

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

785015

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10000/101/452

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TRIAL OF ITALIAN POW
JAN. - MAR. 1944

LIST OF PAPERS

File under No. 383.6-3

HQ ACC, APO 394
Sec'y Gen.

B

Hand of Indian POW

SERIAL NUMBER	FROM	DATE	TO	SYNOPSIS
1) MS 383.6 19) MS 383.6	Col Maxwell Indian Staff Section	17 Jan 28 Jan	Depulgee ee / rcc	Indonesian Staff Member's letter The attached copy received in Royal.
2)	Capt. Dine	2 Feb	MARSH MESSE	The Commission decides to bring to your attention - in the event of a change regarding a POW
2a)	MINISTER of Emergency Affairs - Indian MARSHALL	25 Feb 6 MAR	Capt. Dine A. F. H. Q.	NOTE VERBAL - Reply to (Feb 2) Enclosure copies of letter to MARSH 2 the reply.

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Mined of Italian POW.

SERIAL NUMBER	FROM	DATE	TO	SYNOPSIS
1) 1945 383.6 19) 1945/383.6	Col Maxwell Italian Staff Section	17 Jan 25 Jan	Deputy Sec. EE/17CC	Included in Staff 17 Minute Report. The attack enemy received in Regent.
2)	Capt. Slone	2 Feb	WARSH MASSE	The Commission desires to bring to your attention - in the event of a change requirement in POW
2a)	MINISTER of Economy offices - Italian	25 Feb	Capt. Slone	NOTE VERBA - Reply to (Delia 2)
2b.	MARSHALL	6 MAR	A.F.F. 14.9.	Denial of request of Little to release the reply.

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383.6

6 March 1944

Subject: Trial of Prisoners of War.

To: Allied Force Headquarters (Military Government Section)
APC 512

1. Reference your MSG 383.6 dated 17 January 1944, I enclose copies of a letter addressed by the Deputy Chief Commissioner to the Italian Government and a translation of their reply.

2. I am advised that as a matter of law the status of co-belligerency, which is not a phrase of any defined legal meaning, does not in any sense terminate the war between the Allies and Italy and that the Italian Government are entirely within their legal rights and have in fact correctly interpreted the position in their reply.

3. Apart from the foregoing I am of the opinion that little is to be gained by endeavouring to persuade the Italian Government to agree to any alteration in their rights with regard to prisoners of war and in the absence of further instructions I do not propose to pursue the matter.

at this juncture
and as regards
the point now
at issue

NORL MASON MACFARLANE
Lieutenant General
Chief Commissioner

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MINISTER OF FOREIGN AFFAIRS

(Translation)

(MINISTERO DEGLI AFFARI ESTERI)

25 Feb 44

NOTE VERBALE

The Italian High Command has forwarded to this Ministry a Note the Allied Control Commission directed to Marshal Messe on February 2nd concerning Italian P.O.W.'s;

1^o - In said Note the Allied Control Commission expresses the opinion that in view of the fact that Italy is at present a co-belligerent, the purposes of the Protective Power have come to an end. Consequently, it would not henceforth be feasible to notify to the same Power judicial summons concerning Italian Prisoners of War. The Allied Control Commission therefore requests the Italian Government to state what body they wish should take upon itself the duties attributed so far to the Protective Power by Articles 62, 60, 65 and 66 of the Geneva Convention of July 29, 1929, concerning the treatment of Prisoners of War, and suggests that said duties might be usefully entrusted to the Italian Military Mission in Algiers.

2^o - The Royal Italian Ministry of Foreign Affairs having carefully examined the matter, wish to state that the point of view according to which, in consideration of Italy's present status of co-belligerency, the Protective Power has no further standing, is undoubtedly the most logical and reasonable one, and, as such, could forthwith be upheld and accepted. However the Italian Government cannot, in the present situation, share such a point of view because of the purport that, up to the present at least, the Allied Powers have attributed to the status of co-belligerency; particularly so, in relation with the statements formulated by the British, American and U.S.S.R. Governments on the occasion of Italy's war declaration to Germany, to the effect that the "relationship of co-belligerency between the Government of Italy and the United Nations' Governments can not of itself affect the terms recently signed, which retain their full force and can only be adjusted by agreement between the Allied Governments."

Under these circumstances and until the status of co-belligerency should be modified, or a special agreement reached to deal with the problem of Italian Prisoners of War, the Italian Government are of the opinion that the International Convention at Geneva retains its full force.

This opinion is moreover corroborated by the fact that on the one side the Allied Governments have found it necessary to propound a special agreement with the Italian Government for the organization and occupation of Italian Prisoners of War while, on the other, by Article 4 of the provisional scheme of said agreement it is proposed that "the provisions of Geneva of July 29, 1929 concerning P.O.W.'s and dealing with the attribution of the Protective Power and their Representatives are substituted by direct relations between the U.S. Government and the Government of the British Commonwealth on one side and the Italian Government on the other."

This proposal implicitly recognizes that the Geneva Agreement and, consequently, the action of the Protective Power, remain in full force for the time being.

