section 3.3/NND No. 785016

File

U.S. SECRET Equals British MOST SEC

1394

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

/mdm.

AC/4005^.

22 June 1946.

SUBJECT : Arrest in Rome by French Secret Police of Italian Citizens accused of supplying information to the detriment of France.

TO : H.E. - The Charge d'Affaires of the French Republic
Pardon Varneze - Rome.

1. At the request of the Italian Government, the Navy Sub-Commission has asked the opinion of the D.C.A.A. on the legality of the police measures taken at the time by the French Military Authorities in connection with the above matter.

2. In agreement with the Navy Sub-Commission, it has been decided that before pursuing the matter further the French Embassy be courteously requested to forward to this Sub-Commission a statement of the facts as they are known to them.

3. Would you kindly oblige.

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

Copy to Navy Sub-Commission.

U.S. SECRET Equals British MOST SEC

SU[illegible]

Declassified E.O. 12356 Section 3.3/NND No. 785016

1005 File

130A

NSC/5138
16 June 1946.

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

Subject: Arrest in Rome be French Secret Police of Italian Citizens accused of supplying information to the detriment of France.

1. An early reply to Navy Sub-Commission letter NSC/4885 dated 10 April 1946 would be appreciated.

G. F. MENTZ,
CAPTAIN, U. S. NAVY,
FOR REAR ADMIRAL
CHIEF, NAVY SUB-COMMISSION, AC.

29

Declassified E.O. 12356 Section 3.3/NND No. 785016

Folder 4005

13TH

GGH/nm
20 June 1946.

SUBJECT : Allied Requisitioning Policy.

TO : Chief Commissioner.

Reference is made to your letter 17/VI of June 7, 1946.

1. Under international law requisitions can only be made for military necessity or under the terms of a document such as the armistice.

2. There is no provision in the armistice terms regarding families of officers as their presence in this theatre was not foreseen.

3. They do not seem to come under the category of camp followers a qualification they hardly could have acquired after the cessation of hostilities.

4. It seems that the point in question could be better settled by further agreement with the Italian Government.

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

27

Declassified E.O. 12356 Section 3.3/NND No. 785016

File

C O N F I D E N T I A L

1364

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB-COMMISSION

AC/4005/L. 14 June 1946

SUBJECT : Arrest in Rome by French Secret Police of Italian citizens accused of supplying information to the detriment of France.

TO : Navy Sub-Commission, Allied Commission.

1. Reference your NSC/5138 of 10 June 1946.

2. This matter has been handed over to POLAD's for their opinion on any action which may be contemplated.

3. The illegality of the arrest by French Police appears to be beyond question. However, it would be better to ask the French Embassy for an explanation before taking the matter up again through official channels.

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

C O N F I D E N T I A L

41

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
NAVY SUB-COMMISSION APO 394

4005 V file

135A.

NSC/5136
10 June 1946.

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

Subject: Arrest in Rome be French Secret Police of Italian Citizens accused of supplying information to the detriment of France.

1. An early reply to Navy Sub-Commission letter NSC/4885 dated 10 April 1946 would be appreciated.

G. F. Mentz

G. F. MENTZ,
CAPTAIN, U. S. NAVY,
FOR REAR ADMIRAL
CHIEF, NAVY SUB-COMMISSION, AC.

NAVY SUB-COMMISION
O
O
Chief Counsel
CIO
Italian Section
CLERKS
14 June 46

46

Declassified E.O. 12356 Section 3.3/NND No. 785016

2392

B47

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mbn.

AC/4005/L. 28 Maggio 1946.

SUBJECT : Cittadini tedeschi che compiono atti di commercio in Italia.

Ufficio Legislativo della
Presidenza del Consiglio

Roma

e al

Ministero dell'Industria e Commercio

Roma

Si gradirebbe conoscere l'attuale posizione dei cittadini tedeschi che compiono atti di commercio in Italia.

E' da notare che per "cittadini tedeschi" non si intende far riferimento a tedeschi appartenenti al partito nazista ne' a personale militare comunque in liberta', ma soltanto a tedeschi che compivano regolarmente atti di commercio anche prima della guerra.

Si gradirebbe, inoltre, conoscere se esistono provvedimenti discriminativi contro dette persone e quali documenti sono richiesti perche' gli stessi continuino ad esercitare il commercio regolarmente.

G.G. HAYWARD,
Lt.Colonel,
Deputy Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4065

133A

From : Air Forces Sub-Commission, A.C. ROME.

To : Legal Sub-Commission.

Date : 21st March, 1946.

Ref. : AFSC/22/AIR.

109A

RENT OF LAND PROPERTIES - CIAMPINO AIRPORT

Ref. your AC/4005/L, dated 15 Feb. 1946, enclosed please find a copy of a letter from the Italian Air Ministry on the above subject.

D. H. C. SMITH, S/LDR.,
for AIR VICE MARSHAL,
DIRECTOR,
AIR FORCES SUB-COMMISSION.

LEGAL SUB-COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CL RKS
22 March 46.

Note. Saw Sq/Ldr. Salter about this matter early in April. informed him nothing could be done without fuller information from the Italian authorities. Bring forward if and when such further information is forthcoming. Probably nothing further will be heard of the matter

ST 479

Declassified E.O. 12356 Section 3.3/NND No. 785016

C O P Y

From : Ministero Aeronautica (Works and Brick Section).

To : Air Forces Sub-Commission, A.C. ROME.

Date : 7th March, 1946.

Ref. : D.432/31516/955 Cell.

CIAMPINO NORTH, AUTHORISATION FOR THE USE OF THREE ZONES OF GROUND

Following our dispatch No. 30139, dated the 14th January, 1946, and with which we notified you that:

1. The "Fondazione Figli degli Italiani all'Estero" is an Institution which depends from the Italian Foreign Office which provides for the assistance and education of sons of Italians in Foreign Countries which at present are in Italy, specially in the form of schools and technical training schools;

2. On the above mentioned grounds it was granted for use by the R.A. administration, Stores have been constructed for the deposit of materials needed for the activities of the above mentioned institution.

3. On the above mentioned ground the only persons living there are personnel which have to guard the material in the stores;

4. The grounds have not been granted for agricultural purposes.

5. Of this matter the Commission have been informed, not for political reasons, but because it is area laying near the Ciampino Airport which at present is turned in to an active area on behalf of the Allies.

FOR THE MINISTER
Saudabarbari

Declassified E.O. 12356 Section 3.3/NMD No. 785016

2393

132A

SUBJECT : German War Graves.

