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JUGOSLAV MISSION TO FLORENCE
NOV., DEC. 1944

FILE CLOSED 10 December 1944

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HEADQUARTERS ALLIED COMMISSION
ATO 394
CIVIL AFFAIRS SECTION

Tel: 478008

Ref. AG/4132/1/L

10th December, 1944.

SUBJECT: Prosecution of Lt. UNGAR, Victor.

TO : AFHQ, G-5 Section.

1. O.G. Base NLAJ has complained to this Commission of the action of an ANG Court in Florence in assuming jurisdiction over one of his officers.
2. A copy of the Commission's reply is enclosed.
3. It is presumed that you are in agreement with the policy expressed in that letter.

For the Chief Commissioner:

G.S. PARFINSO, Brig.,
A/VP CA Section.
A/DCOS.Encl.

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Tel: 478008

Ref. AC/4132/1/L

10th December, 1944.

SUBJECT: Prosecution of Lt. UNGAR, Victor.

TO : O.C. Base, National Liberation Army of Yugoslavia.

1. Reference your 2/40/S of 23rd November, 1944, you are no doubt aware that the conviction of Lt. Ungar was quashed by this Commission on the 17th November, 1944, as the reviewing authority appointed by the Chief Commissioner to review all cases found that there was no evidence before the Judge at the trial upon which he could properly have convicted Lt. Ungar of the purchase of blocked cloth.

It is regretted that this error should have occurred.

2. In view, however, of the suggestion made in your letter that on juridicial grounds the Allied Military Court had no jurisdiction to try Lt. Ungar it is felt desirable to state clearly the attitude of this Commission on this subject.

3. AMG Proclamations and Orders are issued to assist the prosecution of the war and in particular the protection and security of the troops in the fighting zone. They apply to and must be obeyed by all persons in Military Government Territory.

4. Compliance with these Proclamations and Orders can only be secured through Allied Military Courts. The only persons exempted from the jurisdiction of these courts are members of the armed forces taking some part in fighting operations in Italy. It does not appear that there is anything either in international law or in any special agreement to require that members of NLAJ who are not concerned in military operations in Italy should also be exempted.

5. If the NLAJ do enter Military Government Territory and infringe the provisions of AMG Proclamations and Orders it will be necessary for this Commission to hold them subject to the jurisdiction of Allied Military Courts.

It is hoped, however, that your cooperation will ensure for the future that members of NLAJ who have legitimate occasion to enter Military

- 2 -

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Government Territory comply with the regulations so that this question will not recur.

For the Chief Commissioner:

G.S. PARKINSON, Brig.,
A/IT CA Section.
A/DOCS.

D R A F T

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4132/1/L

5 Dec 44

SUBJECT: Prosecution of Lt. UNGAR, Victor.

TO: OC, Base, National Liberation Army of Yugoslavia.

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4 Compliance with these Proclamations and Orders can only be secured

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- 2 -

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It is hoped, however, that your cooperation will ensure for the future that members of NLAJ who have legitimate occasion to enter Military Government Territory, comply with the regulations so that this question will not recur.

FOR THE CHIEF COMMISSIONER:

G.R. UPJOHN, Brig,
VP CA Section,
DCOS AC

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DRAFT

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

AC/4132/1/L.

December 1944

SUBJECT : Prosecution of Lt. UNGAR, Victor.

TO : AFHQ G-5.

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2. A copy of the Commission's reply is enclosed.

3. It is presumed that you are in agreement with the policy expressed in that letter.

For the Chief Commissioner :

G. R. UFJOHN, Brigadier,
VP CA Sec
Dep COS

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For the Chief Commissioner :

G. R. UPJOHN, Brigadier,
VP CA Sec
Dep COS

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4132/1
✓
SECRET

29 November 1944

TO : Legal Sub-Commission

FROM : Political Section

1. With reference to the attached memorandum AC 4132/1/L of 16th November about Yugoslav Missions in Italy.
2. Our view is that as these persons are not part of an organised contingent of the armed forces of the United Nations under the Command of Commander-in-Chief, Allied Armies in Italy, they do not fall within the exemption accorded to the members of the Allied Forces under Article 10 (1) of the Allied Military Government Proclamation 1.
3. On the other hand, we have discussed this matter with Mr Broad, the Representative in Bari of the British Resident Minister at Allied Force Headquarters, who is at present deputising for Mr. MacMillan at Caserta. He states that this problem has already arisen in the case of a member of the Yugoslav Forces accused of a murder in Bari. In this case it was ruled by A.P.H.Q. that members of Yugoslav Forces charged with the committing of a civil crime were entitled to be tried by their own military courts. The matter has now arisen again in the connection with another murder case. It has been suggested to Mr. Broad that he should await a communication from this Commission raising the whole problem before the matter is taken up. It has been pointed out to Mr. Broad that the position is in any case different in territory which has been handed back to the Italian Government from that of territories still under Allied Military Rule.
4. The answer to your specific questions in paragraph 6 are:
- a. Yugoslav Military personnel who form the Missions are part of an organised contingent.
 - b. This organised contingent is not under the command of General Alexander.
 - c. So far as is known, no agreement has been made with the Yugoslav Government on the subject of the trial of members of their armed forces.
 - d. Yugoslavia is a member of the United Nations and Yugoslavs generally are regarded as coming under the comprehensive description of "Allies". On the other hand there is no formal treaty of alliance between Yugoslavia and either the United States or the United Kingdom.

