

Declassified E.O. 12356 Section 3.3/RND No. 785017

ACC

10000/109/1577
(VOL. I)

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

785017

10000/109/1577
(VOL. I)

AMG COURTS, MILITARY GOV'T TERRITORY
FEB.-MAY 1944

253/CA

RC & MG Section.

99
16 May 44

Legal Sub-
Commission.

93
Receipt is acknowledged of your letter
AOC/4002/10/L dated 13 May 44 forwarding
booklet "Consolidated Instructions for
Allied Military Courts."

Colonel
Director,
PA to Executive Commissioner.

3701
PA

283
16
REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

CA 134
278
98
13 May, 1944.

REFERENCE : 100/4002/10/L.

SUBJECT : "Consolidated Instructions for Allied Military Courts".

TO : P. A. to Executive Commissioner, A.C.C.

1. Herewith one copy of the new loose leaf "Consolidated Instructions for Allied Military Courts" for use of the Executive Commissioner.
2. Kindly acknowledge receipt.

IGHC/vow.

all 99
I. G. H. CAMPBELL,
Major,
for Chief Legal Officer,
3700

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

785017



Legal S/C

1
dtd 13/May/44

Instructions for Allied Military

ROC/4002/10/L

Consolidated
Cts

HEADQUARTERS
ALLIED COM. COMMISSION
R.C. & M.C. Section
APO 594

97

Ref/283/97/CA.

15 May 1944.

SUBJECT: "Consolidated Instructions for Allied
Military Courts".

TO : Admin Section - For Legal Sub-Commission.

Reference your ACC/ACC2/10/L of 15 May
1944. Receipt is hereby acknowledged of two
copies of the new loose leaf "Consolidated
Instructions for Allied Military Courts".

96

Major J. S. Renkel

HORACE E. FINCH,
Colonel,
Deputy Executive
Commissioner.

AA

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

785017

1
REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

283
778
9/90 C.A. Br 9/0
13 May, 1944.

REFERENCE : AGC/4002/10/L.

SUBJECT : "Consolidated Instructions for Allied Military Courts".

TO : R.C. & M. G. Section.

1. Herewith two copies of the new loose leaf "Consolidated Instructions for Allied Military Courts". Kindly acknowledge receipt.

2. A copy has be supplied direct to the P.A. of Brigadier Lush.

YCHC/wow.

1. Campbell
I. G. R. CAMPBELL,
Major,
for Chief Legal Officer.

3082

1/2 brown ante
pk 95
see 97

785017

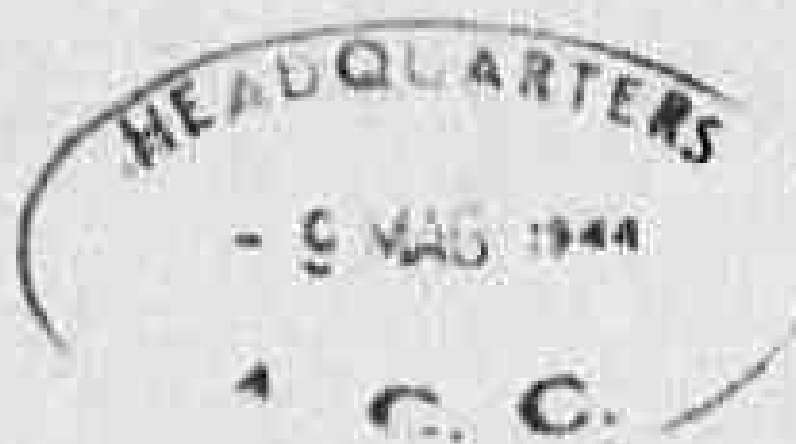
HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394.

8 May, 1944.

REFERENCE : ACC/4002/1/L.
SUBJECT : Case of MICHELS, Camille.
TO : Regional Legal Officer (thru
Regional Commissioner), Region 3.

1. Confirming telephone conversation Colonel UPJOHN - Lt. Col. CHARMAN this morning in view of the unavailability of a number of officers on the Region 3 General Court panel as a matter of emergency I authorize the appointment of Major AIRBURN to be a member of the General Court which is sitting at BARLEVETO tomorrow to hear the case of the above mentioned accused.