In order to clarify the question submitted for opinion it is necessary to make the following distinctions:

a) soldiers who fell on the battlefield

b) soldiers who fell in consequence of actions carried out by the partisans

As regards para a) above a further distinction should be made :

1) soldiers who fell on battlefields where Anglo-American forces have operated

2) soldiers who fell on battlefields where Italian forces have also operated

A double distinction should be made in regard to the obligations arising from the Geneva Convention of 27 July 1927.

From the chronologi al point of view :

1) Obligations to be performed at the time when hostilities on the battlefield have ceased

2) obligations to be performed during the period following on 1)above.

3) obligations to be performed at the time of the final cessation of hostilities

During each of the periods just mentioned there are corresponding obligations as follows:

1) collecting and if possible, medical examination of the bodies

2) burial,communication of the names of the dead

./.

2396

Declassified E.O. 12356 Section 3.3/NND No. 785016

and care of the graves.

3) comunication of the location of the graves.

Said obligations are personal to the belligerents without any regard to the place where the battle occurred.

From the above it follows that:

A) The course of action suggested in the last clause of para 2 of minute (7) (exumation and re-burial) is neither the duty of the Italian Government not that of the American and British because it is not laid down by the Convention.

B) The action suggested in para 2 a) of (7) is the exclusive responsibility of the Allied Military Authorities even for the dead on the battle-fronts held by Italian Units (Regular Army or Partisans) because Allied Forces are the belligerent remaining in possession of the battlefield

The same opinion must be held as regards the action mentioned in 2 b) of (7) bearing in mind that the burial would have been carried out by the care of the Commandos of the various military Units (English, French, Italian, Polish etc.) The maintaining of the graves as mentioned in 2 c) of (7) is equally entrusted to the Allied Authorities keeping in mind that their obligation will last not perpetually but only until an agreement on this matter is reached. These matters are customarily the subject of special provisions in treaties.

It is pointed out that the procedure mentioned in para 3 a) and b) of (7) are not duties imposed by the Convention and therefore are not due to be performed.

In regard to soldiers who fell in isolated actions of partisans it should be noted that:

a) they must be considered as fallen in actions of franc-tireurs

b) the obligation of their burial was not the responsibility of Allied Military or Italian Forces but of the German Army;

Declassified E.O. 12356 Section 3.3/NND No. 785016

c) the communication of the locality of the graves is a duty resting upon Allied Forces

d) In practice the dead have been often buried by the local population

e) in any case the situation of the graves is already known to the competent German Authorities.

This Sub Commission considers that the opinion of the German Authorities cited in the last para of folio (1) is perfectly correct.

Therefore it is clear that <u>all the obligations imposed by the Geneva Convention rest exclusively upon the Allied Authorities</u>, except the burying of those fallen on the Italian battle fronts

Declassified E.O. 12356 Section 3.3/NND No. 785016

131A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/4005/L

MF/ns
9 maggio 1946.

Oggetto: Esenzione dal pagamento di diritti successori per militari alleati caduti in Italia.

Egregio Consigliere,

vengo a seguito della mia precedente lettera AC/4005/L del 13 aprile 1946 sul medesimo oggetto.

Pur rendendomi conto della complessità del problema che mi son permesso sottoporle e della necessità quindi di uno studio accurato Le sarei ben grato se volesse favorirmi un cenno di assicurazione in proposito in modo che possa confermare alle competenti Autorità che il provvedimento desiderato è allo studio.

Gradisca i miei ringraziamenti.

Molto cordialmente

Suo

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

Dott. Antonio Sorrentino
Ufficio Legislativo
Presidenza del Consiglio dei Ministri.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2394

COPY

Ref: 5610/33/80

19 April 1946.

SUBJECT: Position of Italian Ships in Greek Waters.

TO : The Ministry of Foreign Affairs.

Reference your memorandum no. 6/4520/2064 dated 14 Nov 45, regarding the position of Italian ships in Greek waters.

A reply has been received from the Greek Government to the effect that the question of the condition and whereabouts of Italian ships in Greek waters was put before the commission of Economical Problems, which has decided that since these Italian ships are in Greek waters they will be considered as enemy property under sequestration, until the final solution of this question at the Peace Treaty.

(sgd) M.E.DISH

Brigadier,
Acting Chief Commissioner.

Copy to: POLAD 'A')
POLAD 'B' (Our 5610/45/80
-Legal S/O-) of 7 Dec. refers.
Navy S/O (

230

Declassified E.O. 12356 Section 3.3/NND No. 785016

2160

1291

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

MF/rm.
13 April 1946.

AC/4005/L.

OGGETTO : Imposta di successione - esecuzione a favore di militari alleati caduti in guerra.

Egregio Consigliere,

mi riferisco al colloquio che ebbi con Lei circa un mese fa sullo stesso oggetto.

Come ebbi gia' a precisarLe la Commissione Alleata desidererebbe che i benefici derivanti dalla L. 17 - 8 - 1942 No. 948, dalla L. 26 - 2 - 1942 No. 175, dal R.D.L. 19 - 8 - 1943, No. 734 nonche' dal D.L.L. 8 - 3 - 1945 No. 90 concernenti esenzione dal pagamento di imposte di successione a favore dei militari caduti in guerra, vengano estesi anche ai militari delle Nazioni Unite.

Le sarei grato se mi facesse conoscere i risultati dei passi che Lei ha gia' presi in proposito e lo stato generale della questione.

Mi credo, egregio Consigliere, sinceramente suo

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

Dott. Antonio SORRENTINO
Consigliere di Stato
Presidenza del Consiglio
Ufficio legislativo

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37

Declassified E.O. 12356 Section 3.3/NND No. 785016

2 A 2 1

LEGAL
1284

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 384.3 5 April 1946

SUBJECT: Rita ZUCCA.

TO : Headquarters, Allied Commission,
APO 394.

1. Reference AC 4005/1 dated 3 April 1946.

2. Receipt of file on above subject, inclosed in above letter, herewith acknowledged.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

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

LEGAL SUB-COMMISSION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CLERKS
Rec'd 8 April 46

2402

Declassified E.O. 12356 Section 3.3/NND No. 785016

1274

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

/ns

AG/4005/1 5 April 1946.

SUBJECT : Sale of articles pertaining to members of Allied Forces.

TO : Ministry of Interior and Justice.

1. Reference is made to your letter no 1236 of 5 march 1946.

2. As to the question referred to in para 1 of the above mentioned letter this Sub Commission is of opinion that the purchase of personal property is to be considered as perfectly valid and legal.

