

ACC

10000/142/824

LEGAL OPINIONS
(TOP SECRET)
MAY 1944 - AUG. 1945

BEST COPY POSSIBLE
FILMED AS FOUND
IN COLLECTION

TOP SECRET

KEEP IN SAFE

PERMANENTLY

AC/4134/L

TOP SECRET — KEBAR OPINIONS

Downgraded to

Confidential

J. M. A. N. S.

W. H. T. S.

H. Legal Officer

W. H. T. S. (29) W

1 2 2 3

Declassified E.O. 12356 Section 3.3/NND No.

785016

May to Officer
L. Legal Officer

4444 (29) W

~~10000~~

10000 / 142 / 824

THIS FOLDER

CONTAINS PAPERS

FROM MAY - 1944

TO AUG - 1945

CATALOGUE.

HEADQUARTERS
ALLIED CONTROL COMMISSION
REGION 2~~SECRET~~

3 4 43

27 May 1944

Ref: 2201/77/3

SUBJECT: - Lt.Col. ALBANESE Angelo

TO : - R.C. & M.G. Section
HQ. A.C.C. AFO. 394Legal SC
(1 Rew HQ)

Reference secret signal Legal 2789 of 20 May 1944 the Chief Italian Liaison Officer HQ. No 2 District reported to that HQ. on the 19 May 1944 that Col. Albanese was in a condition to be moved from the Palilla Hospital, Bari to 371 P.W. Camp, Padula. He was taken to that Camp on the 23rd May under arrangements made by HQ. No 2 District.

John T. Zillars
JOHN T. ZILLARS
Col. Inf.
Regional Commissioner

29

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

+134

12 B

Received from Legal Subcommittee envelope addressed:

"To: G.S.I. (B) HQ Allied Armies in Italy - C.M.F."

26
Date:.....May 1944

Sgt R. L. ...
.....

1745 hrs
.....

Ref No 4011/1/L.

26/5/44

28

~~SECRET~~

GRI/pa

12
A

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

26 May 1944

Ref. : ACC/4011/1/L.

SUBJECT : Red Cross Parcels Thefts (Lecce and Tutarano).

TO : GSI (B) HQ AAI .

1. In accordance with the third paragraph of AMHQ. instruction O. 18/3305/A3, 6 February 1944 I am sending you herewith the file in the above cases including copy of letters dated 24 May 1944 from the Commandant No.371 PW Camp and Security Branch at No.371 PW Camp respectively with the statement and copies signed by Capt. VOZLA . It appears that further investigation will have to be made with regard to the Lecce case.

2. As the files in Lecce and Tutarano cases have become entangled the combined file is sent herewith. Upon completion of the investigation of further details of the Lecce case it is requested that the completed file be returned to this Sub-Commission.

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

27

40111 ✓

SUBJECT: Alleged War Criminals -
Theft of Red Cross Parcels.

SECRET

11

HQ No.2 District, CMC.
25/233...
19 May, 1944.

HQ 6 Base Sub-Area.

Capt. ANGELO VOZZA.

1. The above-named Italian Officer, at present in custody at Caserma Picca, Piazza San Antonio, Bari, is alleged to have been concerned in thefts of Red Cross parcels.
2. This officer will be transferred to 371 P.W. Camp, Gestona di Padula under your arrangements forthwith. An officer escort will be required.
3. Completion of move will be reported to this Headquarters.

26

Ch. Symington
Major-General,
Cmd. No.2 District.

Copy to:- HQ AGC (Legal Sub-Commission) ✓
HQ No.3 District (A)
HQ 24 Sub-Area.
Cmd. 371 PW Camp.
GSI(b)
MBIA L.O.

1 2 2 8

Declassified E.O. 12356 Section 3.3/NND No.

785016

(9)

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Received from Legal Sub-Commission envelope addressed:

"To: G-1 (P), AFHQ, Ref: ACC/4011/1/L."

Date: ... 2 ... May 1944.

King P.F.C.

Hyatt's test

1500

23

SECRET

JM/cmf

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ACC/4011/1/L

6 May 1944

SUBJECT: War Crimes. Thefts of Red Cross Parcels at British P.O.W.
Camps, at Futurano and Lecce.

TO : G-1 (B), A.F.H.Q.

