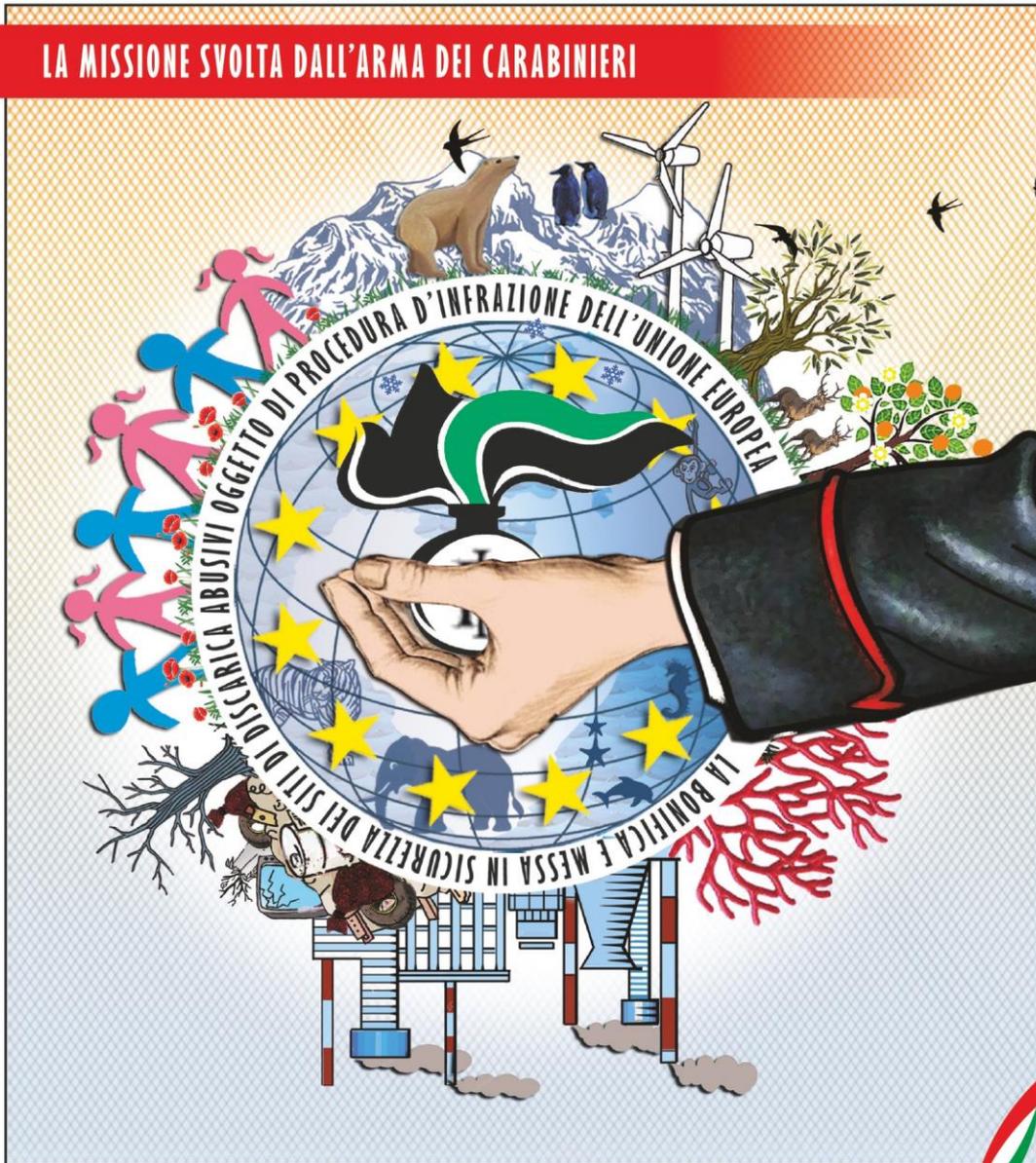


R dell'Arma dei Carabinieri Rassegna

LA MISSIONE SVOLTA DALL'ARMA DEI CARABINIERI



Istituto Poligrafico e Zecca dello Stato S.p.A.

M. C. Perrini

*The closing, sealing and restoration of
illegal landfills as part of the action aimed
at avoiding infringement procedures for
breach of EU waste legislation.*

*The mission carried out by the
Arma dei Carabinieri*

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Short biography of the author

- *Generale di Brigata* of the Arma dei Carabinieri Giuseppe Vadalà was born in Messina on 15 March 1963. He was appointed on 24 March 2017 as *Commissario Straordinario di Governo* (“Government Special Commissioner”) with the task of ensuring the compliance with applicable environmental laws and regulations governing illegal landfills in the national territory.
- Former regional commander in Tuscany of the Corpo forestale dello Stato or CFS (“State Forestry Corps”) from 3 June 2014 to 3 July 2017, when he was appointed Comandante Carabinieri Forestale in the same region.
- Following his graduation in 1987 in forestry at the University of Reggio Calabria, he joined the CFS in 1989.
- From 1992 to 2008, he was officer in charge of various environmental and food safety central investigation units as part of the coordinated nationwide efforts (CITES investigative unit; coordination of environmental and forestry police in the fight against waste trafficking; officer in charge at NIAB, the wildland fire investigation unit), taking part in O.I.P.C. – INTERPOL operations.
- From 2009 to 2013, he was in charge of the environmental and food safety division within the food and forestry unit (NAF – Nucleo agroalimentare e forestale), and from 2010 al 2013 of the II and IV two-year training course for state forestry officers (Commissari del Corpo forestale dello Stato).
- Advisor to the joint parliamentary commission of inquiry on waste trafficking and related crimes (1997) and to the parliamentary commission of inquiry on food fraud, falsification and adulteration (2011).
- Promoted joint-initiatives at an institutional level, with Associazione Libera, Coldiretti, Legambiente, Flai-Cgil, *Slow-Food*, Fondazione Caponnetto, aimed at formalising the exchange of best practice and knowhow between government institutions and stakeholders on the themes of legality, food and the fight against the so-called ‘caporalato’ phenomenon, a form of illegal intermediation and exploitation of workers in the agricultural sector.
- Lecturer in schools and special institutes and author of articles and two books on environmental and food safety.
- Qualified from the Advanced Training Course for the enhancement of scientific and professional expertise of Senior Officers in all the Italian Police Force (XIII Advanced Training Course – t.SFP).
- Member of the Georgofili Society and Accademia di Scienze Forestali.
- He is Ufficiale della Repubblica (Officer of the Order of Merit of the Italian Republic)