3. In regard to the point submitted in para two of the said letter it is hereby stated that all members of Allied Forces are strictly forbidden to sell any article pertaining to the War Department, such as rations, clothes, shoes, and any military equipment.

4. This Sub Commission is informed that the purchase of such property is an offence under articles 648 and 712 of the Italian Penal Code.

5. It is understood that in case of seizure by Italian Police or by A.F. Carabinieri of property of Allied Forces, such property must be returned to the nearest section of A.F. both American or British.

G.G. HAMMAFORD,
Lt.Colonel,
Deputy Chief Legal Advisor.

35

12403

Mod.7

Ministero di Grazia e Giustizia

Roma, 5 marzo 1946

Gabinetto di S.E. il Ministro

Protocollo n. 9c/4236

OGGETTO Acquisti di oggetti di proprietà dei militari alleati.

Alla COMMISSIONE ALLEATA
Sottocommissione Legale
R O M A

Alcuni uffici giudiziari hanno rivolto a questo Ministero il seguente quesito:

si verifica molto frequentemente che cittadini italiani abbiano regolarmente acquistato dietro pagamento oggetti vari da militari alleati. Nel caso che questi oggetti non facciano parte del corredo militare, o non siano comunque di proprietà dell'amministrazione alleata ma bensì di proprietà privata dell'alienante, tale acquisto da parte dei cittadini italiani configura oppure no l'ipotesi di un reato?

...ile conoscere se esiste un di-

Declassified E.O. 12356 Section 3.3/NND No. 785016

OGGETTO Acquisti di oggetti [illegible]

Alla COMMISSIONE ALLEATA
Sottocommissione Legale
R O M A

Alcuni uffici giudiziari hanno rivolto a questo Ministero il seguente quesito:

Si verifica molto frequentemente che cittadini italiani abbiano regolarmente acquistato dietro pagamento oggetti vari da militari alleati. Nel caso che questi oggetti non facciano parte del corredo militare, o non siano comunque di proprietà dell'amministrazione alleata ma bensì di proprietà privata dell'alienante, tale acquisto da parte dei cittadini italiani configura oppure no l'ipotesi di un reato?

A tale scopo sarebbe utile conoscere se esiste un divieto generale di alienazione da parte dei militari alleati di qualsiasi oggetto di cui abbiano la disponibilità e se tale divieto, ove sussista, sia sanzionato da norme di carattere penale o soltanto disciplinare.

Si fa presente che l'ipotesi cui si allude dove intendersi avverata nei territori restituiti all'amministrazione italiana nei quali quindi hanno perduto vigore proclami alleati. Poichè in ogni caso occorre applicare le leg-

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2404

Declassified E.O. 12356 Section 3.3/NND No. 785616

gi penali italiane si prega volere comunicare le notizie richieste e se tale comportamento da parte dei cittadini italiani possa a giudizio di codesta Sottocommissione essere perseguito penalmente e in base a quali disposizioni.

L' UFFICIALE DI COLLEGAMENTO

2405

Declassified E.O. 12356 Section 3.3/NND No. 785016

Translation

MINISTERO DI GRAZIA E GIUSTIZIA

Gabinetto di S.E. il Ministro — Roma 5 March 1946

Protocollo N.UC/4236

SUBJECT : Sales of articles pertaining to members of the Allied Forces.

TO : Hq. AC Legal Sub-Commission

Various judicial officials have submitted to the Ministry the following question:

It happens very frequently that Italian citizens buy various articles from members of the Allied Forces against normal payment. Are these transactions liable to be considered as crimes in the event of the said articles being the personal property of the sellers and not the property of the Allied administration or part of the military equipment?

For this purpose it would be useful to know whether there is a general prohibition for the Allied troops to transfer any object at their disposal and would such prohibition exist whether it causes merely disciplinary measures or penal measures.

It is pointed out that this question refers to cases which might occur in the territories which have been returned to the Italian Government, wherein, therefore the Allied proclamations are no longer in force. Since in each case it is necessary to apply the Italian laws you are requested to supply information on the above point.

Also whether in the opinion of your Sub-Commission Italian citizens concerned may be prosecuted in accordance

Declassified E.O. 12356 Section 3.3/NND No. 785016

It happens very frequently that Italian citizens buy various articles from members of the Allied Forces against normal payment. Are these transactions liable to be considered as crimes in the event of the said articles being the personal property of the sellers and not the property of the Allied administration or part of the military equipment?

For this purpose it would be useful to know whether there is a general prohibition for the Allied troops to transfer any object at their disposal and would such prohibition exist whether it causes merely disciplinary measures or penal measures.

It is pointed out that this question refers to cases which might occur in the territories which have been returned to the Italian Government, wherein, therefore the Allied proclamations are no longer in force. Since in each case it is necessary to apply the Italian laws you are requested to supply information on the above point.

Also whether in the opinion of your Sub-Commission the Italian citizens concerned may be prosecuted in accordance with the penal law and if so which provisions are applicable.

The Liaison Officer
(signed: Bonelli)

33

Translation by Mr. Constantine.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2408

Declassified E.O. 12356 Section 3.3/NND No. 785016

C O N F I D E N T I A L

1254

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/pa.

3 April 46.

AC/4005/2.

SUBJECT : Rita SUCCA.

TO : Allied Forces Headquarters
(Attn: G-5 Section).

Reference your G-5 383.4 of 29 March 1946.

1. Attached herewith is file on above subject.

2. Will you please acknowledge receipt of same.

JOHN E. WEIL,
Colonel, Infantry,
Chief Legal Advisor.

Incls.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

C-O-N-F-I-D-E-N-T-I-A-L

1248

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mdn.

AC/4005/1. 2 April 1946.

SUBJECT : "Axis sally".

TO : Chief Commissioner.

1. Attached is file transmitted by AFHQ on above subject. A resume of the file has been prepared by us for your information.

2. May this file be returned to us for transmission to AFHQ ?

JOHN E. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

C-O-N-F-I-D-E-N-T-I-A-L

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Declassified E.O. 12356 Section 3.3/NND No. 785016

I

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

(123)

/pa.

2 Apr 46.

AC/4005/L.

SUBJECT : RITA ZUCCA.

HEAD TO CHIEF COMMISSIONER.

The case of ZUCCA, Rita Lotus, ("Axis Sally"), has been very carefully investigated and the investigation established the following facts:

She was born in New York on 2nd May 1906 and came to Italy from U.S.A. on 14th Dec 1940.