1. Reference your letters G1/B/305/1/A3 of 8 March and 7 April 1944.
2. Three of the officers implicated in these cases are already in custody at No. 371 P.O.W. Camp.
3. Marshal Messe has been requested by the Deputy Chief Commissioner, Allied Control Commission to arrange for the handing over of the remaining officers concerned.
4. Commandant, No. 371 P.O.W. Camp has been asked to arrange for the collection of the remaining evidence in these cases and the existing records have been transmitted to him.
5. The evidence when complete will be transmitted by No. 371 P.O.W. Camp to JAGD, AFHQ for further action.

G. R. URBACH
Colonel
Chief Legal Officer.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Received from Legal Sub-Commission envelope addressed:

"To: Comdt, No. 371 POW Camp, CMF Ref: ACC/4011/1/L."

Date: ... 2 ... May 1944.

King, PFC
Smith, Lt. B...
1500

23

~~SECRET~~

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

JM/gmf

ACC/4011/1/1

6 May 1944

SUBJECT: Thefts of Red Cross parcels at British POW Camps, Tuteurano and Lecce.

TO : Commandant, No. 371 POW Camp, CMF.

1. Reference your letter 371/1400 of 10 April 1944.
2. The papers attached relate to cases of thefts by Italian military personnel at British POW Camps at (a) Tuteurano (b) Lecce.
3. Three of the Italian officers implicated in this case are already in your custody. Marshal Messe has been requested by Deputy Chief Commissioner, Allied Control Commission, to arrange for the handing over to you also of Lt. Col. Angelo ALPANESE, another officer implicated in this case. This officer is alleged to be ill in hospital, but Marshal Messe has been assured that adequate hospital facilities exist in the Camp.
4. Marshal Messe has also been requested to arrange for the handing over to you of Captain Vozza, implicated in the Lecce case. 23
5. It remains to complete the evidence in these cases, and it is desired that this should be done at No. 371 POW Camp.
6. In the Tuteurano case the report of 67 Section S.I.P. appears to be comprehensive, but if you consider that their report can be further supplemented, it would be appreciated if you would have additional statements taken from the officers in custody.
7. In the Lecce case, the primary investigation was undertaken by the Italian War Ministry, whose report (included in the attached papers) is not considered satisfactory (see letter of 3/4/44 from Capt. McKinnon, 68 Section SIB). It is accordingly desired that this case be investigated de novo, and that a full statement be taken from Capt. Vozza.
8. If it appears from the interrogation of this officer that other members of the Italian armed forces were involved and should be apprehended for interrogation or custody, may this Subcommittee please be informed?
9. The record of evidence when complete should be forwarded with the attached papers and with a short covering report to JAGD, AFHQ.
10. All the Italian personnel involved should be retained in custody by you until further order.

G. P. UPTCHN, Colonel
Chief Legal Officer.

Subject: Red Cross Gifts.
Date : 1-May 1944
From : No 2 District.
Refer : 25/213/A

Original of this letter forwarded to
371 P.O.W. Camp with letter

Subject: Red Cross thefts
Date: 7. 4. 44.
From: AFHQ
Refer: G1/B/3305/1/A3

(2)

Original of this letter forwarded to
371 POW Camp with letter

SECRET

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/gmf

29 April 1944

SUBJECT: Espionage Cases.

TO : Chief Commissioner, A.C.C.

1. The position with regard to the above cases (in which I include cases of persons coming through the German lines for sabotage purposes, although the charge may not have been technically spying) where the death sentence has been imposed by the Court is as follows:

A. In nine cases the death sentence has been confirmed by you or by General Alexander (See list at App. A) of which 7 were in the last 6 weeks.

B. In nine cases the death sentence has been commuted by you or by General Alexander (See list at App. B) of which 8 were in the last 6 weeks.

C. Three cases involving six persons who have been sentenced to death are under review (App. C). These are very recent cases but without fail will be delivered to you for final review on Monday.

2. The actual execution of the death sentence is the responsibility of HQ AAI and not of the Allied Control Commission, and there I believe some delay has been occasioned by doubts of HQ AAI to recognise your authority to confirm death sentences. However, I have sent a certified copy of General Alexander's delegation to them today in response to their telephone call.

3. I hope the above figures will satisfy the Chief of Staff that matters are dealt with expeditiously. He will I am sure appreciate that a certain delay is necessarily involved after sentence as the defendants have 30 days within which to petition for review of the case.