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PRESENTATION

The restoring and securing of contaminated sites are part of a mandatory activity aimed at pursuing a public interest, namely environmental safety and the restoration of a public good and interest that have been contaminated. Qualifying as a productive activity that bears an impact on the economy, an activity of this kind is undoubtedly a public service, regardless of whether the contaminated sites are public or private. In this specific case, the overriding principle is the applicability of the law, specifically of articles 242 and following of the Testo Unico Ambientale – T.U.A. The environmental consolidation act provides to this end the mandatory implementation of such action, with the application of related regulations, or alternatively that such action be entrusted to the local administration, as set down in judgement 5268/2012 of the Council of State regarding the nature of public services (Consiglio di Stato, n. 5268/2012).

The notion of public service, as applicable to those sites that are in breach of waste legislation, has been comprehensively described by the government's Special Commissioner General Vadalà. Public service is, in this light, complementary to the liability regime where penal and administrative legislation converge on the following principles:

a) Pursuant to article 245, comma 2, letter 1, the owners who are not responsible of having caused a contamination must only implement the prevention measures that are set down in article 240, comma 1, letter 1; i.e. “The initiatives aimed at countering an event, action or omission that may place public health or the environment under an imminent threat, intended as a likely risk that may occur to public health or to the environment in the near future, with the aim of preventing or minimizing such a threat”

b) Pursuant to article 242, those owners who are instead responsible of action that may potentially contaminate the site are required to implement contamination prevention measures within twenty-four hours

c) Closing, repairing and cleaning must be carried out exclusively by those who are responsible for the contamination, i.e. by those subjects who are objectively responsible for having caused the contamination (article 244, comma 2).

While there is a substantial agreement regarding the liability of owners, the criminal aspects of non-compliance with safety regulations continue to be unclear.

A recent ruling by the Court of Cassation (17813/2019) established that failure to apply decontamination measures, as established in article 257 of

T.U.A., was liable to criminal prosecution. The judgement was applied to the chairman of an intermunicipal consortium that owned and administered a former municipal landfill. Although the contamination risk threshold had been crossed, the consortium did not draw up and present to the Regional Authorities a decontamination project, thereby failing to implement the prescribed ecological restoration of the site. The application of a more rigorous interpretation of the law highlighted a legal conundrum, establishing that a crime was in any case committed whenever failure to implement decontamination procedures occurred. This was in contrast with the interpretation according to which criminal offence occurred only when the measures prescribed in the approved decontamination project were not implemented. However, this did not take into account the introduction in the penal code, through Law n. 68/2015, of the criminal offence of failing to apply decontamination measures (article 452-*terdecies* c.p.).

While a closer examination show that the application boundaries of these two instances are unclear and partly overlap, it is emerging that the resolution of the legal uncertainty involves the acknowledgment of a wider field of application. In fact, the breach of mandatory decontamination under T.U.A. is punishable in the same way as is, more broadly speaking, the failure to comply with the decontamination measures that are prescribed by law, or ordered by the judge in his capacity as a public officer. This kind of broader reach combines with the application, with regard to the subjective element, of the principle according to which ordinary liability in a crime is considered intentional, while carelessness must be specifically defined, i.e. foreseen by the system. Considering that the latter is not prescribed in article 452-*terdecies* c.p., such an offence must be considered as punishable exclusively as intentional, albeit in generic terms.

Pasquale Fimiani
Sostituto Procuratore generale
Court of Cassation

1. Premise

The restoration of our environment is a key topic of debate. Even more when the changes to our natural habitat are not due to natural causes but manmade, when the harm that is being done to it is intentional or due to sheer carelessness. Public debate on these topics is of great concern to us all not only in avoiding that such harmful conduct occurs in the future but also in fostering the environmental reconstruction effort. Positive action would, in addition, minimise the impact of sanctions imposed by the EU on Italy for breach of environmental protection legislation; target administrative non-compliance in the application of decontamination procedures; pursue corruption cases by combating the involvement of organised crime in this sector; and outline plans to avoid the causes of serious economic and environmental prejudice in Italy.



Illegal landfills contaminate farming land as well as groundwater by releasing contaminants slowly and over long periods of time, thereby causing anxiety and uncertainty.

It is necessary, especially in the more densely populated areas, to set contamination thresholds at zero, to closely monitor industrial and civilian activities by stimulating environmental awareness among waste producers and

by ensuring that production costs are not borne exclusively by the environment.

A new phase is today required in the revitalisation of contaminated land, in the development of sustainable plants and in applying the post-mortem decontamination of landfills that have reached the end of their life cycles. This would ensure excellent life and environmental standards for present and future generations.

2. The original causes of environmental alteration

We would like to start our report by outlining the original causes that led to Italy being cited for breach of EU legislation in 2003. The infringement procedure was followed by the passing of the initial judgement in 2007 which imposed the payment by Italy of sanctions relating to the illegal setting up of two-hundred sites across the country, in compliance with the judgement issued by the European Court of Justice on 2 December 2014.

