

ACC

10000/142/711
(BOX 443)

RIGHTS OF MILI
TERRITORY
MAR. 1944 - SEP

10000/142/711
(BOX 443)

RIGHTS OF MILITARY AUTHORITIES IN UNOCCUPIED
TERRITORY
MAR. 1944 - SEPT. 1945

Top SECRET
HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4102/2/L.

WEB/ap.
6 October 1944.

SUBJECT : Movement Control.

TO : Deputy Chief of Staff, Civil Affairs Section.

BULL 1944

43

25(a) 1. We have considered the questions raised by your
6/4B/C.A. of 5 Oct 1944.

2. We are of opinion that the rights of the Commander-in-Chief to control civilian movement between Italian Government territory and countries outside Italy are limited to the rights specifically conferred by the Short Terms of Armistice, the Long Terms of Armistice and the various Terms of Restoration; and that as no such additional right is conferred by or can be deduced from the Terms of Restoration, the rights, if any, must be limited to those conferred by the Long and Short Terms of Armistice.

3. The only clauses in these Terms which may be relevant to such rights are :-

- (i) Long Terms clause 21.
"In addition to the rights in respect of occupied Italian territory described in Articles 18 to 20.

A. Members of the Land, Sea or Air Forces and officials of the United Nations will have the right of passage in or over non-occupied Italian territory and will be afforded all the necessary facilities and assistance in performing their functions.

B. The Italian authorities, will make available on non-occupied Italian territory all transport facilities required by the United Nations including free transit for their war material and supplies, and will comply with instructions issued by the Allied Commander-in Chief regarding the use and control of airfields, ports, shipping, inland transport systems and vehicles.

(ii) Long Terms clause 26.

"Italian subjects will pending further instructions be prevented from leaving Italian territory except as authorised by the Allied Commander-in Chief and will not in any event take service with any of the countries or in any of the territory of countries at war with any of the United Nations or occupied by any such country " nor will they proceed to any place for the purpose of undertaking work for any such country....."

(iii) Short Terms Clause 10.

"The Commander-in-Chief of the Allied Forces reserves to himself the right to take any measure which in his opinion may be necessary for the protection of the interests of the Allied Forces for the prosecution of the war, and the Italian Government binds itself to take such administration or other action as the Commander-in Chief may require....."

4. We are of opinion that while clause 21 appears to provide for the control of airfields and ports, such control is not intended to be so unrestricted as to extend to a power of complete denial of entry to persons wishing to use such airfields or ports. The purport of the clause is to grant to the Allied Forces an unrestricted use of transport facilities for the benefit of United Nations personnel, and war material and supplies. Unless the entry of persons into those ports or airfields is of such a nature as to interfere with the transport of the United Nations personnel or the war material or supplies, the clause does not in our opinion confer a right to control such entry.

5. We are of opinion that clause 26 does confer a right to prevent egress from Italian territory, but this right only applies against Italian citizens. We do not think that the restoration of territory to the Italian Government in any way operates as a further instruction nor as an authority by the Allied Commander-in Chief within the meaning of that clause. Nor do we think that the introduction of further prohibitions concerning enemy or enemy occupied territories in any way limits the express directive contained in the early part of the clause.

2a1

6. We are of opinion that under clause 10 of the Short Terms the Commander-in-Chief has the right to require the Italian Government to prohibit the movement of civilians, whether of Italian or other nationality, between countries outside Italy and Italian Government territory provided that he is of opinion that such action is necessary for the protection of the Allied Forces for the prosecution of the war. We feel therefore that before expressing a definite opinion upon the rights conferred by the clause in this case we must know whether or not the Commander-in-Chief does take the view that the continuance of the movement under consideration constitutes a hazard to the Allied Forces in the prosecution of the war against which protection is required. If he does take this view we are of opinion that the clause confers a right to require the Italian Government to prohibit this movement.

7. Save as above we are of opinion that the Commander-in-Chief has no right to interfere with the jurisdiction of the Italian Government in their control of such movement.

Richard H. Wilmer

RICHARD H. WILMER,

Colonel, C.A.C.,

Chief Legal Advisor. 41

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Ref: 6/4.1/C.A. ✓

5th October, 1944.

SUBJECT:- Movement Control.

TO:- Chief Legal Adviser.

1. The Acting Chief Commissioner desires to be informed of the legal rights of the Commander-in-Chief under the Armistice Terms or other relevant document to prevent the ingress to and egress from Italian Government territory from and to places outside Italy.
2. Though by a strict control of shipping and aeroplane traffic the passage of unauthorised persons can to a large extent be eliminated, this has not been found wholly watertight and unauthorised persons of Italian and other nationalities have entered into and left Italy without leave; it is for this reason that the Acting Chief Commissioner desires to be informed of the legal powers of the Commander-in-Chief.

G.R. Upjohn
G.R. UPJOHN. Brigadier.
V.P. Civil Affairs Section.

GU/ymb.

12CA Sec.

Please see letter opposite (copy in
file 10110 11) which COS directed
me to write and which is sent
up to you for registering and
despatch. File returned as per
minute 9.

