

HEADQUARTERS ALLIED COMMISSION
AFC 74
LEGAL SUB-COMMISSION

/rm.
26 September 1946.

SUBJECT : Report of Investigation of Court Procedure
and Policy in AB, 13 Corps Area.

TO : The Chief Commissioner.

1. As directed in your written instruction of 14 September 1946, Ref: 2619 F.O., I have made personal investigation of Court Procedure and policy in AB, 13 Corps Area, at Trieste, giving special attention to the application of AB jurisdiction and Court sentences in this connection. There is set forth in the following a brief explanatory resume of the facts and circumstances which prompted this inquiry and report of the results thereof.

2. Up to 2 May 1946 it was the policy of the Allied Military Courts of Venezia Giulia to regard URGH property as belonging to the Allied Forces within the meaning of AB Proclamation 1, and offenders against such property were convicted and sentenced by AB Courts as violators of this proclamation. On that date, on appeal, the legal sufficiency of this policy was challenged by a defendant duly convicted of such proclamation offense. The reviewing authority held that URGH property was not property of the Allied Forces within the meaning of Proclamation 1, and the conviction was quashed and the sentence set aside.

3. This ruling raised a question as to how this and like offenders, in future operations should be dealt with. Consequently on 1 June 1946, the Deputy Chief Legal Officer sent a detailed memorandum to the Deputy Chief Civil Affairs Officer, setting out the above ruling and mentioning three possible alternatives:

- (a) Enforcement of the proclamation offense specially to include URGH property.
- (b) Trial of such cases by Allied Military Courts as offenses against Italian law, as authorized in the Proclamation.
- (c) Channeling of such cases directly to the Italian Courts for trial under Italian law.

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sentences in this connection. There is set forth in the following a brief explanatory resume of the facts and circumstances which prompted this inquiry and report of its results thereof.

2. Up to 20 May 1946 it was the policy of the Allied Military Courts of Venezia Giulia to regard UHRA property as belonging to the Allied forces within the meaning of AAI Proclamation 1, and offenders against such property were convicted and sentenced by AAJ Courts as violators of this proclamation. On that date, on appeal, the legal sufficiency of this policy was challenged by a defendant duly convicted of such proclamation offense. The reviewing authority held that UHRA property was not "property of the Allied Forces" within the meaning of Proclamation 1, and the conviction was quashed and the sentence set aside.

3. This ruling raised a question as to how this, and like offenders, in future operations should be dealt with. Consequently on 1 June 1946, the Deputy Chief Legal Officer, sent a detailed memorandum to the Deputy Chief Civil Affairs Officer, setting out the above ruling and mentioning three possible alternatives:

(a) Underment of the proclamation offense specifically to include UHRA property.

(b) Trial of such cases by Allied Military Courts as offenses against Italian law, as authorized in the Proclamation.

(c) Channelling of such cases directly to the Italian Courts for trial under Italian law.

4. Owing to the then existing extreme shortage of legal personnel and slight prospect of betterment of this position, action (c), supra, was decided on and put into effect immediately, or certainly with the knowledge of, the Chief Civil Affairs Officer. Thereafter UHRA made complaint to Allied Force Headquarters regarding the lightness of punishment on the grounds in inflicting it, or both, in cases involving UHRA property. Thereupon a cable was dispatched by G-5, Allied Force Headquarters, to the Chief Civil Affairs Officer, Trieste, requesting a report in this connection, and on 27 August 1946 such report was duly rendered. This report was forwarded to the Chief Commissioner by lot endorsement which

directed that this investigation be made.

5. In paragraph 4, of the report of the Senior Civil Affairs Officer to G-5, Allied Force Headquarters, after mention of the action of dismissing the conviction on 20 May 1946 (see para 3 of this memorandum) the comment is made that, "there appears to be no other basis for military jurisdiction." The vice of such statement is a lack of precision in saying what was intended to be said. If, as contended, *Ultia* property was not covered by proclamation offenses, it does not follow that military Government Court jurisdiction was at an end. Quite to the contrary. It had been pointed out to the Deputy Chief Civil Affairs Officer that there still remained in Military Government Courts jurisdiction to try offenses under Italian law. The statement, therefore, was incomplete.

6. At a conference held in the office of the Chief Civil Affairs Officer at Trieste on 19 September 1946, at which there were present Colonel HADFIELD, Colonel WHELAN, Colonel BOWMAN and Lt. Colonel MURKIN, it was agreed that Allied Military Courts have jurisdiction to try offenders against *Ultia* property under Italian law, and that all cases now appearing on the dockets of the Venezia Giulia Italian Courts would be forthwith transferred to Allied Military Courts for trial. In my presence such orders were given orally to the President of the Court of Appeal and the Procureurs General, and were later confirmed in writing. Proceedings in such Italian cases are to be instituted before AG Courts by an officer from the legal section detailed for that purpose. All future offenders of this kind are to be channeled direct to Allied Military Courts. It was further agreed that as a matter of policy and for the purpose of effect on the public, violations of Italian law other than *Ultia* cases should from time to time be tried by Allied Military Courts.