4. I am entirely in favour of publicity in cases where the death sentence is imposed and had already instructed legal officers that this was permissible. However, HQ AAI, by their letter AAI/1458/G1(b) dated 14 April, to the Executive Commissioner, have suggested they should control this publicity, and there does not seem any objection to this course.

G. R. UPJOHN, Colonel
Chief Legal Officer.

ESPIONAGE CASES IN WHICH THE SENTENCE HAS BEEN CONFIRMED.

APPENDIX "A"

<u>Name of Defendant</u>	<u>Age, or date of birth.</u>	<u>Confirming Authority</u>	<u>Date</u>
BERTOLI, Mauro	23 Jun.1925	Gen.Alexander	15 Jan.44
CANCELLIERI, Luigi	21 Jun.1925	Gen.Alexander	15 Jan.44
CANTELLI, Marino		Gen.MacFarlane	3 Apr.44
MENICACCI, Enrico		Gen.MacFarlane	3 Apr.44
PALESSE, Italo	24 yrs.	Gen.MacFarlane	18 Apr.44
ASCHIERI, Franco	17 yrs.11 mos.	Gen.MacFarlane	22 Apr.44
TAPOLI, Georgio	18 yrs.10 mos.	Gen.MacFarlane	22 Apr.44
TEDESCO, Vincenzo	19 yrs.	Gen.MacFarlane	22 Apr.44
SCARPELLINI, Virgilio	19 yrs.	Gen.MacFarlane	25 Apr.44

APPENDIX "B"ESPIONAGE CASES IN WHICH THE SENTENCE HAS BEEN COMUTED TO ONE IMPRISONMENT.

<u>Name of Defendant</u>	<u>Age, or date of birth.</u>	<u>Reviewing Authority</u>	<u>Date.</u>
COVELLA, Federico	3 Feb.1926	Gen.Alexander	15 Jan.44
MONTALDI, Bruno	13 Dec.1925	" "	23 Jan.44
GALVAGNO, Claudio	17 yrs.4 mos.	Gen.MacFarlane	9 Apr.44
PELLIGRIN, Carlo	18 yrs.4 mos.	" "	18 Apr.44
ALBERTI, Emilio	16 yrs.8 mos.	" "	18 Apr.44
ACQUA, Gaetano	17 yrs.2 mos.	" "	18 Apr.44
CATANI, Ernesto	28 yrs.	" "	22 Apr.44
TRIFIRO, Mario	20 yrs.	" "	22 Apr.44
RAVERO, Valerio	17 yrs.3 mos.	" "	22 Apr.44

APPENDIX "C"

PENDING ESPIONAGE CASES IN POSSESSION OF LEGAL SUBCOMMISSION.

<u>Name of Defendant.</u>	<u>Age.</u>	<u>Date of Trial</u>	<u>Sentence Imposed.</u>
CALLIGARO, Alfredo	26 yrs)	8 & 10th April 1944	Death
DOMININI, Domenico	27 yrs)		
SEBASTIANELLI, Giulio	28 yrs)		
GUADAGNI, Alfonso	18 yrs)	18 April 1944	Death
SONO, Giovanni	31 yrs)		
VIVIANI, Ennio	17 yrs 7 mos)		

Copy No. 1

JKD/jg

(22A)