*H. L. d'A. Hopkinson*H. L. d'A. HOPKINSON
Acting Vice President, Political Section

HEADQUARTERS ALLIED COMMISSION
POLITICAL SECTION
A/C 394

18 NOV 1944

Ref: 820

26 November 1944

ADDRESSEES TO: G-5 Section, Allied Force Headquarters

1. In telegram No. 6486 of the 14th November, the Political Section reported that the Italian Ministry of Foreign Affairs had submitted an aide-memoire regarding the trial and execution by Yugoslav Partisan units belonging to the Yugoslav National Army of liberation of three Italian officers of the Garibaldi Division, and the placing under enquiry of eleven additional Italian Officers. The Political Section suggested that pending an examination of this question steps might be taken to suspend any further action by the Yugoslav authorities for the time-being.

2. A copy of the aide-memoire together with the enclosed memoranda on the legal aspects of the matter is transmitted herewith. It has been examined by the legal sub-commission of the Allied Commission who have no comments to offer. From the Italian political point of view it is most desirable that any steps possible should be taken to prevent any victimization of Italian military personnel in Yugoslavia and that any action which may be taken against the individual Italian officers in respect of war crimes should be brought within the framework of the arrangements laid down by the War Crimes Commission in London of which it is understood the Yugoslav Government is a member.

3. The Political Section would be grateful if an investigation could be made into the facts of the case and if they could be informed, having regard to the above considerations, what reply should be addressed to the Ministry of Foreign Affairs.

LEGAL SUB-COMMISSION

For the Chief Commissioner:-

C/O

C/O → info

Chief Counsel

C/O

Italian Section

C/R/S

Copies to:

Chief of Staff, A.C.

Deputy Chief of Staff, Civil Affairs, A.C.

British Resident Minister, APRQ

U.S. Political Adviser

American Embassy, British Embassy,

Representative of British Resident

Minister at Bari.

1 DEC 1944

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H. L. d'A. HOPKINSON
Acting Vice President, Political Section

5035

Ministry of Foreign Affairs

N. 7 Seg. Pol.

6/1025/431

(158)

Aide Memoire

It appears that on the 15th August last, the following Italian Officers belonging to the "Garibaldi" division which, as is known, is fighting under Marshal Tito's orders, have been tried and shot by the Yugoslav partisans that are formed into units of the Yugoslav National Army of Liberation:

Lieut-Col. Elio Stuparelli, former Chief of Staff of the "Venezia" Division.

Major Antonio Monzani, formerly of the Command of the "Taurinense" Division.

Captain Caroti, formerly of the Command of the "Venezia" Division.

The charges on which the abovesaid were tried and shot are, as far as it is known, absolutely irrelevant from the juridical standpoint and such as not to justify not only their sentence but not even legal proceedings against them. In fact, Lieut. Col. Stuparelli appears to have been charged with having at one time changed his surname from Stuparich to Stuparelli and to having been a "squadrista"; Major Monzani was accused of having strongly reacted at the disrespectful behaviour of an Italian soldier towards himself; Captain Caroti of have been a "squadrista".

It further appears that the following 11 Italian officers have been placed under inquiry by the Command of the II Corps of the Yugoslav National Army of Liberation:

General of the Brigade (of the Regular Army) Carlo Isasca, former Infantry Commander of the "Venezia" Division;

Artillery Colonel (of the Regular Army) Reja Felice, formerly Commander of the 19. Artillery Regiment of the "Venezia" Division;

Artillery Lieut. Col (of the Regular Army) Mario Sabini, formerly of the 3rd Battalion of the 83. Infantry Regiment "Venezia";

Alpine Major (of the Regular Army) Lionello Albertini, formerly on the General Staff of the Command of the "Venezia" Division.

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Artillery Major (of the Regular Army) Eugenio De Santis, formerly in the Artillery Regiment of the "Ferrara" Infantry Division;

Captain of the Royal Carabiniere, Scenocchia, formerly Commander of the Carabiniere in the "Venezia" Division;

Captain Poppiano, formerly of the 83. Infantry Regiment, "Venezia" Division and formerly Civilian Delegate at Kolasini

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Captain Paganoni, formerly of the 53. Infantry Regiment, "Venetia" Division and formerly Civilian Delegate at Berane;

Captain Panicuoci, formerly of the 83. Infantry Regiment, "Venetia" Division.

It has not been possible to obtain as yet any information concerning the charges against these Officers.

The above information, confirmed also by another reliable source, is of an extremely serious nature and compels the Italian Government to enlist the interest of the Allied Authorities in the matter. The Italian Government formally protests against the unlawful trial of the abovenamed 14 Officers and against the barbarous sentence passed and executed on three of them. The Italian Government demands that any judicial action or any other action of whatsoever nature against the 11 Officers at present under inquiry be suspended and, further, that these last be forthwith repatriated.