Gulab Singh

P.S.O.

Office of COS

18/11

File 30/11 taken on 6/11/2/CA ref 21 Nov 44.
Gulab Singh

Alec 63/11/14

15 October 1944

To: Commodore Stone

From: Political Section

(2a) I regret that I had not been more explicit. With due respect to Colonel Wilmer's opinion, I do not think that an approach to the Italian Government will get us anywhere better than now. So far as British and American Personnel are concerned, surely there is no doubt that SACMED is the final authority. So far as Italians and other Nationals are concerned, our whole difficulty is to get even those to whom we support in and out of the Country, the obstacle being G-2, A.F.H.Q. Their claws are sharp enough already and I do not think that we need suggest that the Italians should sharpen up theirs.

H. A. CACCIA

38

Agree.
W.S.

Deos CAS

8

OK
hwy

No action here. But please draft letter to AFHQ advising how, & if, & etc. they keep control over entry of all kinds of people into Italy

11 Nov 44 To C.O.S.
To see 4a return please
GRH

17/11/44

6.

Mr. Caccia.

On reviewing this, it does not appear that SACMED has the right himself to prohibit but only to direct the Italian Government to do so. Hence the suggestion of the C.of S. Please speak to me about this.

Stone

MINUTE SHEET I

(1)

To: Cos

See 2a, this matter was raised at your meeting
Friday Wednesday 4th Oct.

R.R. Cripps

10 Oct. 44

3.

TO: Acting Chief Commissioner.

Attached is submitted for your information.

In my opinion the C. in C. should clearly be in a position to prevent ingress and egress and that the A.C.C. should in his name request the Italian Government so to legislate. If you agree I will draft.

10 October 44.

M.S. Lush

4.

TO: Chief of Staff.

36

I agree, please get reaction of Political Section. Suggest Legal Adviser's opinion be ~~sent~~ forwarded.

12 October 44.

E.W. Stone

5.

Political Section.

Pl. See above minute of A/C.C.

Editor on
13/10.

4102/2

As Clerk

16A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

MEMO

/rlp.
4 September 1945.

TO : Executive Commissioner.

In my opinion the position in regard to the employment of Allied troops to support CC.RR. in the search of Italian houses in Italian Government territory for arms is as follows:-

1. The Allies have no right to require that the Italian Government or the Carabinieri accept such assistance.
2. Under Italian law the Italian Army has no right by itself to conduct a search for arms in Italian houses. The responsibility for such searches rests on the CC.RR. If however CC.RR. consider that they need military support in the conduct of their search they may request it and it will be then granted. It is solely a matter for the discretion of the CC.RR. whether or not to request such assistance, but they must be guided by the obvious considerations of probable danger and disturbance. If such assistance is requested the military commander has no discretion to refuse.
3. The position of the Allied troops who might be called in to assist the Carabinieri would be in law ~~un-certain~~ curious. Obviously they are not under the command of the Italian Army; still less under that of the CC.RR. Nevertheless I do not see who, except the Italian Government, would be in a position to make complaint of any action which Allied troops may take in consequence of a request from the Carabinieri. Clearly if the Italian Government has officially requested such assistance it also is debarred from making any complaint. At the same time it would be open to any Italian civilian, and a fortiori to the Italian Government, to complain that on any particular occasion the Allied troops behaved in an improper manner or had used more violence than was necessary and to claim compensation accordingly.
4. I do not see how, from the legal point of view, the regulation affecting the use of troops in aid of a civil power in U.K. or U.S. affects the position in Italy; from a political point of view I can see that if any unfortunate incidents occur questions may well be asked which will be based upon the regulations current at home.

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

RESTRICTED

DCK/rs

ALLIED FORCE HEADQUARTERS
APO 512

ADMINISTRATIVE MEMORANDUM)

NUMBER

31)

7 May 1945

POWERS AND RIGHTS OF ALLIED FORCES IN ITALIAN GOVERNMENT TERRITORY

AFHQ Administrative Memorandum Number 57, 1944, is rescinded and the following substituted therefor:

1. General

a. It is the policy of the Allied Governments, as military exigencies permit and as the Italian Government is able to take on the responsibility, to hand back to its jurisdiction and administration territory formerly subject to Allied Military Government. In such territory Allied Military Government ceases on the hand-over and the Italian Government assumes jurisdiction and administration.

b. In handing back territory to the Italian Government, certain rights are reserved to the Allied Forces by agreement with the Italian Government. It is necessary that Allied troops in these areas should be aware of the most important of these rights and the manner in which they are to be exercised.

c. For the purposes mentioned herein the territory which may from time to time be included in that handed back to the Italian Government is termed Italian Government Territory. At the present time such territory comprises the Islands of Sicily and Sardinia and all provinces on the mainland south of the northern boundaries of the provinces of Viterbo, Rieti and Teramo with the exception of the commune of Naples which is still under Allied Military Government. 34

2. Requisitioning - The Allied Forces have retained the power to requisition private and public property and services in Italian Government territory but it is emphasized that this must be exercised sparingly and only for reasons of genuine military necessity. This will be exercised through the Italian authorities. The usual formalities of requisitioning will be followed.