On 6th June 1941 she voluntarily renounced her American nationality by making a sworn oath of renunciation under Section 401 (f) of Chapter IV of the Nationality Act, 1940. The oath was subscribed and sworn before the U.S.A. Consul in Rome, and this act of renunciation was approved by the Department of State, Washington, U.S., on 23rd July 1941.

In 1942 ZUCCA took a post at the Radio Rome (E.I.A.R.) and did various jobs in the English language broadcasts.

In 1944 she helped George Gobel of the German Propaganda to produce at the Radio Rome under German control a daily programme called " Jerry's Front Calling", in these daily broadcasts she made anti-American statements, telling the American soldiers they were foolish in fighting, and that they had been duped by their leaders". This fact is deposed to by an American subject who was a fellow-worker at Radio Rome with ZUCCA, who states he was often beside her at the microphone when she was broadcasting, and at other times he was in the control room watching her. He states further: "I saw and heard her broadcast on the 'Jerry's Front Calling' programme almost daily between March 1st 1944 and May 25th 1944". She was paid Lire 250 a week by Count Dienstead head of the German propaganda. She stated that she was only working for money and did not think there was any truth in the propaganda

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she uttered over the air. When the Germans moved North from Rome ZUCCA moved to Florence with them where she continued to broadcast against the Italians in Italy. In April 1945 she was working for the German controlled Radio in Milan.

In Rome she was very friendly with many Germans, frequently entertaining them at her apartment.

On 20 Sept 1945 in Rome ZUCCA was charged with "Intelligence with the enemy", before an Italian Military Tribunal, found Guilty, and sentenced to 4 years and 9 months confinement. Her counsel has filed a notice of appeal, but in the opinion of Colonel Molfini, Chief Prosecutor of the Italian Military, no sound legal basis exists for an appeal.

ZUCCA's mother came to Italy from New York and sought the aid of AC of S, G-2, Rome Area, concerning an appeal. The AC of S "refused to intervene in any manner and feels that subject was fortunate in receiving a relatively light sentence, and is also not in favour of an appeal. The Office of AC of S has in a letter to G-2 AFHQ stated:" Mrs. ZUCCA wishes to take subject back to the States with her, but this Office feels that since subject saw fit to renounce her American citizenship during the time in which the U.S.A. was passing through one of its most critical periods, she is not worthy of again becoming an American citizen and the FBI and State Department should be advised that Miss ZUCCA should not be allowed to re-enter the U.S.A. under any conditions". In reply to G-2 (G1) Section, AFHQ said: "Attention is drawn to the fact that subject is an Italian citizen and has been tried and convicted by an Italian Tribunal, therefore this office has no jurisdiction over subject".

JOHN A. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

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29

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4005 5397 Folder 22

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 383.4

26 March 1946

SUBJECT: Rita ZUCCA.

TO : Headquarters, Allied Commission,
APO 394.

1. Reference Legal Sub-Commission letter AC/4005/L of 12 March 1946.

2. It is regretted that it has not yet been possible to reply to your letter of 29 Dec 1945. It is hoped to forward a report on the status of Rita ZUCCA within the next few days.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

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

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Declassified E.O. 12356 Section 3.3/NND No. 785016

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121/4

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 383.4

29 March 1946

SUBJECT: Rita Zucca.

TO : Headquarters, Allied Commission,
APO 394.

Reference your AC/A005/1 dated 12 March 1946.

1. Attached is a file containing all the available pertinent information on Rita Zucca.

2. It will be seen that subject is an Italian citizen. Attention is drawn particularly to letter ll A, paragraph 5.

3. You are requested to return the file in due course.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. HAMBLEN
Brigadier General, GSC
Assistant Chief of Staff, G-5.

Encl: as above.

LEG. LIAISON
CLO
DCLO
Chief Counsel
CID
Italian Section
CLERKS
1 Cy Encl

24

Declassified E.O. 12356 Section 3.3/NND No. 785016

C-o-p-y

FROM : LEGAL SUB-COMMISSION. 15 March 1946.

AC/4005/L.

SUBJECT : Rita Zuoon.

MEMORANDUM TO CHIEF COMMISSIONER.

1. Attached are copies of letters, which are self-explanatory. Thus far, no reply has been received, and a reminder has been sent as a follow-up. We have this case in our suspense file.

JOHN H. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Incls.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Tel. 47320

KJC/lk

1197

HEADQUARTERS ALLIED COMMISSION
APO 394
FOOD AND AGRICULTURE BRANCH.

70-19/FA

22 March 1946

SUBJECT: - Lenses of Salt by subject of Monaco.

TO : - AC Chief Liaison Officer, Liguria (Genoa), Attn: Food Liaison Officer.

1. Please refer your letter Lig/1/402 dated 8 February/

2. The complete file on the above subject was referred to Legal Sub-Commission which advises us that owner of the salt should submit a claim to the Claims and Hirings office.

K J Lunan, Maj.

V R.A. COWPER.
Lt. Colonel.
Director FOOD AND AGRICULTURE.

Copies to: HQ AC Legal Sub-Commission.
(Your AC/405/L dated 21 March refers)

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Declassified E.O. 12356 Section 3.3/NND No. 785016

1184

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/ada.

AC/LOG/L. 21 March 1946.

SUBJECT : Exit - Loss by subject of Romano.

TO : Food and Agriculture Sub-Commission.

1. Reference your letter AC/19/FA of 13 February 1946.

2. This would appear to be a matter out of our control and should be referred to Claims and Hirings Office.

Encl. Nil.

ARTHUR P. PUGET,
Major, AUS,
Chief Counsel,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

Tel. 47@420

KJC/lk

1174

HEADQUARTERS ALLIED COMMISSION
A.P.O. 394
FOOD AND AGRICULTURE BRANCH

70-19/FA

16 March 1946

SUBJECT: - Salt - Loss by subject of Monaco

TO : - HQ AC Legal Sub-Commission

1. Please refer to letter 70-19/FA same subject dated 19 February 1946.

2. Would you please forward reply on above subject to this Office.

V. R. A. COWPER.
Lt. Colonel.
Director FOOD AND AGRICULTURE BRANCH.

LEG. SUBCOMMISSION
CLO
DCLO
Chief Counsel
CIO
Italian Section
CLERKS

18 March 47

Graziani, Ltd

2.23

Declassified E.O. 12356 Section 3.3/NND No. 785016

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TEL.47842

KJC/ig

HEADQUARTERS ALLIED COMMISSION
A.P.O. 394
Food & Agriculture Sub-Commission

70-19/FA

19 February 1946.

SUBJECT : Salt - Loss by subject of Monaco.