2. You will submit a list of names for a revised panel as soon as possible for submission by this Sub-Commission to the Executive Commissioner for his signature.



Gerald N. Upjohn
GERALD N. UPJOHN.
Colonel,
Chief Legal Officer.

GHU/wow.

Copy to : Executive Commissioner.

300

785017

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.C. SECTION
APO 394

Ref/283/90/CA

4 May 1944

SUBJECT: Review of Cases.

TO : Hq. AMB 8th Army (Main)

1. Reference your CA/13/44 of 26 April 1944 the reason for differentiating between Army areas and Regions as to reviews is as follows:

a) The Army areas have a limited number of officers, all of whom are exceedingly busy and particularly in times of forward movement. There is only one legal officer of the rank of major or above assigned to each Army who could review. Other legal officers attached, few of whom are of the rank qualified for review, are administering legal affairs in provinces and frequently act as the trial judges themselves and thus cannot review.

b) The Legal Subcommission is desirous of following the early development of new courts administered by officers who have not had such experience and this Subcommission believes that such reviews at Hq. particularly in the early stages, is important.

2. The recent change as to review by Regions came about only after they had become stabilized.

LESLIE M. FISKE
Colonel
Deputy Executive
Commissioner

Copies:

Legal Sub-Commission (Your AMX/4002/L of 2 May 44 refers)

3090

785017

283

3 MAY 1944

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

FHW/gmf

ACC/4002/L

2 May 1944

SUBJECT: Review of Allied Military Court cases in army areas.

TO : Executive Commissioner, ACC.

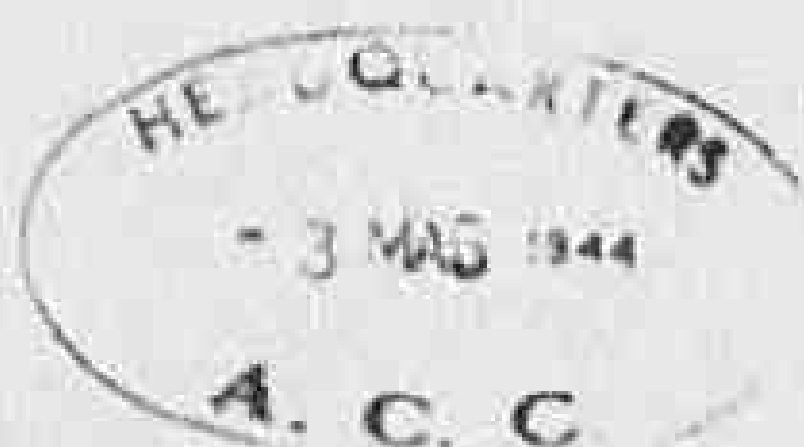
1. Reference 8th Army letter of 28 April 1944 (reference CA/13/44A) and ACC/4002/L of 9 April 44, copy attached.

2. The reason for differentiating between army areas and Regions as to reviews is as follows;

(a) The army areas have a limited number of officers, all of whom are exceedingly busy and particularly in times of forward movement. There is only one legal officer of the rank of major or above assigned to each Army who could review. Other legal officers attached, few of whom are of the rank qualified for review, are administering legal affairs in provinces and frequently act as the trial judges themselves and thus cannot review.

(b) The Legal Subcommittee is desirous of following the early development of new courts administered by officers who have not had much experience and this Subcommittee believes that such reviews at HQ, particularly in the early stages, is important.

3. The recent change as to review by Regions came about only after they had become stabilized.



G. R. Upjohn
G. R. UPJOHN
Colonel
Chief Legal Officer.

for that time 3/7/44

all 90
3095

DEAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
A.P.O. 394

EDHC/ead

88

ACC/4002/L

9th April 1944

SUBJECT: Review of Cases

TO : RLOs (thru RCo) Regions 1, 2, 3, 4, 5 and 6.

Ref ACC/4013/4/L of 6 April 1944 (Notes of Meeting at Naples on 3 April 1944) para. 3 (a).

1. The production of the handbook is being proceeded with. Meanwhile the Executive Commissioner has agreed to decentralisation in reviews.
2. Appendix A is a copy of the draft Article 28 in that book.
3. With effect from 0001 hours, 20th April 1944, NO record will be forwarded to this H.Q. for review unless it falls within the provisions of para 3 of the draft Article 28.