3. Process in Italian Courts - No members of the Allied Forces, Allied followers of such Forces, or British or US Merchant Seamen will be subject to jurisdiction of Italian Courts.

4. Crimes against Allied Forces

a. In Italian Government territory crimes committed by Italian nationals, will normally be tried under Italian Law and in Italian courts.

b. The Allied Forces however, have reserved to themselves the right to hold Allied Military Courts in Italian Government Territory for the trial of Italian nationals who commit acts seriously hostile to the Allied Forces such as cases of espionage or sabotage and to punish them in accordance with the Italian penal code. The reservation of this right is not intended however to encourage the trial of Italian offenders by Allied Military Courts but is to enable them to deal with the most serious offences against Allied personnel or property which cannot effectively be dealt with by Italian Courts.

-1-

RESTRICTED

R E S T R I C T E D

AFHQ Administrative Memo #31 (Cont'd)

c. The procedure to be followed, if it is desired that an offense should be tried by an Allied Military Court, will be for the military authorities to give a full statement of the facts to Headquarters Allied Commission with a request that an Allied Military Government Court be convened to hear the charges. It will be the responsibility of Allied Commission to frame the charges and constitute the Court. It is emphasized that only in the most exceptional circumstances such as mentioned in paragraph 2(b) will any case in Italian Government Territory be referred to Allied Military Courts and then only on order of Allied Commission.

d. There is reserved to the Allied Forces the power to arrest any persons who are believed to have committed offences against Allied personnel or property. High ranking Italian officials and officers of the Italian Armed Forces should, however, only be arrested in collaboration with the appropriate Italian official (e.g. the Prefect or the Commanding Officer of the officer concerned).

e. Apart from cases mentioned in this paragraph and in paragraph 7 the Allied Forces have no power of arrest in Italian Government Territory.

5. Military Zones

a. The right is reserved by the Supreme Allied Commander, Mediterranean Theater to declare specific areas of Italian Government Territory to be Military Zones. By the issue of such a declaration, the exercise of the powers of Military Government in the Zone in question is assumed by the Supreme Allied Commander, Mediterranean Theater. Should the situation in any area become such as to convince the District Commander that the establishment of Zones is necessary, he should, after consulting the Headquarters Allied Commission where possible, report accordingly to this headquarters, giving full reasons to justify his view.

b. The right is also reserved by the Supreme Allied Commander to have made available to the Allied Forces such facilities, utilities and installations as may be required by him or his agents for such dispositions, use or operation as may be determined.

6. Use of troops in aid of the Civil Power

In the event that the local Italian authorities ask for the assistance of Allied troops in quelling civil disturbances, the local commander will point out that the quelling of civilian riots or disturbances is a matter for the Italian authorities and he will refuse such assistance, unless he is of the opinion that it is necessary for the protection of Allied military interests. Furthermore, before rendering such assistance, the local commander will warn the local official requesting his assistance that the territory in question will be liable to be made forthwith an Allied Military Zone. If time permits, the local commander will consult his superior commander before giving assistance. In any event, if the decision is made to grant the assistance required, the first troops to be used will be such Italian troops as may be under command of District/Base Section Commanders. Allied Commanders will inform their superior Commander without delay of any requests made to them and of the action taken thereon.

7. Military and Civilian Internees - The Allied Forces may continue to hold

R E S T R I C T E D

AFHQ Administrative Memo # 31 (Cont'd)

or require the Italian Government to hold in custody military or civilian internees in Italian Government territory. If the Allied Forces require to arrest any person for security or similar reasons such arrest should be carried out in collaboration with Italian officials unless, in any particular case, it is thought that a request to the Italian police to arrest a suspect would be ineffective. In all such cases Allied Force Headquarters will be notified as soon as possible after the arrest has taken place, and an information copy of such notification will be forwarded to Headquarters, Allied Commission.

8. Allied Commission Liaison Officers - Details of the disposition and functions of Headquarters Allied Commission Liaison Officers stationed in Italian Government Territory together with information for the use of Commanders concerning the Italian civil organization and the Italian officials who should be approached by them in their dealings with the Italians has been issued separately by AFHQ letter file AG 091.1/081 GEC-O, dated 29 March, 1945, subject: "Withdrawal of Allied Commission Personnel from Italian Government Territory".

BY COMMAND OF FIELD MARSHAL ALEXANDER:

C. F. Christenderry
C. F. CHRISTENDERRY
Colonel, AGD
Adjutant General

33

DISTRIBUTION:

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AFHQ - ALLIED COMMISSION	
→	Chief Counsel
	CL RK5
	11 May 45

SECRET

AP 593

ALLIED FORCE HEADQUARTERS
APO 512

RHF/jom

: : : : :
 : S E C R E T :
 : Auth: 340 MI :
 : Initials: RHF :
 : 6 January 1945 :
 : : : : :

AG 370.6/005 GCT-O

6 January 1945

SUBJECT: Local Defense Plans.