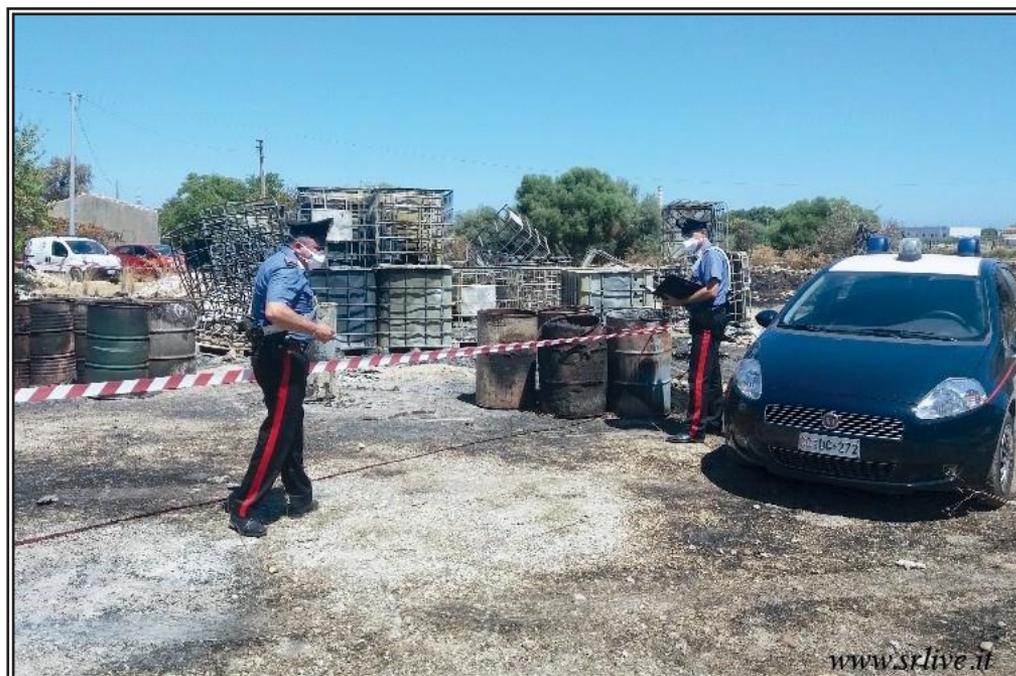
The first judgement in 2007 condemned Italy for the presence in its territory of a number of landfills that had been set up in violation of the waste directives 5/442/CEE; 91/689/CEE; and 1999/31/CE.

The European Community had started to define waste management policies in the Seventies, by establishing the initial rules governing the suitable management and disposal of waste across the European territory. In that same period, Italy had set up landfills that were not fully compliant with these European policies. Set up principally for the disposal of municipal solid waste (MSW), those landfills did not possess features that would have enabled them to store and dispose waste safely or did not have the authorisations that would allow them to be legally acknowledged.

Indeed, the inspections carried out by the Carabinieri of the Commissioner's Office in the 81 landfill sites entrusted to the Commissioner by the government through three specific decrees – the initial 58 sites at the time of the appointment as Special Commissioner on 24 March 2017, the following 22 through a second deliberation on 22 November 2018, and the last site through a third deliberation of 11 June 2019 – showed that in the majority of cases the MSW sites were situated in rural and mountainous areas in locations far from urban centres. Waste in those sites were “stacked” over the natural slopes with garbage being “dumped” without any precaution from the hilltop down to the valley, along the banks of rivers and streams in areas that did not possess geological substrata or technical facilities that would allow them to store and dispose waste safely. In other landfills, waste was dumped near industrial sites, transforming what were temporary landfills into

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permanent ones, such as those around Marghera in Venice or at Augusta, near the Priolo-Gargallo industrial district).



Starting from 2003, when the infringement procedure was initiated, to 2014, when sanction payments started, city councils and regional authorities, with the crucial support of the Ministry for Environment, Land and Sea Protection (MATM), repaired numerous landfill sites in a bid to stop the contamination that the landfills had triggered. Nevertheless, some two-hundred sites, which were successively sanctioned, were left out of the decontamination program, and no one could be held responsible.

While municipal authorities in the Seventies, Eighties and even Nineties had to carry out waste processing in an emergency situation, the serious error they committed concerned the locations they ultimately chose to set up the landfills. The consequences of the choices they made proved to be disastrous, because many of those areas were unfit for waste storing and management. Not only was solid waste dumped in such locations, often prized natural spots, but also special waste, which over time became one of several pollutants that are human health hazards and seriously impact the environment.

The existence of these sites first came to light in 1986 and following four further surveys, in 1996, 2002, 2008 and 2016, by Corpo Forestale dello Stato, the Italian forestry corps, which has now been merged into Carabinieri Forestali. While

this action by the forestry helped to discover, map and monitor these illegal landfill sites and to ascertain responsibilities, the ultimate aim was and continues to be prevention and decontamination.

This initial pre-emptive survey allowed the European Union and the Carabinieri to assess damage and initiate restoration work. By bringing to light the widespread presence of such illegal landfills, the survey also contributed to preventing the creation of new “Terre dei Fuochi” – Land of Fires – where the noxious and criminal burning of trash and toxic waste occurs.



3. The surveys

In the light of the new environmental safety standards and EU policies. Italy carried out five surveys aimed at shedding light on the irregularities that have seriously endangered both the environment and human health. Conducted by Carabinieri Forestali in 1986, 1996, 2002, 2008 and 2016, the surveys, in providing a map of illegal or unsustainable landfills in Italy, gave a clearer picture of the extension of the phenomenon, which significantly impacted woodlands and mountainous areas where watercourses and geological features are subject to stringent protection laws. The nationwide inspections also assessed whether the uncontrolled dumping of waste in these illegal landfills had damaged groundwater or caused geological instability.

Highlights of the three initial surveys (1986 - 1996 - 2002):

| HIGHLIGHTS OF THE 1986 SURVEY | | |
|-------------------------------|-----------|--------------------------|
| n. municipalities | Landfills | |
| | n. | Area covered (in sq. m.) |
| 6,890 | 5,978 | 15,370,170 |
| HIGHLIGHTS OF THE 1996 SURVEY | | |
| n. municipalities | Landfills | |
| | n | Area covered (in sq. m.) |
| 6,802 | 5,422 | 17,594,397 |
| HIGHLIGHTS OF THE 2002 SURVEY | | |
| n. municipalities | Landfills | |
| | n. | Area covered (in sq. m.) |
| 6,802 | 4,866 | 19,017,157 |

4. The European Court of Justice judgement of 2 December 2014 and the current situation

As mentioned earlier, the European Court of Justice initiated in 2003 infringement procedures against Italy for breach of EU waste legislation, which led to the judgement of April 2007 (Third Section, judgement n. C-135/05 of 26 April 2007 – Failure by a Member State to fulfil its obligations – legal framework on waste – Directive 91/156/CEE – Directive 1999/31/CE): “The Italian Republic has failed to fulfil its obligations, as set down in articles 4, 8 and 9 of Directive 75/442, and articles 2, n. 1, of the Council Directive of 12 December 1991, 91/689/CEE, relating to dangerous waste, and articles 14, let. A-c of the Council Directive of 26 April 1999, 1999/31/CE relating to landfills”.