A short aide-memoire is herewith enclosed wherein are set out certain considerations regarding the illegality of the lamented proceedings.

The various deplored incidents show-even apart from their merit-that the principle cannot be accepted that members of the "Italian (Garibaldi Division)" be subjected to a military jurisdiction other than that of the State to which they belong.

The re-affirmation and the respect of this principle is all the more necessary not only in order to safeguard the sovereign rights of the Italian State and the respect of international rules which must exist particularly between States united in a common struggle, but also because it would be inhuman to pretend that Italian soldiers should continue to fight, to suffer, and to die alongside the Yugoslav soldiers, when these co-belligerents do not recognize to the first those rights that the coality of civilized Nations and the particular obligations of the Allies have fixed and sanctioned.

ROME, 12th November, 1944.

Copy

Ministry of Foreign Affairs

AIDE MEMOIRS

1. A universally accepted and practised rule of international law lays down that members of any Expeditionary Force stationed in a Foreign Country shall not be subject to the jurisdiction of local tribunals and shall be exclusively subject to the military jurisdiction of the national army to which the said Forces belong.

Now, owing to the fact that the "Garibaldi" Division, of which the above officers and those at present under inquiry are members, is formed by units of the Italian Divisions, "Venezia," and "Taurinense", and owing also to the fact that on its reorganization, it was, by the very same Yugoslav Command, called the "Italian Partisans Garibaldi Division", it must be considered as a regular Expeditionary Force on Yugoslav territory, operating as a co-belligerent alongside the Yugoslav Partisans Army. The men serving in this Expeditionary Force cannot, therefore, be subjected to any jurisdiction other than the Italian military jurisdiction.

It is here opportune to point out that this principle would still maintain its full value even in the event that the above Division did not dispose of a pre-established Military Tribunal, formed by suitable organs of the Military Judiciary, as in such cases the Italian war emergency law contemplates the formation, with the available means and at any extent, of a War Emergency Military Tribunal for the purpose.

2. Apart from this prejudicial exception to the incompetence of the Partisans Tribunals to try troops belonging to the "Garibaldi" Division - which would in itself be sufficient to show the illegality of the procedure followed - it must be pointed out that the three instances, in respect of which the charges are known, show an absurd claim to consider as crimes - vis - a - vis Italian citizens - facts which must be considered utterly irrelevant to the Yugoslav juridical system. As a matter of fact one of them is considered by Italian legislation, the only one competent to judge in the matter, as perfectly lawful. Reference is here made to the Officers who have been shot for having been "Squadristi", a fact absolutely outside the legal powers of the Yugoslav Court to judge, and to the case of Lieut. Col. Stuparelli, sentenced to death for having, inter alia, modified his surname, an act, this, that took place in conformity with the laws in force in the Country of which the Officer was a citizen.

3. The inadequacy of the charges brought against the above Officers to justify the capital punishment inflicted and the fact that, owing also perhaps to the scarce information available the reasons for which General Isasca and ten other Officers are placed under inquiry are unknown, give rise to fears that the Partisans authorities have proceeded and intend to proceed against them as war criminals.

However, in this instance also, according to the provisions embodied in the "Declaration on Italy", issued by the Ministers for Foreign Affairs of Great Britain, Russia and the United States on the conclusion of the Moscow Conference of October 1943 (and which must be considered to be binding also on Yugoslavia), the legality of the intervention of the Yugoslav Partisans Tribunals must be denied, and for the following two different reasons:

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a) The above Officers, both owing to the character of the charges and to their military rank, cannot be considered war criminals:

b) These Officers, however, inasmuch as they are Italian citizens, even if charged with having acted as war criminals, must in any case be judged by the Italian jurisdictional authority.

As regards point a), in fact, the abovementioned "Declaration" in laying down, differently to the provisions applicable exclusively to Germany set out in the "Declaration of atrocities" issued at the same time, that legal proceedings are to be taken for war crimes only in respect of "fascist chiefs and army, generals", leaves in force the ordinary international rule, according to which only those who have given the orders to accomplish acts that constitute war crimes can be tried and eventually punished, excluding therefore that any action can be taken against those who materially carried out the orders, as, on the contrary, in the case of Germany, where it has been laid down that action can be taken against any officer, any individual and any member of the Nazi party. Now, the abovementioned Italian Officers of whom only one is a General, cannot be considered as executors of orders given by others. Furthermore, the charge brought against some of them of having, together with the Ketchiks, carried out war operations against the partisans, not only does not constitute a real and proper war crime, as contemplated by the "Declaration on atrocities", but does not even represent an infringement of the common rules of international war law. The abovementioned "Declaration," in fact, limits war crimes to acts of exceptional gravity consisting in "atrocities, massacres, and executions in mass committed in cold blood".