TO : Commanding General, 15th Army Group.
 General Officer Commanding, Number 1 District
 General Officer Commanding, Number 2 District
 General Officer Commanding, Number 3 District
 Commander, Balkan Air Force
 Commander, Land Forces, Adriatic
 Commander, Military Mission to the Italian Army
 FOR: Army Sub-Commission.

Deputy President, Allied Commission
 Commanding General, Peninsular Base Section, APO 782.
 Commanding General, Rome Area Allied Command, APO 794

1. Letters, this headquarters, file AG 370.6/106 GCT-O, dated 24 September 1944, AG 370.6/107 GCT-O, dated 27 November 1944, and AG 370.6/107 GCT-O dated 8 December 1944, all subject as above, are rescinded and the following substituted therefor:

2. Your attention is directed to recent local uprisings and disorders which indicate the possible inability of local police to cope with such situations.

3. The present policy with respect to military zones and the employment of Allied troops to quell civil disturbances is laid down in paragraphs 5 and 6 of AFHQ Administrative Memorandum Number 57, 1944, subject: "Powers and Rights of Allied Forces in Italian Government Territory". The following instructions are in amplification of those included in Administrative Memorandum Number 57.

4. There are two types of areas in that part of Italy in rear of the Army boundaries where civil riots or disturbances may occur: first, those areas which have been turned back to the Italian Government, including islands of Sicily and Sardinia, and second, those areas still under Allied Military Government control.

5. Within areas which have been turned back to the Italian Government, the Italian Government is responsible for the maintenance of law and order. To accomplish this, the Italian local civil authorities have under their control the local carabinieri. If, in the opinion of the local Italian authorities, the carabinieri are unable to deal with the situation, they should appeal to the nearest Italian military headquarters for the assistance of such Italian troops as the latter has under its control. If no such Italian troops are available, or if there is still need for additional troops, the Italian civil authorities should request the local district (base section) area or sub-area commander for

Legal

4102/2

SUBJECT: Local Defense Plans.

TO : Commanding General, 15th Army Group.
 General Officer Commanding, Number 1 District
 General Officer Commanding, Number 2 District
 General Officer Commanding, Number 3 District
 Commander, Balkan Air Force
 Commander, Land Forces, Adriatic
 Commander, Military Mission to the Italian Army
 FOR: Army Sub-Commission.
 Deputy President, Allied Commission
 Commanding General, Peninsular Base Section, APO 782.
 Commanding General, Rome Area Allied Command, APO 794.

1. Letters, this headquarters, file AF 370.6/106 GCI-0, dated 24 September 1944, AF 370.6/107 GCI-0, dated 27 November 1944, and AF 370.6/107 GCI-0 dated 8 December 1944, all subject as above, are resubmitted and the following substituted therefor:
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-1-

SECRET

LEG. SUB. C. M. 1550

CLO	
Chief Counsel	✓
CIA	K 15 Jan
Ration Section	
CL RKS	

To be on
 return to HQ

15 JAN 1945

SECRET

Ltr, JHQ, AG 370.6/005 OCT-0,
dtd 6 January 1945 (cont'd)

section) area and sub-area headquarters with the local Italian civil and military authorities.

6. Within areas which are still under Allied Military Government control, the local Allied Military Government authority is responsible for the maintenance of law and order. The local Carabinieri are under the control of Allied Military Government for this purpose. Should additional assistance be required, the local Allied Military Government authority will appeal to the local district (base section) area or sub-area commander. It is essential that close liaison exist between the local Allied Military Government commander and the local district (base section) area and sub-area commander.

7. The above responsibilities as outlined apply to civil disturbances. A disturbance in which military personnel are involved is a military responsibility and will be dealt with by the appropriate military authority.

8. Immediate reports will be made through normal channels in all cases of riots or civil disturbance, whether or not it has been necessary to employ Allied troops.

9. In any case where Allied or Italian troops are employed to quell civil disturbances, the following instructions will apply:

- a. Troops will be moved to the scene of the disturbance with weapons unloaded.
- b. Weapons will be loaded only on command of an officer.
- c. Only small arms will normally be borne by troops. Commanders are advised that the carrying of automatic weapons by troops in a civil disturbance is most undesirable and will only be allowed in the army areas where they will be kept to a minimum and used only as a last resort. Grenades are specifically prohibited.
- d. No smoke, tear gas, or chemicals of any kind will be employed.
- e. No troops will open fire upon rioters except on the express order of an officer.
10. Within the army areas, the Commanding General, 15th Army Group will issue such instructions as are considered necessary to implement the general principles outlined above.

11. Commanders concerned are responsible for the preparation of local defense schemes for the protection of Allied government property and to insure the security and efficiency of the lines of communication. Addressess who have

6. Within areas which are still under Allied Military Government control, the local Allied Military Government authority is responsible for the maintenance of law and order. The local Carabinieri are under the control of Allied Military Government for this purpose. Should additional assistance be required, the local Allied Military Government authority will appeal to the local district (base section) area or sub-area commander. It is essential that close liaison exist between the local Allied Military Government commander and the local district (base section) area and sub-area commander.