In 2008, the Ministry of the environment (MATTM) updated the data it had of landfill sites that had been declared illegal in the third survey of 2002. The data concerning “Illegal waste disposal sites – SSIR” was digitalized thereby facilitating the geolocation of the sites and the updating of all newly collected information. This allowed for a more efficient monitoring of the phenomenon of waste dumping and the setting up of illegal landfills through the compilation of a related data bank.

While the SSIR inquiry showed that two-hundred waste disposal sites did not comply with both EU and national waste legislation, no differentiation was made between those illegal sites where waste was “merely dumped and abandoned” or those that were “illegal and uncontrolled landfills” and those that had been “regularly authorized”. Consequently, a monitoring system was drawn up where all illegal action in the areas of waste dumping and disposal in non-compliant landfills came under the applicable waste legislation (*see table below*).

| DESCRIPTION | GRAND TOTAL GLOBALE | ACTIVE SITES | DORMANT SITES |
|---|---------------------|--------------|---------------|
| Dumping and/or uncontrolled disposal | 3,082 | 420 | 2,662 |
| Landfills (according to current legislation) | 1,383 | 89 | 1,294 |
| Uncontrolled sites arising from the storage of waste or temporary dumping waste | 221 | 23 | 200 |

In 2013, the EU Commission found that Italy had not yet adopted all the measures necessary to comply with the 2007 judgment. As is well known, in its judgement of 2 December 2014, the European Court concluded that the obligation to recover or dispose waste without endangering humans or the environment, and the obligation requiring the holder of waste to have it handled by a waste collector which carries out waste disposal and recovery operations, or to carry out those operations itself according EU waste legislation, have been infringed.

According to the Court, Italy:

- has failed to ensure that the permit system set up is actually applied and observed
- has failed to ensure that operations carried out without a permit are terminated

➤ has failed to record and identify exhaustively all the hazardous waste discharged in the landfills

➤ has continued to default on its obligation to ensure that a conditioning plan or a definitive closing-down measure is adopted for certain landfills.

In addition, the Court pointed out that:

➤ merely closing down a landfill, or covering waste with earth and rubble, is not enough to comply with the obligations under the 'Waste Directive'

➤ Member States are also required to determine whether it is necessary to clean up old illegal sites and, if so, to clean them

➤ Italy has also been reminded that sequestering the landfill and instituting criminal proceedings against the operator do not constitute sufficient measures.

In the light of the above, the Court consequently ordered Italy to pay a lump sum payment of €42,8 million besides paying, in addition, a six-monthly penalty payment until compliance with the 2007 judgment was achieved.

The Court therefore considered it appropriate to order a decreasing penalty payment, to be paid in an amount which will be progressively reduced in proportion to the number of sites brought into conformity with the judgment. Evidence of the adoption of measures necessary for compliance with the 2007 judgment must be sent to the Commission before the end of the six-month period under consideration.

From the total sum, the following should be deducted for each site that is brought into conformity:

➤ € 400,000 for each hazardous waste site;

➤ € 200,000 for every other site.

The judgement concerned 200 waste sites. Out of these:

➤ 128 sites were not in conformity with the Directives 75/442 and 91/689 according to which cleaning up operations must be carried out to fully execute the judgement

➤ two sites were not in conformity with Directive 1999/31, which requires evidence to be submitted concerning the implementation of a conditioning plan or a definitive closing-down measure.

Nine semesters after the 2 December 2014 judgement ordering Italy to pay the fine, 33 months after the appointment of the Special Government Commissioner at the head of a task force specifically set up by the Carabinieri to

this end (24 March 2017 - 31 December), and following the examination of evidence and contacts with the European Commission through the Task Force for the EU infringement procedures of the Prime Minister's office and the dedicated offices Environment Ministry, the situation is currently as follows:

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| NUMBER OF "ILLEGAL" SITES FOR WHICH A COMPLIANCE REQUEST WAS MADE | SIX-MONTH PERIOD | NUMBER OF SITES THAT HAVE BEEN BROUGHT INTO CONFORMITY FOLLOWING EU ENVIRONMENTAL ASSESSMENT | SIX-MONTHLY PENALTY FINE PAYMENT |
|---|---|--|----------------------------------|
| Initial lump sum payment | | | € 40,000,000.00 |
| 200 (sites to be brought into conformity) | 2 December 2014 (European Court of Justice's judgement date) | / | € 42,800,000,00 |
| 54 | 2 June 2015 - 1 st six-month period | 15 (sites not in conformity: 185) | € 39,800,000.00 |
| 38 | 2 December 2015 – 2 nd six.month | 30 (sites not in conformity: 155) | € 33,400,000.00 |
| 24 | 2 June – 3 rd six-monthly payment | 22 (sites not in conformity: 133) | € 27,800,000.00 |
| 40 | 2 December 2016 . 4 th six-month period | 31 (sites not in conformity: 102) | € 21,400,000.00 |
| 33 | 2 June 2017 – 5 th six-month period | 25 (sites not in conformity: 77) | € 16,000,000.00 |
| 9 | 2 December 2017- 6 th six-month period | 9 (sites not in conformity: 68) | € 14,200,000,00 |
| 13 | 2 June – 7 th six-month period | 13 (sites not in conformity: 55) | € 11,600,000.00 |
| 8 | 2 December 2018 – 8 th six-mnth period | 7 (sites not in conformity: 48) | € 10,200,000.00 |
| 9 | 2 June 2019 – 9 th six-month period | 3 (sites not in conformity: 45) | € 9,600,000.00 |
| <i>Total penalty paid</i> | | 155 | € 266,800,000.00 |

Following the ninth six-monthly payment that was due on 2 June 2019, infringement procedures continued to apply on 44 illegal sites out of the 81 that had been entrusted to the Special Commissioner.⁽¹⁾⁽²⁾ Therefore, up to that date, the six-month fine amounted to € 9,6 million, and 37 waste sites had been brought in conformity. In the four years from 2 December 2014 to 2 June 2019, the fines imposed by the EU have been paid, and the Environment Ministry, initially on its own and successively, from 24 March, in collaboration with the Special Commissioner, brought into conformity 155 sites. Over the same period, Italy paid penalties relating to non-compliant sites amounting to a total of € 226.8 million. To this amount, a lump sum of € 40 should be added, bringing up the grand total to € 266.8 million. In the two-and-a-half years since the Special Commissioner took office, 37 sites were restored and secured, generating savings for € 14.8 in fines. The government's action in tackling rapidly and efficiently the infringement has led to a significant saving to public finances.