As regards the second point b), whilst in respect of Germany it is specified that the guilty of war crimes "shall be sent back to the countries where their abominable misdeeds were accomplished so as to be judged and punished according to the laws of the liberated countries and of those Governments that will therein be established", in respect of Italy it is instead generically contemplated that the guilty "shall be arrested and handed to justice". Lacking the specific provisions set out in respect of German war criminals, this justice must be intended to mean national justice and, in this case, Italian justice.

From these two considerations it is clear that, even if it were question of proceedings for war crimes, the Yugoslav partisans authorities would equally have acted unlawfully, inasmuch as they would have violated the abovementioned "Declaration on Italy", both in sentencing Officers who owing to their rank could not possibly have been considered guilty of war crimes, and in claiming the right of judging them. This right, in accordance with the well-established international rule which is not contradicted by the said "Declaration", is reserved to the Tribunals of the Italian State.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4132/1/1.

/rlp.
26 November 1944.

SUBJECT : Yugoslav Mission to Florence.

TO : Director, Displaced Persons & Repatriation S/C.

1. Reference your DPP/26-1/GII(DP) dated 25 Nov 44.
2. Herewith copy of our AC/4132/1/L of 17 Nov 44 as per your request.

W. E. BEHRING,
Colonel,
Deputy Chief Legal Advisor.

Incl: Copy of AC/4132/1/L of 17 Nov 44.

4132/1

13A

MEMORANDUM

TO: Legal Sub-Commission, A.C.

FROM: Director, Displaced Persons & Repatriation Sub-Commission

DATE: 25th November, 1944.

Ref: DPR/26-1/GII(DP)

LT. UNGAR.

I understand that you have given certain directions regarding this case.

I would be very glad if you would let me have a copy to send to "Z" Military Mission, BARI, who try to control the activities of Lt. UNGAR and others like him.

LEGAL SUB COMMISSION	
CLO	
DOLO	
Chief Counsel	
CIN	
Italian Section	
C. 135	
26 NOV 1944	

C.B. FINDLAY,
Colonel,
Director.

8A

23 November 1944

XVII/19/3008

Case of UNGAR Viktor.

Provincial Legal Officer, Florence Province (Thru P.C.)

I. Letter of 17 November 1944, AO/4132/I/L is enclosed. Please bring to the attention of the accused the comments of the Deputy Chief Legal Advisor. (*Reversal forms, this office, enclosed.*)

JOHN K. WEBER
Colonel, Infantry
Regional Legal Officer.

*c/c: Chief Legal Advisor
Hytis, acc*



20

REGION VIII LEGAL OFFICE NO. 1266

HEADQUARTERS REGION VIII

ALLIED MILITARY GOVERNMENT

File Ref:

RVIII/19/3008

Date: 20 November 1944

SUBJECT: Case of Lieut. Viktor UEGAR.

TO : Chief Legal Advisor, Headquarters, AC. ✓

3A

1. See your letter 12 November 1944, AC/4132/1/L.
2. The above letter has been sent to the Provincial Legal Officer, Florence Province, for attention and action.
3. Prior to receipt of your letter, the record of this case was given to Major Lugent, this office, for personal consultation with your office thereon, on the occasion of a visit he was then making. It is hoped that the record was retained by you.

Retained see 8A

John K. Weber
 JOHN K. WEBER
 Colonel, Infantry
 Regional Legal Officer

LEGAL SUB-COMMISSION	
CLO	
DCLO	✓
Chief Counsel	
CJO	
Italian Section	
CL RKS	
21 NOV 1944	



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10A

Encs.

1. You might mention to R.C. the decision to continue prosecuting Yung. I had hoped to get a letter for yr signature but have not had time.
2. I'm writing "Pending further orders they will be treated as with the jurisdiction retained accordingly. All cases to be reviewed at Hq of AC."
3. re Unga. Bancroft has gone wrong on the facts! He will have to be released, I think, & the conviction quashed on the merits. I am investigating.

To legal ✓

R.C. informed verbally at conf on 17 hrs to the effect stated in para 2
 Supreme

G.R. King

(9A)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4132/1/L.

/rlp.
18 November 1944.

SUBJECT : Jurisdiction over Yugoslav Missions.

TO : VP, Civ Affairs Sec.

1. The aide-memoire from the Italian Government on the activities of Yugoslavs has been passed to the Chief of Staff at his request.

2. I agree with your view that it should be passed to AFHQ without comment.

3. On the point of law involved, Dr. Chiomenti interviewed the legal advisor to the Foreign Office who admitted that "the universally accepted principle" under which exemption is claimed for members of an expeditionary force from trial in local courts is based on the fact that in the past most countries when sending an expeditionary force into the country of an Ally have made ~~such claims~~. *agreements to this effect.*

4. From that admission and the silence of text books, ~~in line~~ ^{combined} with the general principles which we discussed, I feel satisfied that there is no such universally accepted principle; on the contrary in the absence of a specific agreement excluding members of an Allied expeditionary force from the jurisdiction of the ~~local~~ courts, no such exemption exists. Compare the position of French or Polish troops in England in 1942.

^{five} 5. Moreover, the Yugoslavs at Bari are not an expeditionary force in the sense of the word.

