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PEACE TREATY, SUBJECTS FOR CONSIDERATION
OCT. 1944 - JULY 1945

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AG/4055/L.

20 July 1945.

SUBJECT : Economic clauses of eventual Peace Treaty with Italy.

TO : Sir Richard NORSWORTHY, British Embassy, ROME.

1. The draft reply to the Board of Trade which you have submitted to this Sub-Commission covers most of the points which it would appear appropriate to include in the Economic clauses of the eventual Peace Treaty in order to assure to Allied nationals the m.f.n. treatment.

2. However the following comments may be of use to you :-

- (a) The status of Foreigner in Italy is governed by Art. 16 of the "Disposizioni sulla Legge in generale" which is the introduction to "Codice Civile" of 1942. This Article sets out the principle that Foreigners enjoy the same civil rights as Italian citizens themselves enjoy in their respective countries. It is the doctrine of reciprocity which was accepted in most European and American countries before the war.

However under the Civil Code of 1865 (which followed closely the liberal tradition and philosophy of Cavour and his successors), foreigners were granted civil rights identical to those of Italian citizens. Reciprocity was not suggested (Art. 3).

- (b) The legislation through which the desiderata of the Allies may be brought into effect should be left entirely to the Italian Government. In this connection it is pointed out that over 200,000 laws and decrees (leggi speciali) exist in Italy and therefore it would be a lengthy and difficult affair to specify to the Government the legislation it is desired to abrogate or amend.
- (c) Currency legislation should be given careful consideration as it affects foreign economic activity more than any other possible business restriction.
- (d) Attention is drawn also to the necessity of preventing the promulgation of laws which may give preferential treatment to Italian concerns against foreign interests in Italy (The cases of AGIP, ANIC etc. are good examples of this type of legislation).
- (e) To "professions reserved to Italian Nationals before 1922", should be added that of "Agenti di Cambio".

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- (f) As far as civil servants being Italian citizens it is emphasized that at one time Professors of Universities, who are State officials, could be foreigners. This faculty was suppressed by fascism.
- (g) Foreign Lawyers may work in this country, but cannot appear in Italian Courts as "avvocati" or "procuratori". Their situation here is more or less the same as in France, where British and American solicitors and attorneys are accepted as "Juristes étrangers". In Italy they should however associate themselves or collaborate with an Italian lawyer.

3. Should you require more specific information please let me know.

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


BRITISH EMBASSY,
ROME.

891/12/45.C.D.

10th July 1945.

To: Col. Behrens, Legal Sub-Commission,
Allied Commission, Rome.

From: Sir Richard Nosworthy, British Embassy,
Rome.

... I enclose a copy of a letter from
the Board of Trade dated 12th April, together
with copy of a draft reply, which is incomplete
but summarizes the information on the subject
which I have been able to obtain from Sir John
Serrao.

I should be most grateful if your
Sub-Commission could check this information
given me and make any amendments or additions
considered suitable.

Rm

COPY

BOARD OF TRADE,
Millbank,
London, S.W.1.

C.R.T.1179/45.

12th April 1945.

Dear Nosworthy,

We are at present engaged in preparing for the Economic and Industrial Planning Staff, and for subsequent discussion between the Departments concerned, a first draft of economic clauses for the eventual Peace Treaty with Italy.

A point has arisen in connection with the clause relating to the rights of United Kingdom nationals to carry on business, on which I should be glad of your help. We propose to suggest that the nationals of the United Nations shall have the right to engage in Italian territory in all kinds of commerce, industry, finance, insurance, navigation, shipping and ship-owning, professions and occupations on the same terms as Italian nationals, save only as regards those classes of business, professions and occupations the exercise of which was, on a date to be specified, confined by law to Italian nationals and companies. (In respect of these excepted businesses and occupations, the nationals of the United Nations would enjoy m.f.n. treatment.) Our difficulty is to decide which date would be the most appropriate. The obvious one is the entry of Italy into the war in May 1940 but it occurs to us that Italy may have introduced new legislation discriminating against foreign nationals after war broke out in September 1939. If this is so, possibly September 1939 would be a more suitable date or it might be advisable to put the reference date even further back; e.g. to a period before the Fascist regime really got into its stride. I should be grateful if you can provide some brief and summary information as to the types of businesses, professions etc. which the Italians restrict to their own nationals and the dates at which the restrictive legislation was introduced; I believe, for instance, that United Kingdom life insurance companies were cut out many years ago.