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d. No smoke, tear gas, or chemicals of any kind will be employed.

e. No troops will open fire upon rioters except on the express order of an officer.

10. Within the Army areas, the Commanding General, 15th Army Group will issue such instructions as are considered necessary to implement the general principles outlined above.

11. Commanders concerned are responsible for the preparation of local defense schemes for the protection of Allied government property and to insure the security and efficiency of the Lines of Communication. Addressees who have not already forwarded copies of their local defense plans will do so without delay. Changes or amendments will be submitted immediately on publication.

SECRET

Ltr, AFHQ, AG 370.6/005 GCT-0
dtd 6 January 1945 (cont'd)

12. All addressees will acknowledge receipt of this order.

By command of Field Marshal ALEXANDER:

/s/ C.W. CHRISTENBERRY
C.W. CHRISTENBERRY
Colonel, AGD,
Acting Adjutant General

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31

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Commission. 12 Jan 45 2606/COS

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BGK/ar

ALLIED FORCE HEADQUARTERS
AFO 512

ADMINISTRATIVE MEMORANDUM)

NUMBER 57)

11 December 1944

POWERS AND RIGHTS OF ALLIED FORCES IN ITALIAN
GOVERNMENT TERRITORY1. General

a. It is the policy of the Allied Governments, as military exigencies permit and as the Italian Government is able to take on the responsibility, to hand back to its jurisdiction and administration territory formerly subject to Allied Military Government. In such territory Allied Military Government ceases on the hand-over and the Italian Government assumes the jurisdiction and administration subject to the paramount guidance and control of the Allied Commission.

b. In handing back territory to the Italian Government, certain rights are reserved to the Allied Forces by agreement with the Italian Government. It is necessary that Allied troops in those areas should be aware of the most important of these rights and the manner in which they are to be exercised.

c. For the purposes mentioned herein the territory which may from time to time be included in that handed back to the Italian Government is termed Italian Government Territory. At the present time such territory comprises the Islands of Sicily and Sardinia and all provinces on the mainland south of the northern boundaries of the provinces of Viterbo, Rieti and Teramo with the exception of the comune of Naples which is still under Allied Military Government.

d. It is to be particularly noted that officers of the Allied Commission stationed in Italian Government territory are there to advise and control the Italian Government and one of their most important functions is liaison between Allied Military Formations in their areas and the local Italian administrative officials.

e. It is further particularly to be noted that all but the most routine dealings with the Italian administration must be conducted through the local Allied Commission representative.

2. Requisitioning - The Allied Forces have retained the power to requisition private and public property and services in Italian Government territory but it is emphasized that this must be exercised sparingly and only for reasons of genuine military necessity. This will be exercised through the Italian authorities. If for example it is necessary to requisition a building it should be done through the Sindaco of the town where the building is situated with the assistance of the nearest provincial officer of the Allied Commission. The usual formalities of requisitioning will be followed.

- 1 -

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AFHQ Adm Memo #57 (cont'd)

3. Process in Italian Courts - No members of the Allied Forces, Allied followers of such forces, or British or U. S. Merchant Seamen will be subject to jurisdiction of Italian Courts.

4. Crimes against Allied Forces

a. In Italian Government territory crimes committed by Italian nationals, will normally be tried under Italian Law and in Italian Courts.

b. The Allied Forces however have reserved to themselves the right to hold Allied Military Courts in Italian Government Territory for the trial of Italian nationals who commit acts seriously hostile to the Allied Forces and to punish them in accordance with the Italian penal code. The reservation of this right is not intended however to encourage the trial of Italian offenders by Allied Military Courts but is to enable them to deal with the most serious offences against Allied personnel or property which cannot effectively be dealt with by the Italian Courts.

c. The procedure to be followed, if it is desired that an offence should be tried by an Allied Military Court, will be for the military authorities to give a full statement of the facts to the local representative of the Allied Commission with a request that an Allied Military Government Court be convened to hear the charges. It will be the responsibility of Allied Commission to frame the charges and constitute the Court. It is emphasized that only in the most exceptional circumstances will any case in Italian Government Territory be referred to Allied Military Courts and then only on order of Allied Commission.

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

5. Military Zones - The present policy with respect to military zones and the employment of Allied troops to quell civil disturbances is as follows:

The right is reserved by the Supreme Allied Commander, Mediterranean Theater to declare specific areas of Italian Government Territory to be Military Zones. By the issue of such a declaration, the exercise of the powers of Military Government in the Zone in question is assumed by the Supreme Allied Commander, Mediterranean Theater. Should the situation in any area become such as to convince the District Commander that the establishment of Zones is necessary, he should, after consulting the Allied Commission Regional Commissioner, report accordingly to this headquarters, giving full reasons to justify his view. The Allied Forces may also re-occupy any part of Italian territory, but the right to constitute a Military Zone will render it unnecessary to exercise this right in respect of any local disorders.