HEADQUARTERS REGION XII
Allied Control Commission
APO 394~~SECRET~~ SECRET

TO : HQ, ACC (R.C. & M.G. Section) 1 September 1944

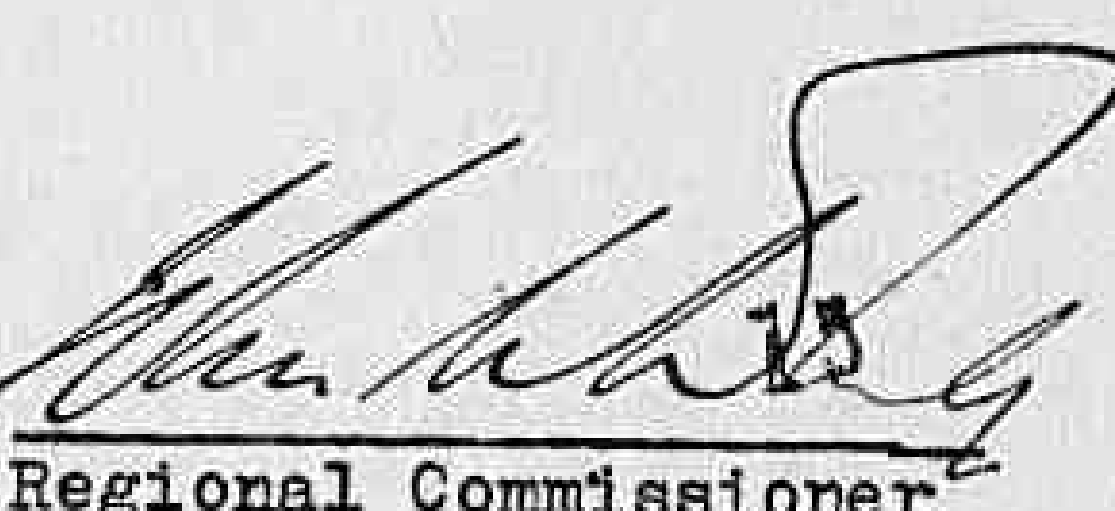
SUBJECT: Proclamations

FILE NO: RXII/032.13

1. It is submitted for your consideration that the new preamble to Proclamation No. 1 is not suitable for posting in the four Provinces of Veneto Giulia (Pola, Fiume, Trieste and Gorizia).

2. If you agree will you, or shall we, proceed with the printing of:

- (a) A version in Italian without preamble.
- (b) A version in Slovene.


Regional Commissioner

Copy numbers:

- 1 - 2 to HQ ACC (R.C. & M.G. Section)
- 3 to AMG 8 Army
- 4 - 5 to Files

Copy No. 2

JED/jg (22B)

HEADQUARTERS REGION XII
Allied Control Commission
APO 394~~SECRET~~

TO : HQ, ACC (R.C. & M.G. Section) 1 September 1944

SUBJECT: Proclamations

FILE NO: RXII/032.13

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- (a) A version in Italian without preamble.
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Regional Commissioner

Copy numbers:

- 1 - 2 to HQ ACC (R.C. & M.G. Section)
- 3 to AMG 8 Army
- 4 - 5 to Files

4134
✓
HEADQUARTERS ALLIED COMMISSION
Office of the Chief Commissioner
APO 394

TOP SECRET.

Ref: 2214/121/30.

30 August 1945.

SUBJECT: Italian Deserters to Yugoslav Navy.

TO : Chief of Staff,
AFHQ.

1. On 26 March 1945 the Italian authorities arrested in Taranto a man named Koljevina Gagar on the charge of desertion from the Italian Navy. At the time of his arrest Koljevina was in the uniform of the Yugoslav Navy; he was apparently serving in the Yugoslav Navy from which he had received authorized shore leave.
2. By letter dated 22 May 1945 the Yugoslav Delegation to the ACI protested, in the name of the Yugoslav Government, against the arrest and requested the immediate release of Koljevina.
3. No reply has been sent to that letter because this Commission was informed that, as a result of conversations in Belgrade, the Yugoslav Government did not intend to press their protest, did not expect a reply and were prepared to allow the matter to drop provided that court-martial proceedings were not instituted.
4. The Yugoslav Delegation to the ACI has, however, written a further letter, dated 25 July 1945, requesting a quick reply to the earlier letter. It is therefore necessary that the policy should be decided and that a reply should be sent.
5. There can be no doubt that the Italian authorities are entitled to arrest and try in Italian Government territory an Italian subject, charged with desertion from the Italian armed forces, unless they are prevented from doing so by the Assistance Terms or the various Terms of Restoration of Territory. The only relevant clause is the clause in the Terms of Restoration (originally No. 13) which provides that "No member of the Allied Forces or any official or other representative of the United Nations, civil or military, shall be brought to trial in any Italian court...without the consent of the Allied Commander in Chief." If Koljevina is to be regarded as a member of the Yugoslav Navy he would be protected by that clause from trial by Italian court-martial, or other Italian court, unless SAC should authorize such trial.
6. It should be pointed out that this clause applies to Taranto even though Taranto has been at all times under the jurisdiction of the Italian Government.
7. The policy of the Allies in regard to members of the Italian armed forces who desert to the armed forces of Yugoslavia has been clearly laid down, and has been made plain to and accepted by the Yugoslav and Italian

- 2 -

Governments. This policy is that desertion from the Italian armed forces must be prevented; that the only Italian subjects whom the Yugoslavs may recruit are Italians of Slav origin who are not serving in the Italian armed forces and that permission for such recruitment must be obtained from this Commission in all cases.