5. Powers and functions of the Commissioner. Normative.

As part of its efforts in tackling and solving this breach of EU waste legislation, the government has the power to promote, stimulate and coordinate activities by appointing a special Commissioner, whose institutional duties are to execute the government's plan which has now been underway for two years and seven months following its implementation on 24 March 2017.

In fact, pursuant to comma 2-*bis* of article 41 of Law 234 of 24 December 2012, the government has been exercising delegated powers from the public administrations involved in the infringement procedures. The law establishes in fact that “in the case of a breach of EU legislation that has been certified by a judgement passed by the European Union Court of Justice ordering the Republic of Italy to make a penalty payment, and when the task of fulfilling such obligations involves implementing measures that are often connected to each other, the head of the government, acting on the proposal by the competent minister (in this case, the minister for the environment), and after having heard the defaulting entities, assigns to the latter appropriate terms for the implementation on their part of the required provisions and measures.

(1) “List of the 58 sites enclosed with the Prime Minister's nomination decree conveyed with f.n. DICA 0009911 P-8.1.4.1 of 9 May 2017”.

(2) “List of the 22 sites enclosed with the Prime Minister's nomination decree conveyed with f.n. DICA 0009911 P-8.1.4.1 of 11 January 2018”.

Should there be a failure to meet any one of these terms, the Cabinet of Ministers, after having heard the interested party, and acting on the proposal of the Prime Minister and the competent minister, will implement the required provisions, including those the law provides, by appointing a specific Commissioner. The heads of the concerned regional governments will be invited to attend the cabinet meeting. The measures outlined in this comma also apply to the failure to comply with the invitation to perform issued prior to the enactment of this measure relating to the premises and characteristics outlined in the first paragraph.”

5.1 Details of the law, principal sources and delegated powers of the government commissioner

The following paragraph will summarize the legal references pertaining to the profile, powers and method of procedure of the government Commissioner, whose broad functions are designed to maximize the effectiveness of procedures.

The appointment of a Special Commissioner has highlighted the will on the part of the central administration, in the person above all of the head of the government, to act rapidly in tackling the infringement procedures, the aim being on the one hand to stop the draining of significant public resources and on the other hand to safeguard the environment, intended as an integrated physical, chemical and biological natural resource.

The broad, effective and comprehensive powers that have been granted to the Special Commissioner specifically serve to stimulate action, streamline administrative procedures, coordinate the tasks of concerned agencies, define priorities in administrative simplification processes, rely on special accounts setting aside amounts that are immediately available for the listed purposes.

By setting and sharing targets with the concerned entities, namely city and regional councils, and by defining administrative processes that have the required funding obtained after having put in place controls aimed at checking administrative irregularities and combating criminal infiltration, it has been possible to adequately and rapidly carry out, in the period of two years and six months during which the Commissioner has operated, the decontamination of 37 waste sites, saving an annual amount of € 14.8 million in fines.

➤ Article 41 of Law n. 234 of 4 December 2012 (Delegated powers of the State for the non-performance of Regional and Provincial councils) – art. 37, 2-bis; 2-ter, 2-quater

- article 10 of decree n. 91 of 24 June 2014 (Enactment of measures) – commas, 4, 5 and 6; article 17 of decree n. 195 of 30 December 2009 (Roles and mandates of the commissioner);
- article 20 of decree n. 185 of 29 November 2008, converted, with amendments in law n. 2 of 28 January 2009 (Powers of the Commissioner) – comma 4;
- article 22 of decree n. 113 of 24 June 2016 (Sources of finance) – points 1, 2, 3, 4, 5, 6, and 7.



6. *Modus operandi* and tools

To achieve the results that have been outlined above, it has clearly emerged that in these thirty months the only viable as well as most efficient method of operation has been that of generating synergies among institutions and stakeholders (municipal and regional councils; government territorial agencies, magistrates, public sector procuring entities, technical and scientific agencies, associations), combined with the coordination and stimulation of activities. In this light, the only special powers the Commissioner levered were those that allowed him to build the broadest possible consensus around the task at hand and meet the targets as rapidly as possible.

Although “getting things done quickly and well” was crucial, bringing down penalty payments at all costs was not the overriding concern. Three other basic factors had to be taken into due account for which time was indeed precious: carry out decontamination adequately; utilize efficiently the funds that had been allotted; identify responsibilities also by following the related paper trail. What in fact proved decisive in closing infringement procedures were the efforts taken in simplifying bureaucracy within the administration, in streamlining decision-making in key operative meetings and in setting common targets right from the start among the key players, which included the Commissioner, the municipal councils, the technicians and enterprises and, above all, the environmental protection agencies (ISPRA/ARPA – Agenzie Regionali di Protezione dell’Ambiente).

Another fact too should be borne in mind: there were no exceptions to the prescriptions set down in the new Procurement Code. All procuring entities acted according to the D.Lgs n. 50 of 18 April 2016 for expenditures amounting to under € 40,000, and between 40,000 and 130,000, thereby with no recourse to direct procurement treaties (*affidamento diretto sotto soglia*).

Thirty-three protocols were signed with as many procuring entities. Key in this procedure was the signing of the Legality Protocol, signed with the Ministry of the Interior on 21 March 2018; the Protocol with the Antimafia and Antiterrorist National Directorates, signed on 7 November 2018; the Protocol with the Procura of Benevento on 20 September del 2017; the Protocol signed with the Anticorruption Authority (ANAC) on January 2018 for the “collaborative supervision” of work carried out in three sites at Lesina (FG), Pizzo (VV) and Augusta (SR). Also having a significant impact was the public notice, issued in July 2017, inviting public sector and state-owned companies to apply as providers for the Commissioner’s Office in the tenders that were advertised as prescribed by the law.

On 31 January 2019, the Commissioner’s website published the 2019-2021 three-year Corruption Prevention Plan (PTPC) for ensuring that the Commissioner’s operative unit maintain transparency in all its actions and activities.

As for technical and scientific cooperation, specific protocols were signed with the national network for environmental protection (SNPA - ISPRA - ARPA) as part of the Framework Agreement of 3 August 2018, which in turn led to protocols with Arpa Emilia Romagna and Arpa Veneto and successively with other agencies.