6. I am satisfied that AMG Courts may, if they wish, in accordance with the principles of international law, take jurisdiction over the Yugoslavs at Bari in the absence of some specific agreement. This does not, of course, deal with the possible difficulty created by the present wording of the proclamation which we have already discussed in detail.

*W. E. Behrens*W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.*Forwarded to CA Sec
of national without comment*

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rm.

17 Nov. 1944.

AC/4083/1/1.
SUBJECT : Case of UNGAR Viktor.TO : Regional Commissioner Toscana Region
(for Regional Legal Officer).

1. I return herewith the record in proceedings against UNGAR Viktor who was tried and convicted at Florence on 2 Nov. 44.

2. The accused was convicted only on the 3rd charge. This conviction has been quashed.

3. I wish to make it quite clear that the quashing is not based either on the plea to the jurisdiction of the Court or on the "defence" that the accused was acting under orders of his senior officers. In respect of the latter point, it is to be noted that it is no defence to criminal proceedings to plead that the crime was committed under orders of a senior officer.

4. Between 11 and 19 Sept. any sale of articles covered by the order of 11 Sept. was forbidden: but after 11 Sept. the sale of up to 10% of such articles was permissible.

The prosecution adduced no evidence to prove either that the sale took place between the 11 and 19 Sept. or that the sale if it took place after 19 Sept. was not one permitted by the order of 19 Sept. For this reason only the conviction is quashed.

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5. In communicating the above decision to Lt. UNGAR, please ensure that he understands quite clearly the precise reason for which the conviction was quashed.

By command of Commodore STONE:

W.E. BEHRENS,
Colonel,
Deputy Chief Legal Adviser

Copy: AC/4083/1/1.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

FA

WEB/ap.

17 November 1944.

MEMORANDUM

TO : Chief of Staff.

1. I understand that you are interested in these papers which are accordingly passed to you.
2. They were passed to this Sub-Commission by VP CA Sec for opinion and return to Political Section.
3. There appears to be no action to be taken except to pass the papers to AF HQ without comment.

W. E. BEHRENS, Colonel,
Deputy Chief Legal Advisor. 13

SECRET

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4132/1/L.

WEB/sp.
16 November 1944.

SUBJECT : Yugo-Slav Missions.

TO : Political Section.

1. Yugo-Slav nationals, members of M.L.A.Y. and Royal Yugo-Slav missions are causing trouble in AMG territory by wilful disregard of AMG Proclamations and Orders.

2. Complaints to the Mission Authorities do not produce satisfactory results and the AMG officials in the Army and Military Government territories consider that for the preservation of law and order it is essential that offenders be prosecuted in AMG Courts.

3. The Yugo-Slavs allege that they are outside AMG jurisdiction, on the ground that they are members of the Allied Forces, and therefore exempted by AMG Proclamation 1, Article X (1)

4. The problem appears to be partly of policy and partly of legal interpretation.

5. So far as policy is concerned, local considerations appear to indicate that it is essential for AMG Courts to assume jurisdiction: it is not known whether any decision has been given in this matter on broader grounds.

6. From the legal point-of-view there are certain questions to which the answers must be known before a definite opinion can be expressed. These are:-

- a. Are the Yugo-Slav officers and personnel who form part of these Missions military personnel and part of an organized contingent? It is assumed that the answer is Yes.

- b. Is this organized contingent under the command of General Wilson or General Alexander? It is assumed that for local administrative purposes (e.g. the movement of a camp) it is under the command of General Wilson. Otherwise, and so far as General Alexander is concerned entirely, No.
- c. Has any agreement been made between the Governments concerned on the subject of trial of these nationals? It is assumed that the answer is No.
- d. Are the Yugo-Slavs allies? It is understood that they are members of the United Nations, but that there is no treaty of alliance between Yugo-Slavia and either U.S.A. or the U.K. and that there is no other ground upon which they can claim to be allies.

7. The question of the construction to be placed upon the phrase Allied Forces was fully considered in February 1944 (at a time when the Yugo-Slav Missions did not exist or at least were not being seriously considered) and a ruling was given, in which you concurred, that for the purposes of AMG jurisdiction the term "members of the Allied Forces" included "organized contingents of the Armed Forces of the United Nations (such as French, Poles or Yugo-Slavs) who are under the command of the Commander-in Chief Italy".

8. It should be observed that :

- a. this definition was purely for the use of officers holding AMG Courts. It has never been made public
- b. this definition has never been discussed with or agreed to by the Yugo-Slavs.

9. It is the opinion of this Sub-Commission that the purpose and scope of the definition, when it was given, was to exclude from AMG jurisdiction troops who formed part of the "order of battle" of the Commander-in-Chief Italy. On the basis of 6 (b) above it is the opinion of this Sub-Commission that, upon the true construction of this definition, the members of the Yugo-Slav missions are subject to the jurisdiction of the AMG Courts.

10. It should be pointed out that, subject to 6 (c) above, there appears to be nothing in international law generally to preclude an occupying power from trying in its courts the members of an allied army who break the law of the occupying power if that allied army is stationed outside the occupied territory, is not under the operational command of the commander of the troops in occupied territory but is engaged on operations in a different sphere and has no right in the occupied territory.