8. Moreover, the Italian Government has been informed that, in spite of the desire of the Allies to prevent these desertions, it is impossible as a practical matter to secure the return of deserters unless they happen to be under Allied control. It follows from this, however, that the Allies must return any deserters who do come under their control and must take no action to prevent the Italian Government from themselves apprehending and trying such deserters when they are in a position to do so.

9. It is the opinion of this Commission that it would be contrary to the agreed policy to regard Koljevina as a duly recruited member of the Yugoslav Navy. It is considered that the proper course to adopt is to treat him as a deserter from the Italian armed forces who is now within the jurisdiction of the Italian Government and who should therefore be placed at their disposal for trial.

10. If Koljevina is to be technically considered as either a member of the Allied Forces or as a military representative of one of the United Nations, it is recommended that the consent of SAC should be given to his court-martial by the Italian authorities.

11. On the basis of this policy, it is proposed to reply to the Yugoslav Delegation to the ACI in the terms of the letter attached hereto at Annexure A. It would be appreciated if you could give an early indication of your approval of this letter in order that it may be transmitted to the Yugoslav Delegation as soon as possible.

12. There are attached hereto, for information, at Annexure B, copies of the documents in the case of Koljevina, and of the relevant letters setting out the general policy for the treatment of such deserters.

ELBERT W. STONE
Rear Admiral, USNR
Chief Commissioner

Annexures A and B:

cc: G-5, AFHQ.
Chief Commissioner.
Executive Commissioner
CA Section (For Legal Sub-Com.)
Navy Sub-Commission.

TOP SECRET

Ref.

SUBJECT : Italian deserters to Yugoslav Navy.

/rlp.
August 1945.

TO : Chief of Staff, ANHQ.

1. On the 26th March 1945 the Italian authorities arrested in Taranto a man named Koljevina Grgur on the charge of desertion from the Italian Navy. At the time of his arrest Koljevina was in the uniform of the Yugoslav Navy; he was apparently serving in the Yugoslav Navy from which he had received authorized shore leave.
2. By letter dated 22 May 1945 the Yugoslav Delegation to the ACI protested, in the name of the Yugoslav Government, against the arrest and requested the immediate release of Koljevina.
3. No reply has been sent to that letter because this Commission was informed that, as a result of conversations in Belgrade, the Yugoslav Government did not intend to press their protest, did not expect a reply and were prepared to allow the matter to drop provided that court-martial proceedings were not instituted.
4. The Yugoslav Delegation to the ACI has however written a further letter, dated 25 July 1945, requesting a quick reply to the earlier letter. It is therefore necessary that the policy should be decided and that a reply should be sent.
5. There can be no doubt that the Italian authorities are entitled to arrest and try in Italian Government territory an Italian subject, charged with desertion from the Italian armed forces, unless they are prevented from doing so by the Armistice Terms or the various Terms of Restoration of Territory. The only relevant clause is the clause in the Terms of Restoration (originally No. 13) which provides that "No member of the Allied Forces or any official or other representative of the United Nations, civil or military, shall be brought to trial in any Italian court...without the consent of the Allied Commander in Chief." If Koljevina is to be regarded as a member of the Yugoslav Navy he would be protected by that clause from trial by Italian court-martial, or other Italian court, unless SAC should authorize such trial.
6. It should be pointed out that this clause applies to Taranto even though Taranto has been at all times under the jurisdiction of the Italian Government.
7. The policy of the Allies in regard to members of the Italian armed forces who desert to the armed forces of Yugoslavia has been clearly laid down, and has been made plain to and accepted by the Yugoslav and Italian Governments.

1

This policy is that desertion from the Italian armed forces must be prevented; that the only Italian subjects whom the Yugoslavs may recruit are Italians of Slovene origin who are not serving in the Italian armed forces and that permission for such recruitment must be obtained from this Commission in all cases.