4102/2
✓
Ref 2606/39/005

1 November 1944

-8 NOV. 1944

SUBJECT: Powers and Rights in Italian Government Territory

TO : G-5 Section, Allied Force Headquarters

1. From the Regional Commissioner, Sicily Region, I have received the attached copy of letter dated 17 October 44, sent to him by 3 District Commander. I would draw your attention to Paras 2 and 3 of this letter, in which it is laid down that in quelling civil disturbances not directly affecting Allied interests Italian troops will not, except in grave emergency, be employed without prior reference through the Allied Commission to the Allied Area Commander.

2. In AAI Administrative Instructions No. 48, para 7, it is stated that "the quelling of civilian riots or disturbances is a matter for the Italian Administration and he (the local Allied Commander) will refuse such assistance, unless he is of the opinion that it is necessary for the protection of Allied military interests".

3. The possibility of the employment of Italian troops is not specifically mentioned in Administrative Instructions No. 48, and it would appear that a procedure for this contingency should be established.

4. However, the channel for permission to use them, as laid down by 3 District, would, I suggest, in some instances delay their employment to a considerable extent. For example, a demand for Italian troops from a Province in the interior of Sicily administered from Palermo would have to pass to the latter and from there to Catania, HQ of the Sub Area Commander, and of course, follow the same route back. Having regard to the length and slowness of communications, a considerable period would elapse before consent could be obtained, by which time damage and casualties might have occurred.

5. It is suggested that where Italian troops are disposed in Italian Government Territory, the Italian authorities should have liberty of action in the event of a civil disturbance, provided that Allied interests are not directly involved.

6. It is for consideration however if it would not be advisable to prescribe ^{rules} and limit the armament of troops so employed.

7. The foregoing does not arise out of the recent incident in Sicily, as you will see by the date of the letter from 3 District, but that occasion does give point to the foregoing proposal. Will you kindly raise the matter and let me know your conclusions.

1 Incl:
As in para 1 above.

EW S
SALARY W. STONE
Commodore, USNR
Acting Chief Commissioner

SECRET

COPY

71B

SUBJECT: Aid to the Civil Power.

SECRET

3 District
Ext 9
69/15

17 Oct 44.

Under authority of AMI A3m Instr No. 43 dated 3 August 44, (which has been subsequently endorsed by AFHQ letter AG 370.6/487 GGT-0 dated 24 Nov 44) this HQ issued Operation Instruction No. 10, "Aid to the Civil Power" (Copies attached for LAZIO and ABRUZZI/MARCHE Regions AOD)

1. Area/2nd Area Cdn commanders will ensure that their liaison with AOC Zone Commissioners (Regional HQ in Sicily) is such that they receive early information of any civil disturbances, should they arise.
2. While the quelling of civil disturbances, which do NOT directly affect Allied interests, is a matter for Italian administrative authorities, it will be borne in mind that the latter will normally only dispose of police and CC.BR. for the purpose. Area defense schemes will be drawn up in the light of this.
3. Where as in SICILY and CALABRIA the Italian authorities do dispose of troops, such will NOT, except in grave emergency, be employed without prior reference through AOC to the Area Commander, who will be kept fully informed of all incidents and actions taken.
4. Areas will forward full reports of all civil disturbances to this HQ, although Allied action may NOT have been called for.

TO	INIT	DATE
COL. CHAPMAN		
COL. YOUNG		
LT COL WILCOX		
MAJ MASON		
MAJ WILSON		
MAJ HANSBURY		
MAJ HARVEY		
MAJ BALLANCE		
CAPT POWELL		

/s/ E. P. Warner.

/t/ Lt. Col.
G. S.
(E. P. WARNER).

3595

Copies to :

3 District
G.A. Section
Stilly Region
Land Forces Sub-Commission.

25

3595

SECRET

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4102/2/L.

WEB/sp.
6 October 1944

SUBJECT : Movement Control.

TO : Deputy Chief of Staff, Civil Affairs Section.

1. We have considered the questions raised by your 6/AB/C.A. of 5 Oct 1944.

2. We are of opinion that the rights of the Commander-in-Chief to control civilian movement between Italian Government territory and countries outside Italy are limited to the rights specifically conferred by the Short Terms of Armistice, the Long Terms of Armistice and the various Terms of Restoration; and that as no such additional right is conferred by or can be deduced from the Terms of Restoration, the rights, if any, must be limited to those conferred by the Long and Short Terms of Armistice.

3. The only clauses in these Terms which may be relevant to such rights are :-

(i) Long Terms clause 21.

"In addition to the rights in respect of occupied Italian territory described in Article 18 to 20.

A. Members of the Land, Sea or Air Forces and officials of the United Nations will have the right of passage in or over non-occupied Italian territory and will be afforded all the necessary facilities and assistance in performing their functions.

B. The Italian authorities, will make available on non-occupied Italian territory all transport facilities required by the United Nations including free transit for their war material and supplies, and will comply with instructions issued by the Allied Commander-in Chief regarding the use and control of airfields, ports, shipping, inland transport systems and vehicles."

(ii) Long Terms clause 26.