11. If, therefore, it is considered that by reason of the present Proclamation jurisdiction does not now exist to try these nationals, but that it should be assumed, there is nothing to prevent an amendment to the Proclamation in order to secure jurisdiction.

12. It would be appreciated if you could advise this Sub-Commission as a matter of urgency as to the answers to the questions raised in para 6, and as to your view on the position generally.

13. It is the present intention of this Sub-Commission to authorize the holding of trials in these cases pending a solution of the problem.

W. E. BEHRENS, Colonel,
Deputy Chief Legal Advisor.

Copy to: VP CA Sec.

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

WEST/ma.
17 Nov 44.

AC/4132/1/L.

SUBJECT : Yugoslav Military Missions.

TO : Legal Officer A.M.G. Fifth Army.

1. Your letter 208/5 of 12 Nov 1944 raises problems of some difficulty both of a legal and political nature. It is proposed to discuss them at the H.Q.'s meeting on 29 November.

2. Pending further instructions all members of the Royal Yugoslav Mission and W.L.A.Y. will be treated as subject to the jurisdiction of the A.M.Courts, but such cases will all be reviewed at this H.Q.

3. Brig. Upjohn agrees with this policy, but in his absence it has not been possible to obtain his signature to a general directive.

4. It is regretted that it ^{has been found} ~~will probably be~~ necessary to quash the conviction of Lieut. Unger on the merits but if so this will have no reference to the question of jurisdiction.

5. Correspondence returned herewith.

By Command of Commodore STONE :

W. E. BISHOPS,
Colonel,
Deputy Chief Legal Advisor.

4132/1

HEADQUARTERS
AMG FIFTH ARMY
APO 464 U.S. ARMY

12 November 1944

208/5

SUBJECT: Yugoslav Military Missions.

TO : H.Q., Allied Commission,
(Legal Sub-Commission).

1. The enclosed correspondence is forwarded for your perusal, in view of the number of instances occurring in which members of Yugoslav military missions have entered the Army Area without proper authority.

2. The case mentioned as having been discussed with Brigadier Upjohn was ultimately tried by a Summary Court, (Major PARNET) which having decided that it had jurisdiction, convicted the accused, a Yugoslav Lieutenant, on charges of travelling without a pass and disobeying an order blocking textiles in the Prato area. Sentence of 4 months imprisonment and a fine of Lire 25,000 (with an additional six months imprisonment in default) were imposed.

3. As it is not clear whether Brigadier Upjohn's advice was given on the particular facts of this case or had a wider application, a ruling is requested as to whether members of (a) the Royal Yugoslav Mission or (b) the N.L.A.Y. Mission do or do not belong to "organized contingents under the command of the Commander in Chief, Italy".

4. May the attached correspondence please be returned with your reply.

LEGAL SUB-COMMISSION

CLO

DCLO

Chief Counsel

CJO

Italian Section

/jm

C. 85

For the Commanding General:

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H.M. Dickie
H.M. DICKIE,
W/Cdr., RAF.,
Legal Officer,
A.M.G. Fifth Army.

14 NOV 1944

HEADQUARTERS ALLIED CONTROL
APO 394.
LEGAL SUB-COMMISSION

AO/4137/1/L.

12 November 1944.

SUBJECT: Case of Lieut. Victor Ungar.

TO: Regional Commissioner, TOSCANA REGION.
Attention Regional Legal Officer.

1. The accused in this case was tried by Major Banlet on 2 Nov 44 at PRATO and was found guilty of purchasing blocked cloth. He was sentenced to four months imprisonment, plus a fine of 25,000 lire or in alternative a further six months imprisonment.

2. From the above facts you will appreciate that this case comes within the jurisdiction of the Regional Commissioner for review. There are, however, major questions of policy involved and the record and petition for review, if any, will be forwarded for review at this Headquarters.

3. In order that Lieut. Ungar may be under no misapprehension as to his position or as to the procedure he should follow would you please ensure that he is personally handed a form 11 and that the procedure for filing a petition for review is explained to him. He should be further advised that if he wishes to challenge in his petition the jurisdiction of the court he must be able to produce further evidence in the nature of signed official statements by responsible senior officers to prove:-

(a) that he was a military member of an organized
Yugo-Slav contingent

(b) that that Yugo-Slav contingent is under and
recognizes the command of the Commander-in-
Chief, Italy.

~~4. If evidence of this kind can be obtained it should be
forwarded to Lieut. Ungar in order that he may attach it to his petition.~~

By command of Commodore STONE.

W. A. BEHRENS.
Colonel,
Deputy Chief Legal Officer.

4. If Lieut. Ungar thinks that he can obtain evidence of this kind, he should have it forwarded to him so that he may attach it to his petition.

Case to be referred to Col. Behrens. T.H. Miller.

file

(Please bring down record
to Sub-Commission)

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1. On the evidence given at the trial Lieutenant UNGAR was rightly convicted. The evidence produced by him was not sufficient to show that he was outside the jurisdiction of the A.M.C. Court.