7. Under a rule of that laid down by Colonel HADFIELD, to cover cases wherein there might exist a choice of solutions, as in the instant case, it was the affirmative, continuing duty of the Chief Legal Officer of Venezia Giulia unhesitatingly to proceed with his administration in such manner as would vigorously enforce occupational law and uphold the prestige of Occupational Government. Therefore a Chief Legal Officer in the performance of his duties has the responsibility of making decisions in the course of his daily administration, though in accordance with good administrative procedure he is required to make reports thereof to his Chief Civil Affairs Officer.

8. The report of the Senior Civil Affairs Officer of Venezia

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6. At a conference held in the office of the Chief Civil Affairs Officer at Trieste

in question I took opportunity again to discuss with the legal personnel of Venezia Giulia the topic of the Law's administration in Occupied Areas. I repeat with emphasis, however, that though this procedure may be expected to have beneficial results, it is no cure-all. In this case I have made specific recommendations to meet many ills currently complained of. They were well received, and there was much optimism in the minds of all regarding future operations. The air seemed cleared, and morale greatly improved.

9. In this connection it must be borne in mind that the majority of the legal staff of Venezia Giulia have had but brief experience in the performance of their present tasks. Whatever may have been their sins of omission or commission, to catalogue them under the heading of "incompetent" at this stage of their careers could hardly be justified. Moreover we no longer possess reserves of talented men power upon which to draw to accomplish the work necessary to be done. Realistically we must husband the man-power resources at our command. The legal personnel of Venezia Giulia are no easier on any to discharge their trust and responsibilities within the scope of their talents. It would be presumptuous at this time to say that they lack that ability necessary to perform the mission required of them. It may take some time, patience and, perhaps, charity in dealing with them before they may function as well as desired. That point is definitely not reached where it can be said with finality that such goal is unattainable.

10. Recommendations:

- A - As indicated, procedure for the trial under Italian law by the Courts of offenses against UNRRA property is now in operation in Venezia Giulia. Adherence thereto should continue until such time as higher authority is of the opinion that it should be relaxed. In the light of our experiences in Italy it never should be entirely abandoned. In Venezia Giulia in particular for many reasons, such procedure should be kept in active, healthy operation, all doubts thereon being resolved against, rather than in favour of relaxation.

- B - The imposition of deterrent sentences in all cases was considered at length at the meeting of the legal personnel of Venezia Giulia with the Chief legal adviser of the Allied Commission. At the time

under the heading of "incompetence" in the stage of their careers could hardly be justified. However we no longer possess reserves of talented men power upon which to draw to accomplish the work necessary to be done. Hesitantly we must husband the man-power resources at our command. The legal personnel of Venezia Giulia are too eager to discharge their trust and responsibilities within the scope of their talents. It would be presumptuous at this time to say that they lack that ability necessary to perform the mission required of them. It may take some time, patience and, perhaps, clarity in dealing with them before they may function as well as desired. That point is definitely not reached where it can be said with finality that such goal is unattainable.

10. Recommendations:

A - As indicated, procedure for the trial under Italian Law by ABC Courts of offenses against Public Property is now in operation in Venezia Giulia. Adherence thereto should continue until such time as higher authority is of the opinion that it should be relaxed. In the light of our experiences in Italy it never should be entirely abandoned. In Venezia Giulia in particular for many reasons, such procedure should be kept an active, healthy operation, all doubts thereon being resolved against, rather than in favour of relaxation.

B - The imposition of deterrent sentences in all cases was considered at length at the meeting of the legal personnel of Venezia Giulia with the Chief Legal Advisor of the Allied Commission. At the time only three of the personnel were absent, two being on leave and one confined in the hospital. Also other administrative innovations, which have proven their merit in operations elsewhere in Italy, were urged for adoption. Among them was that of the weekly conference. There can be no doubt that such conferences, following a suggested pattern, do much to insure uniformity of action by trial judges. This means of coordination was used effectively at Naples and with the Fifth Army. It is the opinion of the Chief Legal Advisor that the employment of this expedient is the best insurance available against lack of uniformity of action in cases of this kind.

C - Occupational law is more than mere rules of discipline for the warring of war, it is a jurisprudence of the family of nations. It belongs to all mankind. It governs the lives and property of people and is recognized and enforced by the highest courts of all civilized peoples. We deceive no one by concluding that our decisions may not be used against us with all the force with which presently we apply them to others. The precedents which we now establish is the law of tomorrow, binding not only on those whom we presently judge, but on ourselves and our posterity in the days that are yet to come. Therefore we may well give pause and ponder over the nature of the trust which presently we are called upon to administer. For this, and other reasons, it is not sufficient that the Chief Legal Officer of Venezia confine himself exactly to a procedural routine. He must furnish an aggressive leadership in the law's administration, judicial in character, and possessed of vision above and beyond the day to day horizon. If the rule of law is ever to be completely substituted for the rule of violence that achievement will be attained through an evolution in law in which the experiences in Occupied Areas, as vivid examples, will be a moving force. From the beginning, that has been the goal for which the Legal Sub-Commission has striven in its work in Italy. Perhaps no one seriously will maintain that this goal has been fully reached. In fact it may be doggedly contested by some that its efforts have failed. But, a record of undeniable progress speaks for itself, and the task is not yet finished. Venezia Giulia may well follow with profit those principles the Legal Sub-Commission, elsewhere in Italy, has sought to establish.