I should also welcome your own views as to the most suitable date to insert in the Peace Treaty clause if a provision of this kind is eventually adopted, and also on the question generally.

Yours sincerely,

(signed) A.E.WELCH.

R. L. Nosworthy, Esq., C.M.G.,
British Embassy,
ROME.

COFY of draft reply to A.E. Welch, Esq., Board of Trade, London, S.W.1.

Dear Welch,

I am able at last to reply to your C.R.T.1179/45 of the 12th April regarding the draft of economic clauses that you have in hand for the eventual Peace Treaty with Italy.

2. In the first place, I would suggest, for many reasons including the political, that the date to be chosen should be October 1st 1922; in other words, we should be emphasising the return to conditions preceding the Fascist regime, even though the Fascist Government did not enter into autarkic policy till 1936.

3. On this basis, so far as I can discover, the only profession restricted to Italian nationals was the legal. All judges, magistrates and lawyers, working in Italy had to be Italian nationals. As regards types of business, the only line restricted before 1922 to Italian nationals or companies was Life Insurance, on which a monopoly was given in 1912 to the Istituto Nazionale delle Assicurazioni. There was, of course, nothing to prevent an Italian insuring his life with a British company operating in the United Kingdom, but no foreign life insurance company can have a branch established in this country.

4. In the fields of finance and industry, restrictions on foreign corporations were introduced by the decree laws, No.1400 of July 17th 1937 (commonly called the Legge Bancaria), No.1966 of November 23rd 1939 (on trust companies), and No.807 of July 24th 1942 (on investments of foreign capital in Italy). Under the first of these measures foreigners owning shares in those Italian banks to be specified in a later order as "of national interest" had to have their bearer shares transformed to nominal shares and to forego their right of vote. Moreover, the supervisory duties over the operations of foreign banks, as against national banks, were transferred from the Minister of the Treasury to the Council of Ministers. By the law No.1966 of 1939 on trust companies, the Boards of Directors of such companies had to be composed as to not less than two-thirds of Italian subjects, the President and General Manager had to be Italian and all members of the "collegio sindacato" had to be members of the appropriate sindacato and hence, through the operation of the Corporative State, Italian nationals. By the decree law No.807 of 1942 (on investments of foreign capital in Italy) the most important and comprehensive of these financial measures, transfers to foreigners of real estate in Italy or of Italian commercial firms required the authorisation of the Minister of Exchange and Currency, whose authorisation was also required to enable foreign nationals or companies to subscribe to or purchase shares in Italian companies or to participate in any other manner in their management or operation.

Copy to the London
Att. of the Legation
of 1942

8 October 1944. (rlp 2A)

SUBJECT : Possible subjects for Peace Treaty C consideration.

1. At the present time there is under consideration by ACC and the Italian Government, an Italian decree which would authorize the return of property to any of the United Nations including France and their nationals where such properties have been sequestered and are still held by sequestrators or liquidators. The decree provides that certain expenses may be deducted by the Italian Government. However, the Italian Government is bound by letter that any receipt given by a property owner shall be without prejudice to any claim he may later have by virtue of agreement between his government and the Italian government. It is important that this should be borne in mind when provisions for damages are being considered.

2. Certain properties have been sold or liquidated fully or in part. This will give rise to certain post-war claims. Inasmuch as some of the properties under Italian law have been sold to state or para-statal institutions and other to private corporations, consideration should be given to the matter of damage. It is conceivable that some of the movable property can be identified and returned and the question will arise whether the former owner is to be given the option of taking back such of his properties as can be identified and returned together with damages or no return and damages for the whole loss.

R.H.W.

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POSSIBLE SUBJECTS FOR PEACE TREATY CONSIDERATION

1. Provision with respect to sentences imposed by Allied Military Courts.
2. Treatment to be accorded claims of nationals of the United or Allied nations and of the French Government growing out of sequestration, nationalization or the disposition of their property by the Italian Government.
3. If the situation should ^{so} develop ~~and~~ that such claims are to be adjudicated by the Italian courts, then consideration should be given to the tolling of the Statute of limitations so that such owners would not be barred of their remedies by reason of the running of Statutes of Limitations.

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