2. Lieutenant UNGAR may file a petition to have his case reviewed. No other person can file this petition for him and the petition itself must be on the correct form and must be filed within 30 days of the date of the trial.

3. Arrangements will be made for the correct form to be handed to Lieutenant UNGAR in case he desires to use it.

4. In presenting his petition Lieutenant UNGAR should state the reasons why he considers that the decision of the court was wrong and the reasons why the court had no jurisdiction to try him.

5. In order to show that the court had no jurisdiction he will have to produce further evidence in the nature of signed official statements by responsible senior officers which will prove :-

- (a) that Lieutenant UNGAR was a ^{military} member of an organized Yugo-Slav contingent
- (b) that that Yugo-Slav contingent is under and recognises the command of the Command-in-Chief Italy.

6. If evidence of this kind can be obtained in Bari it should be forwarded to Lieutenant UNGAR in order that he may attach it to his petition.

HEADQUARTERS
AMG FIFTH ARMY
APO 464 U.S. ARMY

8 NOV 1944

6 November 1944

203/8-1

SUBJECT: Yugoslav Mission to Florence.

TO : H.Q., Allied Commission,
Civil Affairs Branch.

1. The attached ^{copy} correspondence and reports relating
to the above Mission are forwarded for information.

2. This matter was discussed with Brigadier Upjohn
on the occasion of his recent visit to Florence.

For the Commanding General:

E.B. Mayne
E.B. MAYNE,
Colonel, UDF.,
Chief of Staff,
A.M.G. Fifth Army.

LEGAL SUBCOMMISSION

/jm

8 NOV 1944

3881

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C O P Y/jm

ALLIED MILITARY GOVERNMENT
FLORENCE PROVINCEOffice of
Provincial Commissioner

4th November 1944

Ref. No. FG/86

SUBJECT: Yugoslav Mission to Florence.

TO : S.C.A.O., A.M.G. 5th Army,
A.P.O. 464.

1. The attached reports on action taken against the above mission are forwarded to you for your attention.

2. The case of Lt. Viktor Ungar was referred to Brigadier Upjohn, during his visit here, and he expressed the opinion that the case should proceed.

3. In view of the status of the prisoner I have instructed that he be transferred to Florence prison where special treatment will be afforded him.

/S/ Ralph L. Rolph.

/T/ Ralph L. Rolph
Lieut. Col.,
Provincial Commissioner.

RLR/ag

3871

C O F Y/jm

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• ALLIED MILITARY GOVERNMENT
PROVINCE OF FLORENCE

Public Safety
3rd November 1944.

SUBJECT: Jugoslavije Mission to Florence.

TO : P.C., Florence.

1. Reference 203/8 dated 29/10/44 from AMG 5th Army and Displaced Persons Sub-Commission, Allied Control Commission DPR/24/G11 (DP.) dated 27th October 1944.

2. I attach a report of Captain March, CAPO, on the result of the enquiry and subsequent Court proceedings taken against a Lieutenant and two privates of the JUGOSLAVIJE MISSION who were dealt with for:

- 1) Travelling without permit from Florence to Prato.
- 2) Disobeying a Provincial Order.

This report is self explanatory and needs no further comment.

3. The names of these three are: Lieut. UNGAR Viktor (4 months imprisonment and 25,000 Lire fine) Privates SAKSIDA Slavko and POBEVAJ Josef (both dismissed). The Officer is now lodged in prison and the two privates have been given orders to leave for Bari to-morrow (4th November) without fail. The alleged movement order is attached to the Court exhibits and therefore has been, in fact, taken from their possession.

4. I was present during all interrogations and ascertained that two other members of the Mission were in Florence. This morning I interviewed Captain ANTONAC who informed me that he arrived in November 1st by car from Bari, together with his driver Private ALTARAC Israel. He had reported to town Major in Florence and had since been living in the Excelsior Hotel. He stated he was the head of this particular Mission and that the Lieutenant and two privates who had been arrested in Prato were working under his directions. He, however, had no knowledge of the purchases made owing to his late arrival, but that if Lieutenant UNGAR had purchased cloth, than he was quite in order so far as the Mission was concerned.

As no receipt in this case had been obtained for the cloth, I asked if the JUGOSLAVIJE MISSION Authorities would accept verbal statements as to what actually was paid on return

to Bari, and he said: "Yes - we trust one another."

All orders were given by Lieut. Colonel MACMIEDO Sergije of the JUGOSLAVIJE MISSION in Bari, who is the head of the purchasing department. He has full knowledge of all activities of the various Missions.

I have taken possession of Captain ANTONAC alleged Travel pass, which is attached, furnished him with official A.M.G. pass to Bari and directed that he and his driver leave this City for Bari first thing to-morrow morning. The roads are too bad to leave this evening.

5. Having followed this case closely, I am of the opinion that sympathy must be extended to Lieutenant UNGAR on the subsequent result. He was acting on the instructions of his superior Officers and struck me as a honest man who would not knowingly do anything to offend. The person who should accept responsibility for this is Lieut. Colonel MACMIEDO Sergije at Bari.