8. Moreover, the Italian Government has been informed that, in spite of the desire of the Allies to prevent these desertions, it is impossible as a practical matter to secure the return of deserters unless they happen to be under Allied control. It follows from this, however, that the Allies must return any deserters who do come under their control and must take no action to prevent the Italian Government from themselves apprehending and trying such deserters when they are in a position to do so.

9. It is the opinion of this Commission that it would be contrary to the agreed policy to regard Koljevina as a duly recruited member of the Yugoslav Navy. It is considered that the proper course to adopt is to treat him as a deserter from the Italian armed forces who is now within the jurisdiction of the Italian Government and who should therefore be placed at their disposal for trial.

10. If Koljevina is to be technically considered as either a member of the Allied Forces or as a military representative of one of the United Nations, it is recommended that the consent of SAC should be given to his court-martial by the Italian authorities.

11. On the basis of this policy, it is proposed to reply to the Yugoslav Delegation to the ACC in the terms of the letter attached hereto at Annexure A. It would be appreciated if you could give an early indication of your approval of this letter in order that it may be transmitted to the Yugoslav Delegation as soon as possible.

12. There is attached hereto, for information, at Annexure B copies of the documents in the case of Koljevina, and of the relevant letters setting out the general policy for the treatment of such deserters.

HILARY W. STONE,
Rear Admiral, USNR,
Chief Commissioner.

Incls.

Sent to CC on Ex Com file
TS/2214/EC - 27/5/45

TOP SECRET

CA Sec

Copy No 4

FX 87517
JUNE 041945BE/3675
JUNE 051045
PRIORITY

AFHQ SIGNED SACRED SITE PHGEG

ACTION ALCOM ROME INFO MAIN 8 ARMY FOR AMG MAIN SACRIS REAR
SACRIS 15 ARMY GROUP

TOP SECRET.

Following policy will apply in regard to flying of flags in Allied area of VENEZIA GIULIA after JUGOSLAVS have withdrawn and AMG is established.

1. On official buildings which are in any way controlled by or part of AMG only display permitted is that of US and British flags jointly. This applies to police stations whether manned by local SLOVENE or Italian police or by carabinieri.

2. Concentrations of troops in barracks or cages may fly their own National flags in such areas eg JUGOSLAV Detachment may fly the JUGOSLAV flag and Italian flag may be flown over carabinieri barracks (as opposed to police stations referred to in para 1 above).

3. There is to be no restriction on display of flags on private residences and buildings.

DIST

COPY	1	&	2	ACTION -	EX COMMISSIONER 2
"	3			INFO -	CHIEF COMMISSIONER
	4				CA SEC
	5				EST SEC
	6				FILE

TOP SECRET

TOP SECRET

A.E.C. AL S/C

Copy No 5

M 1037
MAY 222300BE/1974
MAY 230830B
URGENT

MAIN AND 8 ARMY

15 ARMY GROUP FOR G5 SECTION INFO HQ ALCOM FOR ACLED, CHIEF OF STAFF MAIN
8TH ARMY PADOVA FOR VENEZIA REGION FOR REG COMM

TOP SECRET.

Reference my M 1036 of 22.

1. In order to meet any emergency which may necessitate posting of proclamations in VENEZIA GIULIA, following revised opening of proclamation No 1 giving first, preamble and secondly, establishment of military government is suggested.

X ALLIED MILITARY GOVERNMENT VENEZIA GIULIA PROCLAMATION NO 1. To the people of VENEZIA GIULIA. In order to hasten the rehabilitation of areas which the Allied forces have freed from German occupation and to ensure the proper administration thereof, to provide for the safety and welfare of yourselves and of the Allied forces, and to preserve law and order, a military government must be established in this territory. This military government will have full control over the administration of this territory and will have power if necessary to try in its own courts and punish any persons who commit offences against any of the special laws and provisions promulgated by the military government. Now, therefore, I, HAROLD RLG ALEXANDER, GCB CSI DSO MC Field Marshal, Supreme Allied Commander, Mediterranean Theatre of Operations, hereby proclaim as follows. X

ESTABLISHMENT OF MILITARY GOVERNMENT. Article 1. All powers of government and jurisdiction in the territory of VENEZIA GIULIA occupied by Allied troops and over its inhabitants, and final administrative responsibility are vested in me as

TOP SECRET

TOP SECRET

- 2 -

(M 1037 cont'd)

military commander and military governor, and Allied military government of such territory is hereby declared and established to exercise these powers under my direction. All administrative and judicial officials and all other government and municipal functionaries and employees and all officers and employees of state, municipal or other services (except such as may be removed by me) are required to continue in the performance of their duties, subject to my direction or the direction of such of my officers of the Allied forces as I may depute for that purpose.