D - Consolidated instructions fix the boundaries of judicial action in the trial and review of Allied Military Court cases. Because sentences in such cases are at times imposed with a view to their deterrent effect on others, these instructions wisely provide for a continuing judicial control over such sentences after they have been imposed. It is provided therein that such control be vested in the Senior Civil Affairs Officer or a Judicial

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Consolidated Instructions fix the boundaries of judicial action in the trial and review of Allied Military Court cases. Because sentences in such cases are at times imposed with a view to their deterrent effect on others, these instructions wisely provide for a continuing judicial control over such sentences after they have been imposed. It is provided therein that such control be vested in the Senior Civil Affairs Officer or a judicial officer not below the rank of major appointed by him for that purpose. This provision was made with full consideration of the rule in agency that acts as personnel in nature as marriage, voting, sitting on a jury or acting as a judge. It cannot be performed for a principal by an agent. It is outside the rule for the Senior Civil Affairs Officer to assume all of such control thru the device of personal instructions to be carried out by the Chief Legal Officer as his agent. The Senior Civil Affairs Officer must personally exercise the function

in its entirety or he must pass it on to be exercised wholly by the judicial officer named for that purpose. This rule is fundamental. It was disturbing to find that judges in Venezia Giulia were reluctant to impose deterrent sentences on the ground that safe guards wisely imposed by Consolidated Institutions for their continued judicial control might not be observed. It is the power of Courts in the administration of the law to determine punishment. It nowhere conflicts with the executive power of pardon which is exercised after the Courts have done their duty. The executive power is not to be used as a limiting force on the Courts any more than the judicial power of the Courts may be used as a limiting force on the rights of the executive. This premise has rigidly prevailed during our Occupation of Italy. It is recommended, therefore, that the exercise of the judicial function in Venezia Giulia be wholly assumed by the Senior Civil Affairs Officer or that it be wholly assumed by a judicial officer named by him for that purpose.

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L. J. Sullivan
R. J. May, Jr.

for JOHN H. ALLEN,
 Colonel, Infantry,
 Chief Legal Advisor.

10/17/47

10/17/47

10 November 1947

TO : Chief of Staff, United States Army
 FROM : Major General William H. Arnold, Jr.
 SUBJECT: Civil Affairs Section, G-5

1. Reference is made to your letter of 10/17/47 dated 10 November 1947, subject as above.

2. In this connection there is enclosed herewith copy of a report prepared by the Chief of Staff, United States Army, dated 10/17/47, which contains an extensive discussion of the various types of civil affairs personnel and their functions. It is suggested that you consider the various types of civil affairs personnel and their functions in connection with the various types of military operations, and, in view of the fact that the various types of civil affairs personnel are not all alike, it is suggested that you consider the various types of civil affairs personnel and their functions in connection with the various types of military operations, and, in view of the fact that the various types of civil affairs personnel are not all alike, it is suggested that you consider the various types of civil affairs personnel and their functions in connection with the various types of military operations.

Major General William H. Arnold, Jr.
 Chief of Staff, United States Army

3. In recognition of this well-established principle of law,

6. In paragraph 5 of his letter the S.C.A.O. states that

which is delegated the duty to chart the political course which that Government must take. This

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2. As pointed out in my memorandum to the Chief Commissioner, I have not recommended that the review

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somewhat from lack of outside advice and guidance. No subordinate agency, no matter how

HEADQUARTERS ALLIED COMMISSION
Office of the Chief Commissioner
APO 7

Ref.: AC/4014/13/L.

14 October 1946. 15A

SUBJECT : Trial of UNRRA cases.

TO : Allied Force Headquarters, G-5 Section,
APO 512.

1. Reference is made to Senior Civil Affairs Officer, Venezia Giulia letter of 27 August 1946 and Allied Force Headquarters G-5 Section Indorsement 942.30 (TS) of 3 September 1946.

2. The investigation required by that indorsement has been carried out and a copy of the Chief Legal Advisor's Report of Investigation of Court procedure and policy in Venezia Giulia (formerly A.M.G. 13 Corps Area) of 10 October 1946 is sent herewith.

3. Of the five recommendations made in that Report A and C have already been adopted. Authority is requested for me as Chief Civil Affairs Officer to require the Senior Civil Affairs Officer Venezia Giulia to act on recommendations B, D and E.

Is/Elmer W. Stone

ELMER W. STONE
Rear Admiral, USNR
Chief Commissioner

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Consolidated Instructions wisely

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