Ruhart H. W. Limer
W. R. Upton
G. R. UPTON,
Colonel,
Chief Legal Officer.

Copy to: RLOs, A.M.G. 5th Army and 8th Army
(For information only. Existing practice for review
in Army areas is NOT affected.)

3992 90

Appendix to AGO/4002/2
dated 9th April 1944

Article 28 - Review.

1. Every person convicted by an Allied Military Court has a right to present a petition for review. The rules governing such petitions are set out in the Rules of Procedure, Rule 25. Para 3 of that rule provides:

"A petition must comply with the following conditions:

- (a) It must be on the prescribed form.
- (b) It must be presented within 30 days.
- (c) It must be presented to the trial court or to the provincial legal officer.
- (d) It must be signed by the accused personally or by the lawyer who appeared for him at the trial.
- (e) It must state the grounds of appeal.
- (f) It must state the full name and address of the accused or the lawyer by whom it is presented."

Provincial and other legal officers must see that the lawyers understand and comply with the provisions of Rule 25.

2. The presiding officer forwarding a petition will always take his comments in the space provided for the purpose. It is the duty of the provincial legal officer to see that this has been done, before the papers are forwarded to Regional Legal Officer.

3. The record of the following cases will be reviewed by the Chief Commissioner or by a judicial officer not below the rank of Lieutenant Colonel appointed by him for that purpose.

(a) Where the trial was held within an army area.

- (1) Where one or more of the charges is framed under Italian Law.
- (2) Where the sentence on the accused or ^{in any one of two or more persons} ~~where the sentence on any one of them~~ exceeds two years imprisonment or 50,000 lire fine.

(3) Where the accused, or where two or more accused are tried jointly, where any one of the accused submits a petition for review.

(4) Where on account of the importance of the case or for any reason the Senior Civil Affairs Officer of the Army submits the record for review by the Chief Commissioner.

(b) Where the trial was held within a Region or part of a Region in rear of an Army.

- (1) Where one or more of the charges is framed under Italian Law.
- (2) Where the sentence on the accused or ^{in any one of two or more persons} ~~where the sentence on any one of them~~ exceeds two years imprisonment or 50,000 lire fine.

(f) It must state the full name and address of the accused or the lawyer by whom it is presented.

Provincial and other legal officers must see that the lawyers understand and comply with the provisions of rule 23.

2. The presiding officer forwarding a petition will always make his comments in the spaces provided for the purpose. It is the duty of the provincial legal officer to see that this has been done, before the papers are forwarded to Regional Legal Officer.

3. The record of the following cases will be reviewed by the Chief Commissioner or by a judicial officer not below the rank of Lieutenant Colonel appointed by him for that purpose.

(a) Where the trial was held within an army area.

(1) Where one or more of the charges is framed under Italian law.
(2) Where the sentence on the accused or ~~where two or more accused are tried jointly, where the sentence on any one of them exceeds two years imprisonment or 50,000 lire fine.~~ ^{on any one of two or more persons}

(3) Where the accused, or where two or more accused are tried jointly, where any one of the accused submits a petition for review.

(4) Where on account of the importance of the case or for any reason the Senior Civil Affairs Officer of the Army submits the record for review by the Chief Commissioner.

(b) Where the trial was held within a Region or part of a Region in rear of an Army.

(1) Where one or more of the charges is framed under Italian law.
(2) Where the sentence on the accused or ~~where two or more accused are tried jointly, where the sentence on any one of them exceeds two years imprisonment or 50,000 lire fine.~~ ^{on any one of two or more persons}

(3) Where on account of the importance of the case or for any reason the Regional Commissioner submits the record for review by the Chief Commissioner.

4. The records of all other cases (whether or not a petition for review is presented) will be reviewed by the Regional Commissioner or by a judicial officer not below the rank of Major appointed by him for that purpose.

5. There is no right to submit a petition to the Chief Commissioner by way of appeal from the decision of the Regional Commissioner in any case reviewed by him in accordance with the powers above conferred on him.

6. a. Records of cases for review by the Chief Commissioner will be forwarded by Regional Legal Officers to the Chief Legal Officer immediately upon

- (1) Receipt of a petition for review, or
- (2) Expiration of the period necessary for a petition for review presented on the last permissible day to reach the Regional Legal Officer.