TO : HQ. AC. Legal Sub-Commission.

1. Attached is letter reference Lig/I/402 dated 8th February from Liguria Liaison Group requesting to know what course of action should be taken by Mr.M.Maurice who lost a certain quantity of salt in attempting to make an exchange with Sepral of Cremona Province.

2. We are enclosing copies of all correspondence in our files on the above subject.

3. We will appreciate receiving your advice as to what reply we should make to the above letter of the Liguria Liaison Group.

W.J. LEGG
Director

Enclosures
8 copies of correspondence.

Copy for infor. to :
HQ. A.C. Tn. & Shipping S/C.

Declassified E.O. 12356 Section 3.3/NND No. 785016

1164

FROM : LEGAL SUB-COMMISSION.

AC/4005/L.

SUBJECT : Rita ZUCCA.

MEMORANDUM TO CHIEF COMMISSIONER.

1. Attached are copies of letters, which are self-explanatory. Thus far, no reply has been received, and a reminder has been sent as a follow-up. We have this case in our suspense file.

JOHN K. WEBB.
Colonel, Infantry.
Chief Legal Advisor.

Incls.

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEAD QUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

JKW/pa.
12 Nov 46.

AC/4005/L.

SUBJECT : Rita ZUCCA.

TO : AFHQ, G-5 Section.

1. Please see your letter 4 January 1946, subject : Rita Zucca, to these Headquarters, reference G-5 383.4.

2. Has a reply been sent from your office? If so, may we have a copy of such communication? Our files do not disclose a reply.

For Chief Commissioner :

JOHN K. WEBER,
Colonel, Infantry.
Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4/605

1144

HEADQUARTERS ALLIED COMMISSION
Office of the Chief Commissioner
APO 394

14 March 1946.

MEMORANDUM TO: Colonel Weber, Legal S/C.

On 21 December 1945 I sent you copies of letters from Senator Vandenberg and Representative Shafer regarding Rita Zucca, "Axis Sally", requesting that advise me what replies should be made.

May I have the results of your investigation.

EMERY W. STONE
Rear Admiral, USNR
Chief Commissioner

CLO
DCLO
Chief Counsel
CIO
Italian Section
CLERKS
15 March 46.

See folio 88A
folio 89A
folio 91A

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Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/es

AC/4005/L

20 February 1946

SUBJECT : Italian Naval Munitions Production.

TO : Navy Sub-Commission

1. Lt. Comdr. Crabb's letter does not disclose any fact which was not already known to your Sub-Commission.

2. The final decision to be taken in this matter appears to rest on a question of fact much more than on a point of law.

3. Either Ing. Goeta stated that he would like to keep his men busy and asked leave to continue the work on the four machines fully understanding that he was doing so under his own responsibility without any commitment being undertaken by the Allied authorities.

4. Or Lt. Comdr. Crabb requested him to complete the 33B because of the interest shown in this type of craft by US Navy thus committing the Allied authorities to compensation for the cost of production.

5. As US Navy interest in 33B is fully admitted, it appears difficult to accept the first alternative unless Ing. Goeta confirms the facts set out in Para 6 of your enclosure (A).

6. I am afraid that until this evidence is obtained the opinion of this Sub-Commission cannot be modified.

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

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Declassified E.O. 12356 Section 3.3/NND No. 785016

112A

HEADQUARTERS ALLIED COMMISSION
NAVY SUB-COMMISSION APO 394

101A NSC/4612
18 February 1946

JJA

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

Subject: Italian Naval Munitions Production.

Reference: (a) Your ltr AC/4005/1 dated 4 February 1946.
(b) Navy S/C ltr NSC/4429 dated 15 January 1946.

Enclosure: (A) Letter from Lt.Comdr. L.K.P. Crabb, RNVR, to RNO Venice dated 13 February 1946. (Copy).

1. With regard to references (a) and (b), enclosure (A) is forwarded for information.

2. It is requested that the Legal Sub-Commission inform the Navy Sub-Commission whether or not the facts set forth in enclosure (A) change the decision handed down in reference (a), paragraph 9.

G. F. MENTZ,
CAPTAIN, U. S. NAVY,
FOR REAR ADMIRAL
CHIEF, NAVY SUB-COMMISSION, AC.

CLO
DCLO
Chief Counsel
CJO
Italian Section
CL RKS
Rec'd. 19 Feb 46

2424

Declassified E.O. 12356 Section 3.3/NND No. 785016

ALLIED NAVIES EXPERIMENTAL STATION
S/Andrea - Venice - Tel.26210

Venice Feb.13th,1946

From: Lt/Comdr. L.K.P. CRABB, R.N.V.R.
To: R.N.O. Venice

Subject: Miniature Submarine at Caproni Works Milan.

Ref.: (A) Navy S/C letter NSC/4558 6th Feb.1946
(B) Navy S/C letter NSC/4429 15th Jan.1946
(C) AC/4005/L 4th, Feb.1946

1) When the writer first visited Caproni Workshops in Milan in June 1945, Ing.Goeta stated that the Germans had ordered 18 SSB. Four of these were in an advanced state of assembly and could be completed in three weeks, nine more could be produced in four months. Ing. Goeta suggested that in order to keep his men working he should carry on work in the four torpedos at his own risk. A signal was made to C-in-C-Med (R) FOTALI FOTALI (Rome) SNONA by NOIC Venice, stating these facts.

2) The matter was again referred to in my report to Cin-C Med paragraph 3 Sec:III of 26,6,45.

3) The Superintendent of Diving visited the works in July 1945 and referred to the torpedos in his report to D.T.M. dated 16,7,45 Appendix IV paragraph 2 and Appendix VII paragraph 4.

4) N.O.I.C.'s letter to Navy Sub-Commission Rome, dated 3rd September 1945.No 831/26/2 paragraph 6, states that 2 SSB had been completed and that 2 more were practically ready. At this time Ing. Goeta was told by me not to proceed further pending further orders.

5) Ref paragraph 3 of AC/4005/L 4th February 1946. Plans of these SSB had been sent to A.F.H.Q. from Venice by the Intelligence Collecting Unit early in May.

6) Ref paragraph 7 of the same letter it is desired to stress the fact that Ing.Goeta stated that three weeks work would serve to complete the four machines, that all parts were ready and present in his shops and that he would like to keep his men busy as they had to be paid in any case.

7) At this time the U.S.Navy was showing great interest in this type of craft and a visit from the Superintendent of Diving was expected, on his report it was expected that a final decision wouldbe made as to the future of these machines.