"Italian subjects will pending further instructions be prevented from leaving Italian territory except as authorized by the Allied Commander-in Chief and will not in any event take service with any of the countries or in any of the territory of countries at war with any of the United Nations or occupied by any such country " nor will they proceed to any place for the purpose of undertaking work for any such country....."

(iii) Short Terms Clause 10.

"The Commander-in Chief of the Allied Forces reserves to himself the right to take any measure which in his opinion may be necessary for the protection of the interests of the Allied Forces for the prosecution of the war, and the Italian Government binds itself to take such administration or other action as the Commander-in-Chief may require....."

4. We are of opinion that while clause 21 appears to provide for the control of airfields and ports, such control is not intended to be so unrestricted as to extend to a power of complete denial of entry to persons wishing to use such airfields or ports. The purport of the clause is to grant to the Allied Forces an unrestricted use of transport facilities for the benefit of United Nations personnel, and war material and supplies unless the entry of persons into those ports or airfields is of such a nature as to interfere with the transport of the United Nations personnel or the war material or supplies, the clause does not in our opinion confer a right to control such entry.

5. We are of opinion that clause 26 does confer a right to prevent egress from Italian territory, but this right only applies against Italian citizens. We do not think that the restoration of territory to the Italian Government in any way operates as a further instruction nor as an authority by the Allied Commander-in Chief within the meaning of that clause. Nor do we think that the introduction of further prohibitions concerning enemy or enemy occupied territories in any way limits the express directive contained in the early part of the clause.

6. We are of opinion that under clause 40 of the Short Terms the Commander-in-Chief has the right to require the Italian Government to prohibit the movement of civilians; whether of Italian or other nationality, between countries outside Italy and Italian Government territory provided that he is of opinion that such action is necessary for the protection of the Allied Forces for the prosecution of the war; We feel therefore that before expressing a definite opinion upon the rights conferred by the clause in this case we must know whether or not the Commander-in-Chief does take the view that the continuance of the movement under consideration constitutes a hazard to the Allied Forces in the prosecution of the war against which protection is required. If he does take this view we are of opinion that the clause confers a right to require the Italian Government to prohibit this movement;

7. Save as above we are of opinion that the Commander-in-Chief has no right to interfere with the jurisdiction of the Italian Government in their control of such movement.

RICHARD H. WILMER,
Colonel, C.A.C., 22
Chief Legal Advisor

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Ref: 6/4B/C.A.

5th October, 1944.

SUBJECT:- Movement Control.TO:- Chief Legal Adviser.

1. The Acting Chief Commissioner desires to be informed of the legal rights of the Commander-in-Chief under the Armistice Terms or other relevant document to prevent the ingress to and egress from Italian Government territory from and to places outside Italy.

2. Though by a strict control of shipping and aeroplane traffic the passage of unauthorised persons can to a large extent be eliminated, this has not been found wholly watertight and unauthorised persons of Italian and other nationalities have entered into and left Italy without leave; it is for this reason that the Acting Chief Commissioner desires to be informed of the legal powers of the Commander-in-Chief.

-21

G. E. UPJOHN. Brigadier.
V.P. Civil Affairs Section.

GRU/ymb.

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

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

Ref: 276/104/CA

/Gb.
17 Aug 44

SUBJECT: Use of Troops in aid of Civil Power

TO: R C & M G Section

1. Reference AAI Administrative Instructions No 48, Para 7 and RAAC Circular AG 20 of 12 Aug 44 and discuss-
sign Major Talbot - Captain More.

2. It is suggested that a letter in the following form might be sent to the ACC Liaison Officer:

"In practice it is hardly conceivable that a request for assistance would be made except in emergency and the Circular as at present drawn would seem to leave room for confusion. We think that Rome Allied Area Command should be asked to reword para 9 of their AG 300 of 12 Aug 44.

It would be better either to adopt the wording used in para 7 of AAI Administrative Circular No 48, or alternatively to retain the wording as at present, but omitting (a) the first sentence (b) the opening words "In any case" of the second sentence and (c) the penultimate sentence."

J. MORE,
Captain
for Acting Chief Legal Officer.

Copy to: ACC/4077/L

Ref: 276/104/GA

17 Aug 44

SUBJECT: Use of Troops in aid of Civil Power

TO: R C & H G Section

1. Reference AAI Administrative Instructions No 28, para 7 and RAC Circular AG 20 of 12 Aug 44 and discussion Major Talbot - Captain More.

2. It is suggested that a letter in the following form might be sent to the AGC Liaison Officer:

"In practice it is hardly conceivable that a request for assistance would be made except in emergency and the Circular as at present drawn would seem to leave room for confusion. We think that Home Allied Area Command should be asked to reword para 9 of their AG 300 of 12 Aug 44.

It would be better either to adopt the wording used in para 7 of AAI Administrative Circular No 28, or alternatively to retain the wording as at present, but omitting (a) the first sentence (b) the opening words "In any case" of the second sentence and (c) the penultimate sentence."

J. MORE,
Captain
for Acting Chief Legal Officer.

Copy to: AGC/4077/L

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

CHU/ent

ACC/4102/2/L

8 May 1944

SUBJECT: Position of Military Authorities in Unoccupied Territory.