Whichever shall first happen.

86/

b. Records of such cases until forwarded and records of other cases will be disposed of as directed by the Regional Commissioner.

7. Petitions presented out of time strictly speaking may be disregarded; Rules of Procedure, Article 23, para. 5. As a matter of practice, unless they are very substantially out of time, they will be treated the same as if presented within the permitted time. ADVOCATES WILL NOT BE INCREASED OF TIME.

8. The Decision of the Reviewing Authority will be entered in the space provided therefor on the Record (i.e. on the back of Form 2 or Form 4 or Form 8).

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3. The operation of the courts has recently been so satisfactory that the Peninsular Base Section and our other military neighbors may well look to the continuation of that high standard. In order to ease the difficult readjustment which will be necessary when we discontinue our operations, it would be well now to begin reversing the present trend and to force more and more cases into the Italian Courts. It is appreciated that this will not be easy. The headaches involved are going to be aggravated in direct proportion to the length of time we continue our expanding court program.

4. It is, therefore, suggested that, with the approval of the Legal Subcommittee, every effort be made increasingly to transfer to Italian Courts the maximum number of cases that those courts can be organized to handle.

7

NORMAN E. FISKE
Colonel
Deputy Executive Commissioner

~~Copy to:~~

~~Legal Subcommittee~~

83
26 April 1944.

SUBJECT: Naples Courts.

TO : Deputy Executive Commissioner.

1. Letter, this section, this headquarters, dated 23 March 1944, quoting an Administrative Instruction of HQ, AAI (Admin. Echelon) states in part:

"2.

(c) Allied Military Courts.

As the Proclamation of the Military ceases to operate in unoccupied ITALY, all crimes will normally be tried under Italian law and in Italian courts. The Allied Forces, however, have reserved to themselves the right to hold Allied Military Courts in unoccupied Italy for the trial of civilians who commit acts seriously hostile to the Allied Forces, and to punish them in accordance with the Italian Penal Codes.

The reservation of this right is not intended to encourage the trials of civilian offenders by Allied Courts but only to deal with the most serious offences against Allied personnel or property which cannot be properly dealt with by the Italian Courts....."

2. I have quite properly been requested to assist in attempting to "condition" Peninsular Base Section to the inevitable day when Naples Province will be handed back to the Italian government, (or legal officers now employed here will be withdrawn) and the Base Section will have to look to the Italian courts for punishment of civilian offenders except in the most crucial and aggravated cases.

3. It is difficult to accomplish much along this line in the face of an expanding court structure and a growing volume of cases tried by military courts, which to the outsider evidence intent by the Commission to enlarge, rather than contract, the scope of its operations in the administration of justice.

4. The organization which has developed from the highly commendable efforts of Col. Weber and Capt. Correa, to "clean up the backlog" of accumulated cases, shows a quite normal

82

tendency to perpetuate itself. The Military Police and other authorities are now getting approximately the results they want from the courts. More convictions lead to more arrests, and almost any officer who is a lawyer by profession can find a busy assignment in the Naples court system. There has as we know, even been some "recruiting" across sub-commission and regional lines.

5. Legal officers in this work now total 24, and civilian employees not less than 60. Over 4,000 cases per month are disposed of, and plans are in progress to set up an entire section to handle landlord and tenant cases -- strictly civil controversies having little relationship to the purpose of military government.

6. Viewed from one aspect, all of this is commendable, and I intend no criticism. Quite the contrary. The job is being done very well indeed. But the stronger and more exclusive position we permit our courts to attain, and the more pleasing their work is to Peninsular Base Section and our other military neighbors, the greater the void will be when we discontinue operations, and the more difficult the necessary adjustment.

7. All in all, it seems to me that the more prudent course would be to start at once to reverse the present trend and force more cases into the Italian courts. This may be painful to all parties concerned, but the "headaches" involved are going to be aggravated in direct proportion to the length of time for which we permit the present policy to continue.


ALFRED C. BOWMAN, Lt. Col.

302

1st Ind.
 HQ Province of Naples ACC, 24 April 1944

JLX/jh

TO: Regional Commissioner, Region 3, ACC.

Forwarded.