/s/ L.K.P. Crabb
Lt.Comdr. L.K.P. CRABB,R.N.V.R.

COPY

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Declassified E.O. 12356 Section 3.3/NND No. 785016

Col. Hannaford

The M. of J. wants

further information on this matter.

16/2

4805 1114

Mod.2

Ministero di Grazia e Giustizia

Gabinetto de S.E. il Ministro

Roma, 29.1.1946 - 19

Protocollo n. UC/4231

OGGETTO Causa di Adessa Olga, Abbagiam e Abbadilo, cittadini etiopici.

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale
ROMA

Si restituisce l'unita lettera con preghiera di specificare a quale pratica si riferisce.

L'UFFICIALE DI COLLEGAMENTO
(Dr.G.Bonelli)

Declassified E.O. 12356 Section 3.3/NND No. 785016

ALLA COMMISSIONE ALLEATA
Sottocommissione Legale
R O M A

Si restituisce l'unita lettera con preghiera di specificare a quale pratica si riferisce.

L'UFFICIALE DI COLLEGAMENTO
(Dr.G.Bonelli)

Bonelli

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Declassified E.O. 12356 Section 3.3/NND No. 785016

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Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

AC/14326/P.S.

GCH/ns
21 January 1946

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 the 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.

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

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

G.G. Hannaford

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

Copy to Ministero degli Esteri(Cons. Prunas).
" " Displaced Persons
" " Polad A and B

Declassified E.O. 12356 Section 3.3/NND No. 785016

HEADQUARTERS ALLIED COMMISSION
AFO 394
LEGAL SUB COMMISSION

MF/ns
15 February 1946.

AC/4005/-

SUBJECT : ment of Land Properties Ciampino Airport.

TO : Air Forces Sub Commission.

1. Reference your AFSC/22/AIR dated 29th Jan. 1946. to Food and Agriculture Sub Commission.

2. It would be very much appreciated if you will put this Sub Commission in a position to advise on the above mentioned matter by supplying us with all details and documents which are in your possession.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

13

Declassified E.O. 12356 Section 3.3/NND No. 785016

Tel. 489081
Ext. 262

Office

HEADQUARTERS ALLIED COMMISSION
APO 394
FOOD & AGRICULTURE SUB-COMMISSION

AGR/161

5 February 1946

SUBJECT: Rent of Land Properties Ciampino Airport.

TO : Legal Sub-Commission.

1. The Air Forces Sub-Commission with their AFSC/22/AIR dated 29 January 1946, subject as above, have forwarded to this Sub-Commission the attached copy of letter which they have received from the Italian Air Ministry, asking for our advise on the matter.

2. As the latter does not come under our jurisdiction we are transmitting the above mentioned copy of letter to you for such action as you may consider appropriate.

W. J. LEGG
Director

Enclosures:
As above.

cc: Air Forces Sub-Commission.

DCLO
Chief Counsel
CIO

7-2-46.

Declassified E.O. 12356 Section 3.3/NND No. 785016

TRANSLATION

From : I.A.M. "Demanio Direttorate".

To : A.F.S.C., A.C., Rome.

Date : 14th January, 1946.

Ref : D432/30139/186/Coll.

RENT OF THREE LAND PROPERTIES IN THE CIAMPINO NORTH AREA

Through agreement of 10-3-1937 the General Secretariat of the "Pesci Italiani all'Estero" was granted the rent of three land properties of approximatively 7.400 square meters held by the Air Force Administration. Said zones are situated on the Ciampino North Airport area close to the railroad station of Ciampino.

The said zones were rented for the duration of nine years with the purpose of facilitating the construction, on the part of the Secretariat General a certain number of buildings for the storage of war material and clothing to be assigned to the "Summer for children Institution" and camping for the children of Italian citizens residing abroad.

At the present time, the Institution for children of Italian citizens residing abroad (figli degli Italiani all'Estero), following a decision of the Ministry of Foreign Affairs, has come in possession of the whole real estate property previously kept by the said General Secretariat. In view of the time limit of said agreement, which will be effective up to the 10 of March,46, said Institute requests its renewal for a period of other nine years.

The writer while recommending the renewal of the agreement in question, kindly requests this Sub Commission to examine and give favourable consideration to what is requested by this P.I.E. institution.

Your action in this matter will be very much appreciated.

The Minister.

Declassified E.O. 12356 Section 3.3/NND No. 785016

104A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mdn.

12 February 1946.

AC/4005/1.

SUBJECT : Giudice Istruttore Renzi.

TO : Ministry of Pardon and Justice.

1. Herewith please find enclosed request of instructions from Giudice Istruttore A. Renzi, assigned to the Tribunal of Trieste.

2. It is understood that this Sub-Commission is not in the position to give instructions on the matter.

3. Please acknowledge receipt.

MURRAY THOMAS,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

4/605

File Ilari

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
13 CORPS

106A

LEGAL DIVISION Tel. 29794 ex.... Date 28 December 1945
FILE REF.: 13C/AMG/LD/ Misc/824
SUBJECT: Application for compensation from Italian Government

TO: Chief Legal Advisor - M.Q. Allied Commission A.P.O. 394 ROME

Please advise on the three questions referred to in the attached letter.

For the Senior Civil Affairs Officer,

R. G. Ettenedge 2 JAN

for A.S. GOLD, Lieut.
Major, AUS
Chief Legal Officer

LEGAL SUBSECTION
CLO
DCLO
Chief Counsel
CJO
Italian Section
CLERKS

Declassified E.O. 12356 Section 3.3/NND No. 785016

Translation

In order to make it possible to treat a civil case which has been promoted on the 20/4/1945 by widow ZIMOLO Maria (for account of herself and of her son Giuliano) against the Ministry of the Armed Forces (of the former Fascist Republic) for the obtention of an indemnity in connection with her husband's death (who has been overrun by an Italian military car in Trieste on the 27/X/1942), we kindly regest you to let us know:

1) whether there exists or not a successor office (ufficio stralcio) to the said Ministry of the Armed Forces (in the affermative we should like to know where it is)
2) whether or not the present Italian Ministry of War is bound to refund damages caused to civilians by military motor-cars at the above-mentioned epoch (27/X/1942).
3) whether there exists a link (and what kind of link) between the former Fascist Republican Ministry of the Armed Forces and the present Italian Ministry of War, so as to establish whether the latter has accepted the responsibilities of the former regarding the payment of such indemnities as mentioned above.

Thanking, respectfully,
the inquiring Judge
signed A. RENZI

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB COMMISSION

4005

AC/4044/1/-

AT/ne
4 February 1946.