During its operations spanning several months, the Commissioner's task force developed a "national operative approach," i.e. a rigorous and structured procedure, setting tasks and deadlines and involving all key public stakeholders (regional and municipal councils, procuring entities, scientific and economic agencies, media partners and civic associations) with the aim of "getting things done quickly and well." It was an approach that heralded an analytical, detailed and operative model that developed along three phases:

➤ *Information* – data gathering (inspection, photographic and technical surveys, examination of paperwork relating to administration, accounting and the environment)

➤ *Planning* – definition of an efficient and sustainable executive plan agreed by all concerned players

➤ *Operative* – implementation of a plan of action where the division of tasks, constant monitoring and deadlines are key, with the aim of solving environmental disruption and cleaning up the concerned waste sites.



This procedure and operational method were defined to meet the terms set under the Commissioner's mandate and the European Union's obligations, i.e.

- Ensure that waste is no longer dumped in the sites
- List and identify dangerous waste
- Enforce the required measures ensuring that waste in the sites does not endanger humans and the environment. Therefore, assess if waste has contaminated the site and consequently if it is necessary to implement what is set down by Italian law in these circumstances, which is to secure and/or decontaminate and/or repair the site.

The action ultimately led to the drafting of a Final Report ("Conclusive Determination" pursuant to article 242 of D.Lgs. 152), which was a recapitulation of the action that was accomplished. The document, outlining the full scope of the tasks that were finalized under the terms of the government mandate, was signed by the Commissioner, who took responsibility for the action taken. The act was the conclusive document that was handed over to the European Commission. Containing the highlights of the administrative procedure that was pursued, the document provided a full account of the various phases of the procedure, including the reasons why the site was now safe and technical and administrative compliance had been achieved. In describing the principal steps that were taken and the outcome of the technical assessment, these conclusive remarks provided a comprehensive and conclusive overview of the entire procedure under the 152/2006 legislative decree. While this action was conducted according to a prescribed sequence, it also took into due consideration the peculiarities and characteristic features of each landfill. Every report issued by Commissioner will therefore contain the administrative act and technical assessment relating to every single operational phase that was pursued on the site.

Thanks to the logical consistency and the chronological sequence of the Commissioner's Final Report, it is possible to trace each and every step of the process in a clear and orderly manner, thereby providing a comprehensive overview to allow the European Commission to make an appropriate assessment.

7. Organisation

In his tasks aimed at establishing and supervising operative links with the full range of stakeholders involved in the territory where EU waste legislation had been breached, the Commissioner could rely on an organisational support structure that sustained the activities.

Thanks to the support of the *Comando Generale* of the Arma dei Carabinieri, an Operative Office, a support task force, was set up in Rome within the forestry headquarters (Comando Carabinieri Unità Forestali Ambientali e Agroalimentari – CUFA)

The Carabinieri not only provided operational logistics and tools but also economic and financial support by sustaining mission expenses for costs incurred by staff on official duties away from place of employment that were successively refunded from the Commissioner's budget. The Arma dei Carabinieri set up the Commissioner's Operative Office, providing logistical,



infrastructural and formal support.

The “Support Office for the Government Commissioner” consists of 11 Carabinieri, including three officers, each at the head of a Division:

➤ The Division for operational coordination and implementation focuses on initiating action aimed at securing and repairing landfills by coordinating onsite investigation, specialty action, and technical inspections

- Division for the management of financial resources and cost planning and control tasked with checking expenditure flows
- Division for logistics, coordination and communication assigned with the following duties: coordination and development of information/operational flows; administration and management of human and IT resources; supervision of logistics, communication flows, media relations, web content, contacts and correspondence with institutions. It should be observed that on 21 January 2019, the Commissioner and the *Comando Generale* signed an agreement that in addition to regulating logistical and administrative aspects, human resources, also regulated funding, with resources being drawn for an amount of 0,5% from the overall budget assigned to the Commissioner's special accounts. Although these sums were then transferred to the Carabinieri's various expenditure chapters, several other items have been added to sustain the Territorial and Specialty activities carried out by the Carabinieri for the Commissioner's tasks.

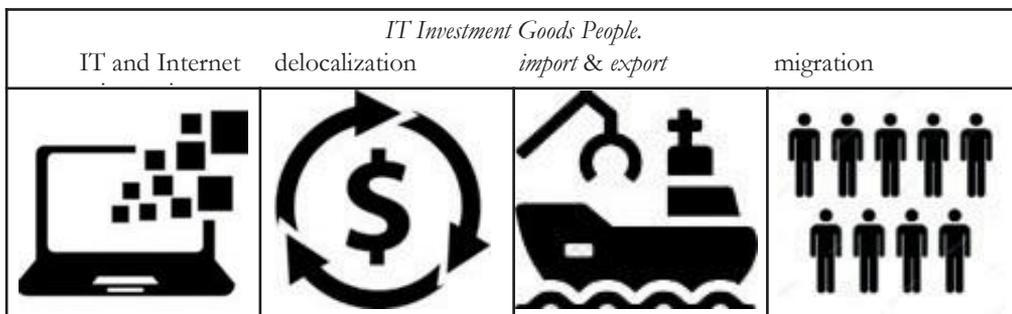
An *Addendum* was successively included to the agreement on 15 July 2019 to deal more specifically with the air support provided by the Carabinieri to the Commissioner consisting of helicopter reconnoitring services over the concerned areas. Also, part of the Addendum was the setting up of specialised health and work safety units respectively assigned with the task of pre-empting and monitoring health risks for citizens living near the landfills and ensuring occupational safety compliance at the sites.

8. Strategic background. Local environmental resources and criminal infiltration

In consideration of its threat to the planet's environment, to food resources and ultimately to man's survival itself, illegal waste disposal should be seen as a key strategic priority. Over especially the last four decades, available intelligence has clearly pointed out that the mismanagement, overexploitation and wilful destruction of food and natural resources have heightened the level of concern throughout the planet, compelling governments to take concerted action in assessing and combating environmental threat and food insecurity.

The fall of the Berlin wall in November 1989; China's admission in the World Trade Organization in 1994 (formalised in 2001); and the economic growth of areas like CINDIA (China and India) and BRICS (Brazil, Russia, India, China, South Africa) have shaped new geopolitical scenarios which have in turn generated globalisation, a phenomenon driven by the exponential development of four types of flows:

- information (technology and internet)
- investment (delocalization in third countries)
- goods (export-import)
- people (migration)



While rising volumes of trade and manufacturing have led to growing wealth in wider segments of the world population that had previously been left out from the production and wealth accumulation cycle, they have also negatively impacted countries by engendering new types of threats. As hazards and risks diversified, so have the dangers nations face both at home and abroad not only in terms of war but also in terms of asymmetric threats.