Colonel John K. Weber, Infantry was assigned to Naples Province as Provincial Legal Officer late in January 1944. At this time there was a large backlog of untried cases both in the AMG and the Italian Courts. The Provincial Commissioner was being subjected to tremendous pressure from the Base Area Commanders and from other sources to clean up this situation. Due to the entirely inadequate legal staff before this time, it had been impossible to keep pace with the activity of the police in filling the jails. Colonel Weber has done a most amazing and outstanding job. By sheer force of his personality he has been able to secure the assignment of and to borrow from other regions of ACC and even from base sections, officers, some legal and some line, to assist him in cleaning up this situation. On days, nights, and Sundays he has conducted schools for the education of these officers and for their instruction in the administration of justice. The turnover in his department has been almost unbelievable. His efforts have not been confined alone to the trial of cases and the supervision of the Italian Courts, but he has organized a system of investigation, preparation for trial and prosecution, which is functioning admirably. Like every other agency in ACC the lack of motor transport has been a great handicap on the efforts of the Colonel. The Province has done everything humanly possible to supply these needs, but has found it impossible to do so. Colonel Weber advises as that his officers' staff as of to-day consists of 23. In addition to these in the legal department's monthly payroll as of this date aggregates 202,000 lire, indicating that he has 74 civilian employees. Lt. Col. John A. Warner, Provincial Public Safety Officer, who has had 27 years experience in the New York State Police, is very enthusiastic about the significant work, which Colonel Weber has done. The backlog of superior court cases to-day is about 150. The population of the jails however is increasing constantly because of the large number of convictions, which are being secured by the 14 Courts in Naples City, which are now functioning. Colonel Warner points out that the existing prison facilities are rapidly approaching the point of saturation.

In conclusion - we requesting the Region to provide the legal

the Provincial Commissioner was being subjected to tremendous pressure from the Base Area Commanders and from other sources to clean up this situation. Due to the entirely inadequate legal staff before this time, it had been impossible to keep pace with the activity of the police in filling the jails. Colonel Weber has done a most amazing and outstanding job. By sheer force of his personality he has been able to secure the assignment of and to borrow from other regions of ACC and even from base sections, officers, some legal and some line, to assist him in cleaning up this situation. On days, nights, and Sundays he has conducted schools for the education of these officers and for their instruction in the administration of justice. The turnover in his department has been almost unbelievable. His efforts have not been confined alone to the trial of cases and the supervision of the Italian Courts, but he has organized a system of investigation, preparation for trial and prosecution, which is functioning admirably. Like every other agency in ACC the lack of motor transport has been a great handicap on the efforts of the Colonel. The Province has done everything humanly possible to supply these needs, but has found it impossible to do so. Colonel Weber advises me that his officers' staff as of to-day consists of 23. In addition to these in the legal departments monthly payroll as of this date aggregates 202,000 lire, indicating that he has 74 civilian employees. Lt. Col. John A. Warner, Provincial Public Safety Officer, who has had 27 years experience in the New York State Police, is very enthusiastic about the magnificent work, which Colonel Weber has done. The backlog of superior court cases to-day is about 130. The population of the jails however is increasing constantly because of the large number of convictions, which are being secured by the 14 Courts in Naples City, which are now functioning. Colonel Warner points out that the existing prison facilities are rapidly approaching the point of saturation.

In conclusion I am requesting the Region to provide the legal department of the province with such motor transportation as is necessary to enable it to function properly. I also wish to point out, that there may be cause for great alarm in the fact that the legal department of a single province is now assuming such large proportions, which appear to be out of proportion to the other activities incident to ACC work and I suggest that this whole subject of courts and justice

under ACC be given intensive study by the proper sub-commission of higher echelon. This is particularly desirable at this time as we approach the point where the administration of the province will be largely turned back to the Italians, subject to ACC supervision only.

JAMES L. KINCAID

Lt. Col. AUS

Provincial Commissioner.

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

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Declassified E.O. 12356 Section 3.3/NND No. 785017

Conit ? See memo,
same date, by Temple
on p. 19

79
22 April 1944

Transportation

Provincial Commissioner, Naples Province.