SUBJECT : Mobilization of Italian Telecommunications Personnel in Emergencies.

TO : Labour Sub Commission.

1. Reference your LSC/523/1002 of 15 January to Communications Sub Commission.

2. Para 2 of your letter asks the opinion of this Sub-Commission "on the validity of the statement at Para. 7 (c) of the enclosure to AFHQ memorandum G/311.3 of 20th December 1945, viz., that under the terms of the Armistice the Allies have the right to demand the services of Italian civilian employees as labour to maintain the essential requirements of the Forces of Occupation, and that this right of the Allies is an obligation of these Italian civilians."

3. Art. 16 of the Armistice gives the Allied C. in C. the right to take over any communication stations. Art. 18 states that Allied Forces will occupy certain parts of Italian territory.

4. Art. 19 says that "in the territories or areas referred to in article 18," i.e. the parts of Italy occupied by Allied Forces, ".....all inter-communication installations..... which be made available in good condition by the competent Italian authorities with the personnel required for working them." It should be noted that this obligation only relates to the parts of Italy occupied by Allied Forces.

5. After stating in Art. 20 that the United Nations will exercise all the rights of an occupying power in the areas occupied by Allied Forces the Armistice terms go on to provide that "in addition to the rights in respect of occupied Italian territories described in Arts. 18 to 20.....the Italian authorities will make available on non-occupied Italian territory all transport facilities required by the United Nations .....and will comply with instructions issued by the Allied C.-in-C. regarding the use and control of airfields....inter-communication systems." (Art. 18). The obligation to comply with such Allied instructions appears to relate only to non-occupied Italian territory.

./.

Declassified E.O. 12356 Section 3.3/NND No. 785016

6. The terms upon which each restoration of territory to the Italian Government is made are "without prejudice to any rights, powers and immunities of the United Nations under the Armistice Terms heretofore granted to the Italian Government, all of which remain in full force and effect throughout all Italian territory."

7. The obligation under Art. 19 upon the Italian authorities to make available in good condition all ports and harbours, and all intercommunication installations is imposed in "the territories or areas referred to in Art. 18," which are stated to be certain parts of Italian territory which the forces of the United Nations will require to occupy and which will from time to time be notified by the United Nations. Although, as mentioned in para 6 above, it has been a condition of each restoration of territory that all the Armistice terms remain in full force in all Italian territory, it is open to doubt whether the obligations imposed under Art. 19 still exist in those parts of Italian territory which are no longer occupied by Allied forces. There remains, however, an obligation under Art. 21 B that the Italian authorities will on Italian territory not occupied by Allied forces comply with instructions issued by C. in C. regarding the use and control of intercommunication systems. This is an obligation not imposed upon any persons or class of persons to perform particular services, but an obligation upon "the Italian authorities" to carry out any instructions issued by the Allied C.in C. regarding the use and control of airfields, ports, shipping, transport systems, and intercommunication systems.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mda.

AC/4005/L. 5 February 1946.

SUBJECT : Italian Military Air Courier Service.

TO : Air Forces Sub-Commission.

1. Reference your AFSC/24/AIR of 25th January 1946.

2. Allied Governments constantly need to move military personnel about Italy by air, and they may do so either by using their own aircraft or those of an independent service. Personnel under military orders must travel in whatever planes the military authorities choose, but, as far as the rights of the soldier are concerned, the carrier is the governmental or military authority operating through an agent. If injured as a result of negligence military persons could bring an action against their government with its consent. Whether they would also have a right of action for damages against the Italian Government is a question of Italian law, and one with which this Sub-Commission is not concerned and expresses no opinion. Quasi - military personnel, who are bound to obey military orders and who are liable to be brought before military courts for failure to obey orders, are in the same position as soldiers. Quasi - military personnel other than the class last mentioned would seemingly have a right of action for negligence against the government employing them, again with Governments consent. In the case of ~~such personnel and~~ private persons making a claim for damages for negligence the matter would be outside the province of this Sub-Commission to advise on, but one coming with in the sphere of the Claims Commission.

3. As a general proposition the carrier cannot by a notification printed on the ticket or otherwise free himself from his common law

Declassified E.O. 12356 Section 3.3/NND No. 785016

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3. As a general proposition the carrier cannot by a notification printed on the ticket or otherwise free himself from his common law liability towards the person he carries, and any such attempt to avoid liability for his tortious acts would be likely to be held invalid as being contrary to public policy. Whether the Italian Government could avoid all liability for claims for negligence by a notice printed on the ticket issued to passengers by the Courier Service is a question governed by Italian law on which no opinion is expressed.

MURGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2439.

Declassified E.O. 12356 Section 3.3/NND No. 785016

From : Air Forces Sub-Commission, A.C. ROME.

To : Legal Sub-Commission, A.C. ROME
(Attn. Col. WEBER.)

Date : 25th January, 1946.

Ref. : AFSC/24/AIR.

LEGAL LIABILITY IN THE EVENT OF CLAIMS RELATIVE TO THE ITALIAN MILITARY AIR COURIER SERVICE

For information and insurance purposes, this Sub-Commission respectfully solicits your considered opinion in respect to the points mentioned below and which deal with the operation and supervision of the Italian Military Air Courier Service. For your guidance we are listing various subjects which we feel may have some bearing on the case.

SUPERVISION:

1. The Courier Service was inaugurated at the request of the Allied Commission. This supervision however has been relinquished to the point that all operations are now under the direct control of Italian Air Force or Italian Air Ministry personnel. For example, the Italians are responsible for maintenance of courier aircraft, briefing, decisions as to when or if planes will take-off, and actual operations of the planes.

2. Some of the booking agents are Allied Commission personnel (British and American). The booking agent manifests passengers and is responsible for transporting passengers and baggages to and from the airport. He loads same onto the plane and in most cases, sees them off the plane at destination. At some stations, Allied Commission transportation is utilized for carrying passengers to and from the airport.

TYPE OF PASSENGERS:

1. Free Passage - All personnel on payroll of an Allied Government, if on official business and all personnel of Italian Air Ministry or Italian Air Force, on official business.

2. Interdepartmental Charging - All personnel on payroll of Italian Government, and on official business.

3. Fare Paying - Private business, UNRRA, Vatican, private societies, political parties, Red Cross, any not covered by N. 1 and N. 2.

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Declassified E.O. 12356 Section 3.3/NND No. 785016

NOTE: All fares collected belong to the Italian Air Ministry.