In this connection the Ministry of Foreign Affairs have the honour to draw attention on their Note Verbal handed on January 29 by Marshal Badoglio to the Deputy President of the Allied Control Commission which sets forth the Italian Government's remarks, from a general and particular standpoint, on the above mentioned scheme. These remarks dealt specifically with paragraph 5 and 7 and gave the reasons why the Italian Government are unable to agree in declaring void the provisions of the Geneva Convention and in accepting that both the P.O.W. be deprived of the protection accorded by said Convention and the Italian Government of the possibility of taking whatsoever decision in their regard.

3° - As to the specific proposal that the duties envisaged by articles 60, 62, 65 and 66 of the Geneva Convention be turned over to the Italian Military Mission in Algiers, the Ministry of Foreign Affairs desire to call the attention of the Allied Control Commission on the fact that a protection exercised by said Mission, in view of its present organization and limited scope, could not conveniently take the place of the much broader and more efficient protection provided for in the above mentioned paragraphs of the Geneva Convention.

In fact these paragraphs, duly considered in relation to the general provisions of the Agreement, envisage the possibility of direct and continuous contacts, wherever the Prisoners of War may be, between the former and representatives of the Protective Power. Moreover they provide the possibility that the Protective Power should be in a position to exercise its duties in a timely way.

The Italian Military Mission in Algiers, on the other hand, has no such possibilities while its communications are limited to those with the Royal Government.

The Italian Government express therefore the opinion that summons of Italian P.O.W. at a Military Court should be **duly** notified to the Power in charge of Italian interests, until such a moment when, as it is sincerely hoped, all the complex and difficult problem of the P.O.W. shall find its solution in an appropriate agreement between Italy and the Powers concerned, with a view to implementing, with the P.O.W.'s contribution, the Italian war effort in the interest of the common cause.

Salerno, February 25, 1944.

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QS/nms

2 February 1944

SUBJECT: Maintenance of Discipline among Prisoners of War.

His Excellency Marshal of Italy Messe
Chief of the Supreme General Staff

Your Excellency,

1. The Commission desires to bring to your attention that in the event of a charge brought against a Prisoner of War for trial by a military court, notification has to be made by the Detaining Power to the Protective Power that a court has been convened.

2. It would appear that as Italy is now a co-belligerent, there is no Protecting Power to whom notification can be made in regard to the trial of Italian nationals. The Commission requests that you obtain from the Italian Government their wishes as to which body shall take the place of the Protecting Power as referred to in Articles 60, 62, 65 and 66 of the International Convention of 1929.

3. It has been suggested that these functions could be conveniently performed by the Italian Military Mission now in Algiers.

For the Deputy President, Allied Control Commission;

ELLERY W. STONE
Captain, USNR
Acting Chief of Staff

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HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

Administrative Half Section

AMG/383.6/AD.

28 January 1944.

SUBJECT: Trial, Italian Prisoners of War.

TO: Chief Commissioner,
Allied Control Commission,
BRINDISI.

1. The attached correspondence received in the office of Legal Sub-commission is forwarded for appropriate action, as the matter appears to be one for the attention of the Military Section.

/s/ R. R. CRIPPS
R. R. CRIPPS,
Lt. Colonel,

For the Vice President Administrative Half Section

Incls: (2) i. MGS, A.F.H.Q. letter MGS 383.6 dated 17 January 1944.
ii. Letter G1/B/2252/A2 dated 15 January 1944.

Received by hand fr Major Thackrah.

2 Feb. /s/ G. W. QUINSMITH

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ALLIED FORCE HEADQUARTERS
Military Government Section

ATM/CF/eg

MGS 383.6

17 January 1944.

SUBJECT: Trial of Prisoners of War

TO : Deputy President, Allied Control Commission.

Inclosed is a Staff Minute Sheet from G-1 (Br) at this Headquarters dated 15 January 1944, subject "Prisoners of War-Discipline", pointing out that there is no "protecting power" to which the Allied Forces may give notice of intention to try an Italian prisoner of war, and requesting that the Italian Government be invited to designate an appropriate addressee to which such notice may be sent. The matter is referred to the Allied Control Commission, for appropriate action and report.

/s/ A. T. MAXWELL
Colonel
Acting Chief

Incl:
as above.

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G1/B/2252/A2

15 Jan 44.

Prisoners of War - Discipline

1. G.I.(B) Mil Gov 15 Jan 1. Para 15 of the "Regulations for the Maintenance of Discipline among Prisoners of War, 1939, provides that, in the event of a charge being brought against a prisoner of war for trial by military court, notification shall be made by the Detaining Power to the "Protecting Power" that a military court has been convened.
A.2. Sec 44
2. Now that ITALY is a co-belligerent, there is no Protecting Power to whom notification can be made in respect of Italian prisoners of war.
3. Will you please obtain from the Italian Government their wishes as to the body which shall take the place of the Protecting Power for the purpose of Articles 60, 62, 65 and 66 of the International Convention relative to the treatment of Prisoners of War, 1929.
4. We suggest that these functions could conveniently be performed by the Italian Military Mission now in ALGIERS.

/s/ A.S. BARSDORF, Lt.Col.
A.S. BARSDORF, Lt.Col., AAG
for Major General,
G.I.(B).

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