1. Lack of transport for the indispensable needs of the Military Government Courts has become so grave that the program now in operation is definitely jeopardized. After weeks of patient effort, the net success this office has been enlisted in as follows:

- a) One taxi-cab with tires of ancient vintage.
- b) Three motorcycles without drivers.
- c) The intermittent use of a motor car and driver obtained from Naples Province on a day request that is degenerating into a raw function of nerves and personalities.
- d) A civilian automobile for use of the Provincial Legal Officer equipped with inner tubes that cannot be relied upon with any degree of certainty.

Direct necessity requires that this car be used in process serving in addition to the use originally intended.

2. It is fantastic to expect such equipment to meet the realistic requirements of a metropolitan area of the size of Naples. Resort to make shift methods have been used until now but cannot continue indefinitely; the human mind and body have a point in saturation beyond which they cannot absorb. This point definitely has been reached. The personnel responsible for the appearance of witnesses have staggered along in the fleeting hope that some one, whose responsibility it is, would give this matter its merited attention. That attention has not been forthcoming.

This letter is not written in criticism of any one. This Office believes it has a job to perform, and it is willing to undertake its performance. Perhaps in our zeal we have striven for a goal, that is neither required or desired. Is the failure of transport to be taken in such light? If so, this office would like to be advised so that it may adjust its activities within the bounds which the now-furnished equipment will permit. We appreciate we may be in error and solicit an expression thereon from higher authority for our guidance.

Thurs Jan

Provincial Commissioner, Naples Province.

1. Lack of transport for the indispensable needs of the Military Government Courts has become so grave that the program now in operation is definitely jeopardized. After weeks of patient effort, the net success this office has been enlisted is as follows:

- a) One taxi-cab with tires of ancient vintage.
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- d) A civilian automobile for use of the Provincial Legal Officer equipped with inner tubes that cannot be relied upon with any degree of certainty.

Dire necessity requires that this car be used in process serving in addition to the use originally intended.

2. It is fantastic to expect such equipment to meet the realistic requirements of a metropolitan area of the size of Naples. Resort to make shift methods have been used until now but cannot continue indefinitely; the human mind and body have a point in saturation beyond which they cannot absorb. This point definitely has been reached. The personnel responsible for the appearance of witnesses have staggered along in the fleeting hope that some one, whose responsibility it is, would give this matter its merited attention. That attention has not been forthcoming.

This letter is not written in criticism of any one. This Office believes it has a job to perform, and is willing to undertake its performance. Perhaps in our zeal we have striven for a goal, that is neither required or desired. Is the failure of transport to be taken in such light? If so, this office would like to be advised so that it may adjust its activities within the bounds which the now-furnished equipment will permit. We appreciate we may be in error and solicit an expression thereon from higher authority for our guidance.

John L. Wexler
JOHN L. WEXLER
Colonel Infantry
P.L.O. Naples Province.

785017

Subject: Review of Cases.

283 *CA* 34
05959
Main H.Q., A.M.G.
Eighth Army.

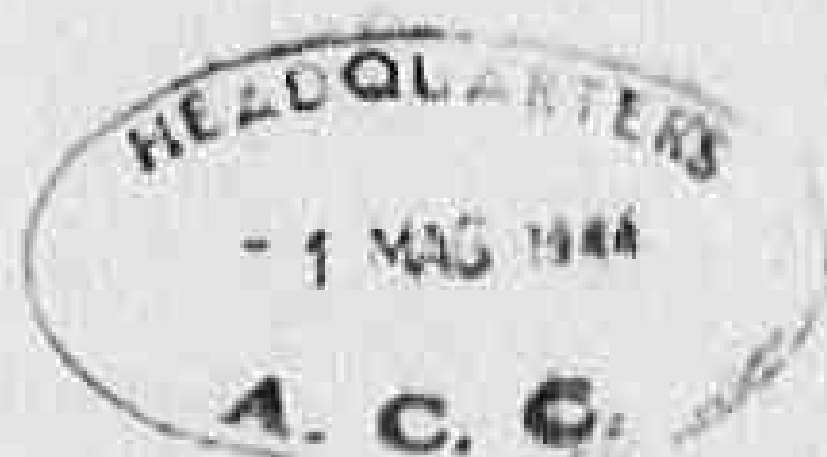
On/15/44
26 April 44

Executive Commissioner Branch,
Main H.Q., A.C.C.
A.P.O. 394.

not received.

1. I would refer to your letter of the 9th April, 44, ACC/4002/L with attached Appendix 'A'. In para 3 (a) (3) there would appear to be a discrimination against S.C.A.Os and S.L.Os of Armies.