With the above facts in mind, may we state our questions regarding several points and ask that you favor us with your legal opinion of such: -

(1) Are the Allied Commission or the Allied Governments to be considered as principals or as agents in respect to the overall functioning of the courier service.

(2) In case of claims arising out of the negligence of an employee or agent of either the Allied Commission, Allied Governments or Italian Air Ministry or Air Force, to whom would the liability accrue in case of accidents occurring: -

a. In the tranport of passengers and baggage to and from the airport.

b. In the loading or unloading of passengers and baggage at the aircraft.

c. During the actual take-off, flight, or landing operations.

(3) If a waiver or disclaimer of liability is printed on each ticket, excusing the Allied Commission or Allied Governments of any responsibility in case of accident, would such a waiver "hold any water" in a civil court, should a neglicence action be instituted by any of those peoples or agencies listed in paragraph entitled "types of passengers".

4. Would the same situation apply should the Italian Air Ministry also deny responsibility in like circumstances.

In other words, we are most interested to know just what our own legal status is in the matter and whether we or the Italian Air Ministry need consider the question of third party insurance coverage, particularly now that fare charges will be inaugurated. Your comments in the matter will be gratefully accepted.

J. W. Gilday

J. W. GILDAY,
MAJOR, AIR CORPS,
AIR VICE MARSHAL,
DIRECTOR,
AIR FORCES SUB-COMMISSION.

C-O-N-F-I-D-E-N-T-I-A-L

(1014)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mdm.

AC/4005/L.

4 February 1946.

SUBJECT : Italian Naval Munitions Production.

TO : Navy Sub-Commission.

1. Reference your Confidential Letter No. 152/4429 of 15 January 1946.

2. Several months ago Lt. Comdr. Crabb, RNVR, of the Allied Naval Experimental Station at Venice visited the Caproni works in Milano where he saw 4 miniature submarines known as "Maiali - Delta" under construction. He did not order all work to cease and the confiscation of the partly constructed four vessels; on the contrary according to Caproni's naval consultant, Ing. Goeta, he "evidenced a possible interest in using these "Maiali" if they were completed". While it is true that no specific order was given for the submarines to be completed, it must be borne in mind that upon seeing these examples of a new type of submarine the Allied Naval representative did not order their confiscation or say that they were not to be completed.

3. It is presumed from the facts submitted that the details of construction of these miniature submarines were unknown until they were seen by the Allied Naval Authorities to whom they would be of great interest. It is almost certain that Lieut. Comdr. Crabb on seeing for the first time an entirely new type of submarine would have made a report to his superiors in which he would have stated what action he had taken with regard to the completion of the vessels. If such a report is in existence, it should have been submitted, as it will contain facts essential to be known in giving the opinion requested. The fact that a report was made by the officer who saw the completed submarines in November strengthens the view that there must have been a report several months earlier when the vessels were first seen.

Declassified E.O. 12356 Section 3.3/NND No. 785016

2. Several months ago Lt. Comdr. Grabb, RCNVR, of the Allied Naval Experimental Station at Venice visited the Caproni works in Milano where he saw 4 miniature submarines known as "Maiali - Delta" under construction. He did not order all work to cease and the confiscation of the partly constructed four vessels; on the contrary according to Caproni's naval consultant, Ing. Costa, he "evidenced a possible interest in using these "Maiali" if they were completed". While it is true that no specific order was given for the submarines to be completed, it must be borne in mind that upon seeing these examples of a new type of submarine the Allied Naval representative did not order their confiscation or say that they were not to be completed.

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4. In November an Allied naval officer visited the Caproni works and found the four miniature submarines had been completed. There is no suggestion that there had been any attempt to conceal the work of completion. Ing. Costa on being questioned stated that several months earlier Lt. Comdr. Grabb had visited the works and "evidenced an interest in using these "Maiali" if they were completed." He further stated "in the meantime the Allied Experimental Station salvaged several "Maiali" in Venice and there was no further need for the Caproni product."

5. Upon these facts an opinion is sought as to whether the Allied Authorities have the legal right to take possession of the submarines and dispose of them.

6. Under Art. 13 of the Long Terms the manufacture, production and construction of war material is forbidden, but the principal question

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here to be determined is whether these four submarines have been constructed in breach of the Armistice Terms.

7. After the visit of Lt. Comdr. Crabb to the Caproni works several months prior to November it is incredible that Caproni, or in fact any firm, would have put in several months work and spent a large sum of money in completing these submarines, if they were not to receive some reward for their labour and materials. The work of completion was done quite openly without any attempt at concealment. When the vessels were first seen by Lt. Comdr. Crabb about the month of August, he could have ordered their immediate confiscation. This he did not do, nor did he give any order to discontinue the work on the submarines. In my opinion the irresistible conclusion to be drawn from the facts is that there was an understanding, express or tacit, between Lt.Comdr. Crabb and the Caproni Coy. that the Company should go ahead and complete the four vessels. From this it follows that, as these submarines have been constructed with the Allies full knowledge and with their express or tacit consent, they cannot be said to have been made in breach of the Armistice Terms, and consequently the Allied Authorities have no right to confiscate them, certainly without compensation.

8. It is obvious that the Allied Naval authorities were considerably interested in this new type of submarine, and would in all probability have taken them over upon completion, as the makers allege Lt.Comdr. Crabb intended to do. The only reason Allied interest has ceased in the four submarines completed by Caproni is that prior to their completion the Naval Authorities in Venice salvaged several submarines of the same type. From the time the Naval Authorities first saw the Submarines, and allowed the Company to proceed with their construction, something in the nature of a implied promise to pay for the cost of completion must be inferred. The Coy. would never have put in several months work on any other understanding. In my opinion it would be a breach of an implied undertaking and in fact highly unjust if the Naval Authorities could now say to the Caproni Coy.: "We have no further interest in the four submarines, as we have now salvaged others from the harbour in Venice, but we propose to confiscate and destroy them." This attitude is one which the Allied Authorities cannot honourably take.

9. For the reason set out above this Sub-Commission is of opinion that the Navy Sub-Commission has not the legal power to take possession of the four miniature submarines, and that, if it desires to do so, it can only do so upon paying to the Caproni Coy. a sum that would cover the cost of construction plus a reasonable profit to the builders on the whole

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9. For the reason set out above this Sub-Commission is of opinion that the Navy Sub-Commission has not the legal power to take possession of the four miniature submarines, and that, if it desires to do so, it can only do so upon paying to the Caproni Coy. a sum that would cover the cost of production plus a reasonable profit to the builders on the whole undertaking.

[illegible] THOMAS,
Italian Branch,
for Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785016

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