In today's global stage, confrontation does not only occur in the shape of armed conflict between the world's principal powers, but also through rising international tension linked to terrorism, economic interests, energy development, environmental and food resources, pandemic risks, and dwindling supply of water, today's white gold. Also causing much strain are the financial markets, the management and disposal of waste, the illegal trade of waste, the illegal and criminal control of landfills and waste sites, the corruption of the bidding process in public tenders especially in those involving the assignment of landfill cleaning and decontamination work.

In this light, the exchange of BESTMAPS *intelligence* should consider environmental indicators and key assessments aimed at

- gaining knowledge of contexts and areas of investigation
- analysing data and research outcome
- preventing contamination and harmful conduct.

For governments and public authorities, gaining full awareness of the impact of dwindling environmental resources, their unlawful management, destruction or mishandling, is a key priority, fraught with heavy responsibilities.

Once the issue of environmental concern becomes a matter of major strategic interest, a warning system, involving signalling, observation and countermeasures, must be put in place.



Such a system requires providing dedicated information for prevention purposes, thereby enhancing safety measures and awareness in the various areas affecting environmental protection and food safety, such as:

1. Global climate change and greenhouse effect
2. Chlorofluorocarbons (CFCs) that cause ozone depletion
3. Contamination of farmland by heavy metals, pesticides, and burial of waste
4. Desertification process
5. Unsustainable intensification of the use of land also for non-food purposes (biofuels, solar panels, and wind power stations)

6. Deforestation, forest thievery and cattle raiding
7. Cross border pollution
8. Critical threat to irrigation water management and hydrogeological stability
9. Trafficking in dangerous and radioactive waste
10. Disposal of electronic, plastic, biomass and special waste (“Terre dei Fuochi” – Land of Fires – where the noxious and criminal burning of trash and toxic waste occurs)
11. Earth moving and modelling and river aggregates mining or dredging
12. Illicit trade in counterfeit and unregulated food and drink
13. Trafficking in uncertified timber
14. Undocumented farm labourers, often of immigrant origin, illegally hired also through the ‘caporalato’ system, a form of illegal intermediation and exploitation of workers in the agricultural sector
15. Illegal intermediation in farm products and fisheries and in the food transportation chain
16. Trafficking in hormones as growth promoters in food producing animals
17. Wildlife smuggling involving the illegal gathering, transportation, and distribution of exotic and autochthonous species and their derivatives
18. Criminal infiltration in the cement and earth moving and modelling chain, and in unregulated property development
20. Criminal infiltration in the handling and disposal of municipal solid waste (MSW) and in the cleaning up and securing of landfills.

9. The environmental resources of the land (“operative case”): illegal waste sites that breach EU legislation

A warning over a breach of waste legislation is crucial in starting the process and in signalling that the threat arising from the mismanagement or criminal mishandling of the environment may impact the assigned scope of responsibilities. The warning also triggers a fact-finding mission aimed at defining the plan of action to solve or prevent the threat.

➤ *Warning:* As waste production increased in the 1970s and 1980s, manufacturing companies, as well as municipal authorities, were forced, also in the absence of state-of-the-art waste processing machinery and equipment, to improperly and illegally dispose, out of necessity, masses of waste in rural areas far from urban centres. Waste was dumped into rivers and streams from hilltops or left to rot in huge piles in places far removed from the

manufacturing plants, often causing damage to the groundwater. These illegal landfills ultimately led to the payment on the part of Italy of heavy six-monthly penalty payments to the European Union following a judgement by the European Court of Justice which found that our country had failed, in the period between 2003 and 2014, to bring into conformity waste sites that had been constructed illegally;

➤ *Warning problem:* The need to close down the waste sites in quicker time has often forced authorities to take emergency action by adopting simplified administrative procedures, including less stringent decontamination certification, to allow for a degree of discretionary leeway in the assignment of public works. In Regions where organized crime is more widespread or where a significant volume of work and business is controlled by shell companies, it is easier for crime syndicates to boost illicit activities and ultimately gain control through corruption or by exploiting economic hardship.

➤ *Outcome:* The task of the Special Commissioner, with the support of the Carabinieri task force established by the government, is to clean-up and secure waste sites bearing the following in mind:

- Fulfil the task in the shortest time possible to reduce the penalties
- Decontaminate the areas with a view to handing them back to the local community
- Ensure that the task is not carried out by implementing emergency measures but by adopting ordinary procedures where action is shared and coordinated with local entities, and the decontamination certification is issued by the Commissioner's Office under the powers granted to it by law;
- Conduct prior checks on possible criminal involvement by liaising with the competent institutional authorities (Interior Ministry and local government agencies, the National Antimafia and Anticorruption Directorates) and by diversifying procuring entities
- Apply an operative method where all related spending procedures are transparent and traceable.

10. Mission accountability

In the initial 30 months of its mandate, the Commissioner's Office has carried out its mission following two principal paths of action:

1. Promotion and coordination of administrative procedures with Regional and Municipal Councils through the procuring entities
2. Analyses of the local situation to prevent illegal practices

In the first instance, 530 meetings were held in this period with regional and municipal authorities and other institutions (202 in taskforce headquarters and 328 elsewhere). The Commissioner also attended 156 institutional meetings and 141 events, including conferences, seminars and press briefings

In the second, the Commissioner's Office compiled and handed to the judiciary 21 reports for 16 district prosecutor offices that had jurisdiction over the matter. The reports outlined 123 offences against the public administration, 12 crimes involving the failure to bring waste sites into conformity and four crimes involving waste trafficking. To this end, 143 illegal landfills were inspected, out of which 32 were earmarked for action.

To accomplish the tasks outlined above, the Carabinieri of the Commissioner's Office carried out in the period between 24 March 2017 and 31 December 2019, a total of 748 missions (128 in Calabria, 154 in Campania, 81 in Veneto, 49 in Tuscany, 43 in Sicily, 54 in Puglia, 86 in Abruzzo, 78 in Lazio, 2 in Sardinia, 2 in Piemonte, 47 in Emilia Romagna, 10 in Lombardy, 2 in Umbria, 7 in Marche, plus 5 *ad personam* meetings in Brussels), amounting to a total of 952 workdays days. € 892.200 was spent on food, accommodation and staff allowance; € 37,500 on fuel; and € 17,580 on the maintenance of the service vehicles that were deployed.