2. May this H.Q. be informed why right of review can be given to Regions despite appeal, whereas S.C.A.Os and S.L.Os of Armies can only review when there is no appeal.



3084

Refused

Group Captain,
Officer Commanding,
H.Q., A.M.G. Eighth Army Main.

Copy to: Legal Sub-Commission,
Main H.Q., A.C.C.
A.P.O. 394.

see 90

*Legal taking ACTION on this letter & will
notify CAB of action taken.*

015 APR Rech
283 TM 14 APR 844

CAB 73

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
ATC 394

ASG/4602/1/1

14 April 1944.

SUBJECT: General Military Courts.

TO : HQ Allied Control Commission; EC & MG Section.

Attached to Case
File 719

1. Ref 283/71/CA of 11 April 44.
2. One copy of the copy order enclosed in your letter is returned as this Subcommittee has another copy.
3. This Subcommittee has no knowledge as to the disposition of the order. It was signed by Col. Fiske, without any previous reference to us.
4. It will be appreciated if you will inform us how it came about that such an order was put direct before Col. Fiske without Legal Subcommittee having been consulted.
5. The order you refer to in para 2 of your letter (which was signed by the Executive Commissioner after discussion with the Chief Legal Officer) is an entirely separate order.

TV
SP
MFA 2/1/1

1. Campbell
G. R. UFGERN
Colonel
Chief Legal Officer.

Lt Col Shopp
I am glad to say I have
nothing to do with it
16/4

Capt Talbot
I am not sure if it
was made by Capt Campbell
put up to Col Fiske
which means he
must have had some
idea of it
See 308.7
PA

1. Spatter with Calhoun as Ref to Legal Officer.
2. Court in case cancelled
3. Court suspended from Commission
4. Telephone between Calhoun and Capt Uppsher
5. Lt Shopp (Ref 2) made order in to Col Fiske
6. Lt Shopp a General Commission referred him para 2 above 17/4

785017

12 APR Recd

283

Chubb

4/11

72

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APC 394.

11 April, 1944.

REFERENCE : APC/4042/L.
SUBJECT : British Merchant Seamen.
TO : Executive Commissioner.

1. Referring to the conversation between Colonel Upjohn and Colonel Shipp yesterday on the "Madagascar Agreement" I have looked up the matter in our files and according to Colonel Rowe, then D.C.L.C., who had been in Madagascar the arrangement reached in Madagascar was merely that Merchant Seamen should be tried in A.M.G. Courts.

2. In this country we have assumed such jurisdiction and the sole difficulty that arises, which was also the difficulty in Madagascar, is with regard to the imprisonment of offenders.

3. It appears, therefore, that the arrangements made at the conference on the 17th March 1944 - see my APC/4042/L dated 4 April 1944, are far more complete and go far further to meet the problem than was the case under the "Madagascar Agreement" and I shall be glad if the Executive Commissioner may be informed of this fact.

Gerald R. Upjohn

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

GRU/vow.

Ex Comm

Do you wish to take this any further?

*No - we did it more simply with the
M/4042/L*

*pe.
8/17/44
3082*

HEADQUARTERS
ALLIED CONTROL COMMISSION
E.C. & H.Q. Section
APO 394

71

Ref/283/71/02.

11 April 1944.

SUBJECT: General Military Court.

TO : V.P. Admin. Section - For Legal Sub-Commission.

1. Enclosed is copy of an order appointing a General Court, this day received by this Headquarters from Region III.
2. It is believed this is the same order you took up with Brigadier Lash three days ago.
3. Will you please advise what disposition was made of the order? Capt. Stewart cannot furnish the information.

EXP
NORMAN E. FINE
Colonel,
Deputy Executive
Commissioner.

6/4 10/1
3001

71A

BRITISH STAFF
ALLIED CONTROL COMMISSION
APR 1944

I, BRITISH STAFF 1944, P.M.C., Col. Brigadier, Executive Commissioner, Allied Control Commission, by virtue and in exercise of the powers in that behalf vested in me hereby appoint the following officers of the Allied Forces, to wit: Colonel H.G. Miller (1), Major W.C. Macdonald (2), Major J.G. Carroll (3), Capt. W.C. Bates (4), Lt. Colonel J.C. Arnold (5), Major Mitchell (6) and Captain J.C. Brown (7) or any three of them to be a General Military Court for the trial of any and all cases brought before it for trial.

