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STATUS OF I
AFTER REST
APR. 1944

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STATUS OF ITALIAN LAWS ANNULLED BY PROCLAMATION
AFTER RESTORATION
APR. 1944

FILE CLOSED 15 April 1944

ALLIED MILITARY GOVERNMENT

SUBJECT: Laws in restored territories
TO: D.C.L.O.

FILE No. ALC/4124/L

AMGOT HQ. SICILY

15/4/1944

You asked me some time ago for a legal opinion on this topic. Major Hammond has kindly ^{considered} the matter from the point of view of Italian law, and this opinion is principally his contribution.

J. Moore

O.K.

Capt 8

ALLIED MILITARY GOVERNMENT

R1460

SUBJECT: Law in restored territories

TO: Major Hammarford

Seen & agreed
by Major Hammarford
14/4/44 JLM

FILE No.

AMGOT HQ. SICILY

14/4/1944

1. Some time ago you kindly commented on an opinion which I wrote on this subject for Lt Col Wilmer.
2. I have now recast the opinion so as to incorporate your amendments.
3. Would you be kind enough to look through the latest draft and consider if it sufficiently

COVER the subject? If so I will pass it to
Lt Col. Wilner (who in the meantime appears
to have forgotten all about it)

Thurs

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

23 April 1944

SUBJECT: Whether on the restoration to the Italian authorities of territory temporarily in Allied occupation the Italian laws annulled or modified by Allied proclamations come back into force.

TO : D.C.L.O.

1. By A.M.C. Proclamation No.7, the organisation known as the fascist party was dissolved and declared illegal. The question arises whether this Proclamation has any continuing effect after restoration of territory.

This question is one specific example of the general question as to what is the law in restored territories as from the date of restoration.

2. It is a general principle of international law that the suspension of laws by an occupying power, whether or not relating to fundamental institutions, ceases to have effect when the authority of the occupying power is terminated. (see e.g. Feichenfeld para 3.5). There is nothing in the terms of restoration which conflicts with this principle.

Accordingly, whatever validity may attach to acts committed during our occupation in reliance on our Proclamations, our Proclamations themselves lost all validity for the future, as from the termination of our occupation.

3. The question of the state of the law in the restored territory as from the date of restoration is accordingly a question of municipal law.

4. In Italy promulgation of a law in the "Gazzetta Ufficiale" renders its provisions operative in all Italian territory, unless otherwise stipulated. Any territory over which the law is not to operate must be specifically excepted. (The position is similar in France, where, in the last war, legislation passed in Paris became legally operative in German-occupied territories; though not actually effective until liberation of those territories).

5. The Badoglio Government will therefore regard as legally operative over all Italy (subject to any specified exceptions) all legislation decreed by it at any time. This will include, inter alia, all anti-fascist legislation decreed by it in Rome.

6. On the same principle all such legislation will become actually effective in any restored territory as from the date of restoration. In the absence of any such specific exceptions as above mentioned, there will be no necessity for further legislation unless for the purpose of adapting existing law to local conditions in restored territories.

J. MORE,
CAPTAIN.

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REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

23 April 1944

SUBJECT: Whether on the restoration to the Italian authorities of territory temporarily in Allied occupation the Italian laws annulled or modified by Allied proclamations come back into force.

TO : D.C.E.G.

1. By A.M.G. Proclamation No. 7, the organization known as the fascist party was dissolved and declared illegal. The question arises whether this Proclamation has any continuing effect after restoration of territory.

This question is one specific example of the general question as to what is the law in restored territories as from the date of restoration.

2. It is a general principle of international law that the suspension of laws by an occupying power, whether or not relating to fundamental institutions, ceases to have effect when the authority of the occupying power is terminated. (see e.g. Peichenfeld para 326). There is nothing in the terms of restoration which conflicts with this principle.

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J. MORE,
CAPTAIN.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

#3 April 1944

SUBJECT: Whether on the restoration to the Italian authorities of territory temporarily in Allied occupation the Italian laws annulled or modified by Allied proclamations come back into force.

TO : D.C.H.O.

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J. MORE,
CAPTAIN.

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