Article 2. All persons in the said territory will obey promptly all orders given by me or under my authority and must refrain from all acts hostile to the troops under my command, from all acts of violence and from any act calculated to disturb law and order or public safety in any way. So long as you remain peaceable and comply with my orders, you will be subjected to no greater interference than may be inevitable in the course of the administrative task of the military government.

Article 3. Your existing personal and property rights will be fully respected and your existing laws will remain in force and effect except insofar as it may be necessary for me in the discharge of my duties as Supreme Allied Commander and as Military Governor to change or supersede them by proclamation or other order by me or under my direction.

Article 4. Effective Date. This proclamation will become operative in each province or part thereof within the said territory of VENEZIA GIULIA on the date of its first publication therein. Signed HAROLD RLG ALEXANDER, Field Marshal, Supreme Allied Commander, Mediterranean Theatre of Operations."

2. Suggest the above must be translated into Yugoslavian as well as Italian to meet outlying village requirements. Above proclamation would only be used in

TOP SECRET

1247

TOP SECRET
- 3 -

(M 1037 cont'd)

emergency and pending arrival of fresh proclamations to include part 2 and part 3 as redrafted by you.

3. Signal agreement or otherwise. Urgent.

DIST
Copy No 1 INFO-ACTION: *CASEC*
" " 2 INFO: ~~Legal~~ *A/O*
" " 3 INFO: A/President
" " 4 Chief Commissioner
" " 5 Executive Commissioner
" " 6 ~~On-Site~~ *LEGAL* *1/4*
File

TOP SECRET

TOP SECRET

4134

M 1036
MAY 221645B

LEGAL S/C

COPY NO 5

E/1959

MAY 230830

OP-PRIORITY

MAIR AMM 8TH ARMY

ACTION 15 ARMY GROUP FOR G-5 SECTION FOR INFORMATION HQALCOM
FOR ACLEG.

TOP SECRET.

In the event of Allied Military Government being imposed East of ISONZO river in VENEZIA GIULIA and in view changed conditions due to, firstly surrender of German Army and secondly political position, proclamation number 1 no longer applicable and might cause difficulties if posted. My Legal Officer preparing emergency proclamation based only on imposition of Military Government and leaving out parts 2 and 3 of proclamation number 1. Parts 2 and 3 will be re-written and if emergency arises posted afterwards. To enable Military Government to be imposed request authority be signalled by SACMED to army commander authorising his signature on proclamation. Consider re-drafting whole proclamation should be undertaken without delay and copy flown here for us to print. Will have to translate into YUGOSLAVIAN as many parts are not Italian speaking.

DIST

COPY NO 1
" " 2
" " 3
" " 4
" " 5
" " 6

INFO-ACTION -

INFO -

CA SEC

A/PRESIDENT

CHIEF COMMISSIONER

EX COMMISSIONER

~~CA SEC~~ LEGAL

FILE

TOP SECRET

TOP SECRET.

file

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4134/L.

25 April 1945.

SUBJECT : 15 Army Group Adm Directive 3.

TO : O. A. Sec.

1. Reference TS/CEQ/68 of 24 Apr 45 the preparation of the anti-fraternization order is in course.

2. I do however desire to draw your urgent attention to paras. 8 (c) and 12 (b) of the directive.

3. I have not seen the document referred to in para 8 (c) and do not therefore know how many of the surrendering troops are to be designated as prisoners of war. I have however expressed the opinion that all troops surrendering are, probably, entitled to treatment as prisoners of war (See AC/4076/L of 1 March 45).

4. Before AMG Courts can take cognizance of any offences committed by surrendered troops it must be clearly established that such troops are not prisoners of war. I cannot, without full knowledge of the facts, express a definite opinion in advance, but I feel that the matter requires detailed consideration and that it may possibly be necessary to refuse all jurisdiction in these cases and to have the directive modified accordingly.