The Commissioner's Office operating costs amounted to € 53,300, out of which € 29,700 have been fully paid. So far, payment orders against the Commissioners' special accounts have been made relating to sites at Casalbordino (CH), Bellante (TE), Taranta Peligna (CH), Vasto (CH), Verbicaro (CS), Acquaro (VV) and Chioggia (VE) for a sum of € 7,871,328.38.

To maximise the effectiveness of the action undertaken, 32 protocols or memorandums (MOU) were signed with as many institutions and agencies. Acting as immediately applicable normative tools, the following is the complete list of the key agreements that were signed:

➤ Eight MOUs with as many procuring entities (with Sogesid, with Invitalia, three with the *Provveditorati Interregionali alle Opere Pubbliche*, detached units of the infrastructure ministry operating in Calabria and Sicily, in Abruzzo Lazio and Sardinia, in Veneto and Friuli e Trentino Alto Adige; with *Enti di Bonifica Consorziati dell'Associazione Nazionale dei Consorzi di Bonifica - ANBI*, with Azienda Speciale per il Porto di Chioggia - ASPO and Veneto Acque); three other MOUs have also been confirmed with as many local branches of *ASMEECOMM - Associazione per la Sussidiarietà e la Modernizzazione degli Enti* with headquarters in Calabria; with Centrale Unica di Committenza - CUC of Lesina (FG); with Centrale Unica di Committenza - CUC of Monti Erei di Leonforte (EN), that act as procuring entities

➤ Three MOUs were signed with as many scientific agencies (Istituto Nazionale di Geofisica e Vulcanologia – INGV; Istituto di Ricerca sulle Acque - IRSA- del Consiglio Nazionale delle Ricerche - CNR of Bari; Sistema Nazionale di Protezione dell'Ambiente - ISPRA/ARPA);

➤ MOU with the Procura di Benevento

➤ MOU with Fondazione Caponnetto of Florence

➤ Tender protocol (*Protocollo di Legalità*) with the Interior Ministry

➤ MOU with Autorità Nazionale Anticorruzione (ANAC)

➤ MOU with Confindustria;

➤ MOU Albo Nazionale dei Gestori Ambientali;

➤ MOU with MaidireMedia - Ricicla TV

➤ MOU Unità Tecnico Amministrativa della Presidenza del Consiglio dei Ministri in Naples

➤ MOU with the Antimafia and Anticorruption National Directorates

➤ MOU with Istituto Superiore di Sanità;

➤ MOU with Unioncamere and Albo Gestori del Veneto;

➤ MOU with ARPAE (Agenzia Regionale Protezione Ambientale dell'Emilia Romagna)

- MOU with ARPAV (Agenzia Regionale protezione Ambientale del Veneto);
- MOU with Cisambiente;
- MOU with Comando Generale dell'Arma dei Carabinieri;
- MOU with Associazione Nazionale dei Medici dell'Ambiente (ISDE);
- MOU with Consiglio Nazionale degli Ingegneri;
- MOU "Addendum" defining operational cooperation with the Arma dei Carabinieri

11. Conclusions

The Ministry for the Environment was established in 1986, approximately at the same time of the setting up of what was then known as the environmental protection unit of the Carabinieri (Comando Tutela Ambientale Carabinieri), four years after Italy's first piece of waste legislation (DPR 915/82) was passed. It was at that time that a specialised police force, the state forestry corps (Corpo forestale dello Stato), discovered, following a major nationwide survey, which was the first of its kind, the criminal utilisation of caves and landfills to illegally bury and dispose waste, bringing to light the earliest instances of "tombamento dei rifiuti", the highly pernicious practice of burying waste. Forty years later, the mission has been pursued further and more efficaciously by the Arma dei Carabinieri through its new forestry, environmental and food safety police force, the Comando Unità Forestali, Ambientali e Agroalimentari, thereby renewing its commitment in cleaning-up illegal waste sites and identifying responsibilities.

The Arma dei Carabinieri, through this specialised task force and the collaboration of its territorial and specialised units, is committed with unswerving dedication to furthering its innovative method of procedure, offering whatever service the country might need and considers most useful for the community as a whole.

The minister for the Environment, Land and Sea Protection, General Sergio Costa, has recently signed the D.L. n. 111 of 14 October 2019 ("Urgent measures to fulfil the obligations set down by Directive 2008/50/CE concerning the quality of the air..."⁹), which amended Law n. 229 of 15 December 2016. Also known as the "Climate Decree", it establishes in specific five commas the roles and mandates of the Commissioner's Office,

strengthening its operational structures in the fight to eliminate illegal waste sites. Although specifically set up to counter the emergency arising from a breach of the EU waste legislation, the Commissioner's task cannot be efficiently conducted in the absence of definite legal framework. Besides providing a more permanent legal provision to the operations that started 30 months ago, the Climate Decree has also given legal recognition to the work carried out thus far by the Arma dei Carabinieri through the organisation and special *task-force* it has set up.

In the aftermath of World War II, large swathes of land were reclaimed for agriculture. Thanks to article 44 of the Constitution which establishes “the rational use of land... limitations to private land ownership... land reclamation...”, thousands of hectares were recovered in the post-war years for the community as a whole. What must be done today is to recover thousands of hectares of land that have been damaged, contaminated and abandoned, reclaiming them according to that same constitutional principle that in the 1950s helped to reclaim extensive stretches of previously unusable land.

“Land does not grow”, it is not replicable, it is not unlimited, as we well know. The use of land is limited, it is non-renewable. It is a capital that can be seized and for this reason it must be protected, preserved, recovered. Land is a treasure we must cherish and keep safe for the generations to come.

Sources

- I, II, III and IV Reports on the cleaning-up of illegal landfills coming under the judgement of the European Court of Justice of 2 December 2014, case n. 196/13, pursuant to D.L. 24 June 2016, n. 113, art. 22, comma 6, converted into law with amendments art. 1, comma 1, on 7 August 2016 – edited by the Government Special Commissioner's Office.





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