6. I understand from Major Samson, Displaced Persons, Florence, that he is dealing with other Yugoslavs he has found in Florence to-day, but details are unknown to me.

/S/ H.S. Harris.

/T/ H.S. HARRIS, Major
P.P.S.O.,
Florence Province.

C O P Y /jm

S T A B

BAZE N.O.V. JUGOSLAVIJE

Odelenje za snabdevanje

Br. 1372/77

12 September 1944

MOVEMENT ORDERComander Ivo Antunac

NOT one of the accused —
but the capt in charge =
See 1c

- 1./ You will proceed to FLORENCE via ROME by road on 13 September 1944.
- 2./ On arrival FLORENCE you will proceed in accordance with instructions issued by your own HQ.
- 3./ After preformed duty you will return to Bari.

Chef of Staff

(Signature illegible)

Colonel

Ordered to leave FLORENCE
by 2359hrs. 31-Oct-44 3 Nov'44*

No Security Objection.

Per ordine della
F.S.S. deve allon-
tanarsi di FIRENZE
primo delle ore 2359
il giorno 31-Oct-44
3 Nov'44.*

/S/ E.S. Kingham, Sgt.

FIELD SECURITY

Section

Intelligence Corps.

3

(Sgn. illegible)

31 Ott. 44.

31 Oct. 44.

* Extended by F.S.S.

(Same signature as above - illegible).

3881

COPY /jm

ALLIED MILITARY GOVERNMENT
PROVINCE OF FLORENCE

Public Safety Department

3 Nov 44.

From... Capt T. Marsh, P.S.O.
(Attached)

To:.....P.P.S.O.

Subject....Viktor UNGAR, Slavko SAKSIDA and Josef POBEVAJ
Yugo-slav Army.

1. At about 1300 hrs on the 25 Oct 44, Sgt Murphy of the 101 C.M.P. Coy, (American) was on duty at Prato where he saw an Allied military truck outside a cafe. Amongst other things he found that it contained a large quantity of stationary and II bales of cloth of various designs.

2. Inside the cafe were the a/m with two or three Italian civilians. The three Yugo-slavs were all dressed in Khaki uniform and Ungar claimed that he was a Lt in the Yugo-slav Army of Liberation at Bari Saksida and Pobevaj being privates in the same Unit. He admitted he was in charge of the truck and had travelled from Bari.

3. When interviewed about the cloth, Ungar stated that he was acting as supply officer to his unit and had received instructions from his C.O. to come to Florence and district to purchase cloth, paper and any other useful articles he could obtain. He produced a movement order for the journey from Bari to Florence, but the purpose of his visit to Florence was not contained in the order. Ungar said that the order to buy cloth etc was a verbal one. He admitted having purchased the II bales of cloth from some person in Florence. He could not name the firm and said he would have great difficulty in locating it. Although receipts had ~~not~~ been obtained for many other articles he had bought, Ungar could not produce receipts for the cloth. He maintained that he had obtained this for his unit and that he would be able to satisfy his C.O. concerning the cost etc on his return.

4. One of the civilians found in the company of Ungar, admitted he had made the journey from Florence to Prato without a permit. He was acting in an advisory capacity on the purchase of the cloth. This man was subsequently charged before a Summary A.M.G. Court and fined 6.000 lire.

5. During the course of my enquiries I found that on arrival in Florence, Ungar visited the F.S.S. and presented his credentials. His papers were endorsed 'no security objections'. He also presented a cheque drawn on the Banca di Napoli, for a considerable sum, believed 2.000.000 lire to the Provincial Finance Officer for endorsement, (together with his other papers). The cheque was endorsed and later cashed in Florence.

6. Neither Ungar nor either of the privates could produce any document which showed that they were attached to either a British or American Unit. They were very vague as to the standing of their unit and failed to satisfy me that they were soldiers serving under the Allied Commander. Accordingly I preferred charges against them i.e., 1. Exceeding 10 Kms, from Florence to Prato without a permit, 2. Disobeying a Provincial Order, effecting the blocking of cloth.

7. The cases came before Major G.A. Bamlet L.O. sitting as a Summary Court, at Prato on 2 Nov 44. At the outset Ungar challenged the Courts jurisdiction on the grounds that he and the two privates were Allied soldiers. After a long argument and an examination of all the personal documents, the Court held that it was not satisfied that the accused were serving under the orders of the Allied Commander, Italy, and therefore had jurisdiction.

8. All three pleaded 'not guilty'. The charges against the two privates were dismissed on the grounds that they had acted under the orders and influence of Ungar who they considered to be their officer. Ungar was found 'guilty' only on the charge of disobeying the Provincial Order, dealing with the blocking of cloth. He was sentenced to 4 mths imprisonment, plus a fine of 25.000 lire or in alternative a further 6 mths. He gave notice that he would take steps to have the case reviewed at once. An order was also made confiscating the cloth subject to the charge.

9. Arrangements have been made for Pte's Saksida and Pobevaj to return to Bari with the truck.

/S/ T. Marsh.

Capt. P.S.O.

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