TO : Executive Commissioner, ACC.

1. I enclose copy of a letter sent to me from P.C. Potenza and enclosures. These were sent to me direct as a result of my request when visiting Major Nicholls at Potenza last Friday.

2. The communications by 52 Area Command ought, I think you will agree, never to have been made by them direct to the Italian authorities and contravenes Para. 2 of Administrative Instruction No. 6 issued by HQ IAI Admin. Echelon on 15 March (See IAI/3064/A(0)).

3. It is submitted that it is essential that all such communications be made through ACC for two reasons.

(a) Nothing is more harmful to relationship between ACC officers in the field and local Italian authorities than to have another body issuing requests and instructions to such local authorities.

(b) The wishes of the Military Authorities can be transmitted to the Italian local authorities far more efficiently through ACC. The Prefect or Questore can be asked to pass the appropriate ordinances and so on as to put the matter on a proper footing. This was done, you will recall, when 56 Area wanted to restrict the sale of wine and wrote to ACC asking them to take the necessary steps (See enclosure to your 307/46/C dated 5 April).

4. For the above reasons will you please ask HQ IAI to instruct 52 Area to discontinue their present practice and channel all such requests through the appropriate ACC authority.

G. H. UPJOHN
Colonel
Chief Legal Officer.

Copy to: P.C. Potenza.

File ACC/4102/L

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ALLIED CONTROL COMMISSION
POTENZA PROVINCE

Pr

(5A)

Potenza, 5 May 1944

TO : HQ ACC - Salerno - (for Chief Legal Officer)
From: Major H.H. Nichols - Provincial Commissioner - POTENZA

SUBJECT: Sale of Wine.

I enclose herewith copies of correspondence re: sale of wine to Allied Forces from No. 52 Area who it appears deal direct with civilian authorities.

Please advise me whether I should be in order in insisting that in this Province such instructions should be issued by ACC.

(sgd) H. H. Nichols

Major, Provincial Commissioner.
Potenza Province,

Enc.

va/

See also file 4149/L

9

13 April 1944

XXXXXXX

Memorandum to: Lt. Col. Chapman, R.L.C., Region III

XXX

Facts of cases at Pompei.

1. Three American soldiers went from Pompei to Scafati which is just across the line, and while there were beaten up by a group of Italian civilians. The latter were arrested by the Military Police in Scafati and were brought back to Pompei for trial. The defendants set up as their defence lack of jurisdiction since the crime was committed in Scafati which is a part of the King's Italy. Question arises whether or not the Allied Military Government Court at Pompei has jurisdiction to try these cases.

The other situation involves offenses committed in Pompei and the arrest of the offenders in Scafati being brought back for trial in Pompei. Defense set up is lack of jurisdiction, Scafati being part of King's Italy.

JOHN K. WEBER
Colonel, Infantry
P.L.O., Naples Prov'

MOST SECRET

4107/2
HEADQUARTERS
ALLIED COMMISSION
R.C. & I. SECTION
APO 394

(4A)

Ref /125/20/CA

28 March 1944

SUBJECT: Powers and Rights of Allied Forces and
AMG in unoccupied territory.
TO : Legal Sub-Commission.

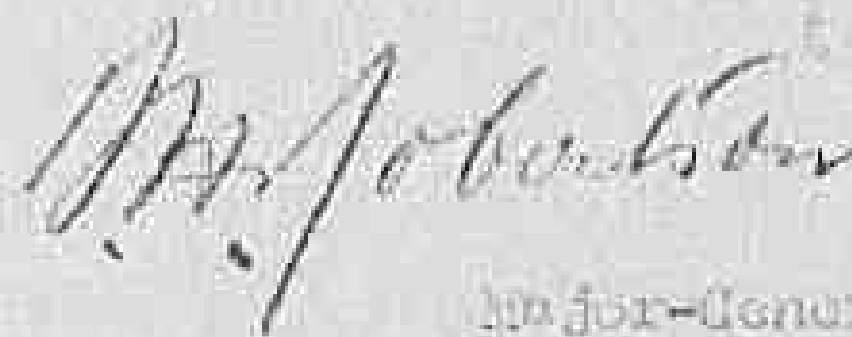
1. As requested in your ACC/4102/2/L of 26
March 1944, attached hereto is copy of AAI/3064/A(O)
of 15 March 1944 dealing with above subject.
2. Please acknowledge receipt.

to Disfield White
for NORMAN E. FISKE
Colonel
Deputy Executive
Commissioner

- 3 -

10. Emergency Action.

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



Major-General,
C.A.C.

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REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

/gmf

(3A)

ACC/1202/2/L

26 March 1944.

SUBJECT: Powers and Rights of Allied Forces & AMG in Unoccupied Territory.

TO : Executive Commissioner, ACC.

May this subcommittee please be supplied with a copy of HQ AAI
Administrative Instruction referred to in para 1 of your Ref /125/18/CA
dated 23 March, 1944 on the above subject.

G. R. UPJOHN, Colonel
Chief Legal Officer.