5. Clearly, from a technical point of view, the directive must be modified to exclude AMG jurisdiction over personnel who are admittedly designated as prisoners of war.

The directive is returned herewith

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

WEB/wcw.

TOP SECRET.

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HEADQUARTERS ALLIED COMMISSION

A.F.C. 394

Legal Sub-Commission

File ref: (not on original)

AC/4134/L

MEMORANDUM

12 March 1945

TO : G A Section

1. I have read the opinion of Col Hammond of 19 February 1945 but find myself unable to accept his arguments.

2. Col Hammond's opinion is founded upon the contentions:-

- (a) That the Armistice does not require the Allied Commission to take any particular form and that the Commission could be established in different sections for different parts of Italy;
- (b) That the appointment of Mr MacMillan as Acting President of the Commission can be revoked by SAC.

3. In my opinion Col Hammond's first contention ignores the fact that under the Armistice terms there is to be set up "a Control Commission" to the HQ of which the Italian Government will send a delegation to represent Italian interests. The function of the Commission was the regulation and execution of the Armistice terms, including Art 20 which provides for the administration of occupied territory. These terms were fulfilled and by their fulfilment the Commission and its one HQ were established for the discharge of these appointed functions. To adopt now, or in the future, the policy that this Commission was not the sole body for this purpose would be to ignore the established course of conduct, and to increase the difficulties of the Italian Government and would in my opinion be inconsistent with the Armistice terms.

4. So far as the revocation of Mr MacMillan's appointment is concerned I am of opinion that since the delegation by SAC was made in pursuance of a declaration by UK and US, which declaration was formally and publicly announced to the Italian Government, this delegation cannot be revoked at the will of SAC. It is irrelevant to this issue that the implementation of this declaration by SAC may have been made in a particular form which appears to enable SAC to revoke the appointment. 3

5. Since, however, no action is contemplated at the present time on the basis of Col Hammond's opinion, it appears that no immediate reply is necessary.

W. E. BURENS,
Colonel,
Deputy Chief Legal Officer.

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HEADQUARTERS
ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4134/1

6 February 1945

SUBJECT :- Responsibilities of the Allied Commission

TO :- Chief Commissioner, HQ Allied Commission

- 1 This sub-commission has been asked to advise whether it would be in order for a governmental authority to be established, independent of the Allied Commission and dependent directly upon AMHQ, which should assume responsibility for administration and control of a portion of Italian territory, either by itself or in conjunction with some foreign power.
- 2 Under Articles 37 and 42 of the Instrument of the Surrender of Italy it is provided that a Control Commission will be appointed representative of the United Nations charged with regulating and executing, under the orders of SACMED, the instrument of surrender, and that the Italian Government will send a delegation to the HQ of the Control Commission to represent Italian interests and to transmit the orders of the Control Commission to the competent Italian authorities.
- 3 In the opinion of this sub-commission it is clear from the general terms of the Instrument of Surrender that the provisions thereof extend to the whole of Italian territory within the limits prescribed by Article 41. This territory, for the purpose of this opinion, includes all territory which before the outbreak of the present war formed part of the mainland of Italy.
- 4 It is the further opinion of this sub-commission that the effect of these Articles is, by treaty with the Italian Government, to establish the Allied (Control) Commission as the sole authority, within the territory of Italy as so defined, for administering and executing the terms of the Instrument of Surrender of Italy under the orders of SACMED, and as the channel of communication between SACMED and the Italian Government for this purpose. Any portion of Italy which is, or may hereafter be, liberated by the Allied Forces is, or will become, subject to the terms of the Instrument of Surrender, and subject to control thereunder through the Allied Commission.
- 5 It would seem clear that this is the opinion of the Governments of the United States and Great Britain, since in the appointment of Mr MACMILLAN as Acting President of the Allied Commission it was publicly announced that he should become the responsible head of the Commission and that in order to effect this, General WILSON would delegate to Mr MACMILLAN his functions as President of the Commission.

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- 6 It is assumed that General WILSON did in fact so delegate his functions. On this assumption, it is considered that SACRED would have no authority thereafter to establish a different Governmental institution separate from the Allied Commission or not under the control of Mr MACMILLAN.
- 7 On each of the above grounds, therefore, it is the opinion of this sub-commission that the creation of such an authority as is envisaged in paragraph 1 hereof would be irregular and improper.

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

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