/s/ Norman S. Fisk
Colonel

For
S.D. 1944
Brigadier,
Executive Commissioner.

Dated this 1 April 1944.

Certified a true copy :

Louis A. Sabatino

Louis A. Sabatino
2nd Lt. P.M.C., C-1175834
A.C.C., Region 3, Legal Division.

Col. Fiske.

Treaty of Merchant Seamen

(70)

1. Ex. Commission not want to see 68 + 69.
2. This seems an improvement, but para 5 is tricky and as legal SC say the procedure is very cumbersome.
3. N.A. at present?

CAB

The Madagascar agreement (copied in Trifilomia) overcame all these difficulties in a far more simple form. Can we raise this?

M/9/4

3079

Bv 12/4

153 *17049*
6 APR Recd

RESTRICTED

REAR ADMIRALTY
ALLIED CONTROL COMMISSION
Legal Subcommission
ACC 394

CMU/CME

Type

ACC/4042/L

SUBJECT: Merchant Seamen.

4 April 1944

TO : Mr. Makins - C/O Mr. Caccia
 Mr. Caccia - HQ ACC
 Mr. Dunn - British E.O. C/O Mr. Caccia
 Col. Windsor KC - Region 4 ACC
 Mr. Whitcomb - British P.O.
 Mr. McPart - War (Navy House)
 Mr. Foker - War (Marines)
 Major - HQ 441 (A)
 Major Hornbush - HQ 441 (AM)

1. I refer to the meeting (at which all of the above addressees were present), convened by me at the Provincia Building, Naples on 17 March to discuss problems that arise in connection with the trial of Merchant Seamen for offences committed on shore.

2. When draft minutes of the meeting were prepared it was found that one or two small points (e.g. as to the exact status of decision personnel) remained to be cleared up and Mr. Dunn asked for and has received further instructions from the Foreign Office on the matter.

3. In these circumstances I do not propose to circulate minutes but to circulate as an Appendix to this letter the conclusions reached by the meeting, expanded in the light of the above mentioned instructions.

4. If you have any queries herein or desire any amendments to be made, please let me know as soon as possible.

G. R. Hyatt

G. R. Hyatt, Colonel
Chief Legal Officer.

Copy to: Administrative V.P.
Representing Government

TO :

Mr. Watkins
Mr. Caccia
Mr. Dunn
Col. William MC
Mr. Hutchinson
Mr. Kergath
Mr. Loker
Major
Major Robertson
- G/O Mr. Caccia
- HQ AOC
- British P.O. G/O Mr. Caccia
- British P.O. AOC
- British P.O.
- WPT (Heavy House)
- WPT (Neples)
- HQ AAI (A)
- HQ AAI (AM)

1. I refer to the meeting (at which all of the above addressees were present), convened by me at the Provincial Building, Naples on 17 March to discuss problems that arise in connection with the trial of Merchant Seamen for offences committed on shore.

2. Two draft minutes of the meeting were prepared it was found that one or two small points (e.g. as to the exact status of Dominion personnel) remained to be cleared up and Mr. Dunn asked for and has received further instructions from the Foreign Office on the matter.

3. In these circumstances I do not propose to circulate minutes but to circulate as an appendix to this letter the conclusions reached by the meeting, expanded in the light of the above mentioned instructions.

4. If you have any queries hereon or desire any amendments to be made, please let me know as soon as possible.

G. R. Hyatt
G. R. Hyatt, Colonel
Chief Legal Officer.

Copy to: Administrative V.P.
Executive Commissioner (M.B. The substance of App. will be included in Allied Military Courts handbook now in course of preparation).

RESTRICTED

3678

R E S T R I C T E D

APPENDIX TO LETTER ACC/4042/1
DATED ~~1941~~ 16 AprilMERCHANT SHIPS1. Ambit of Discussion.

- (a) The meeting was concerned solely with offences committed on shore in Sicily or Italy by persons who were the master or members of the crew of merchant ships.
- (b) The meeting did not consider the case of persons who were the master or members of the crew of U.S. merchant ships who, it was understood, could be tried by U.S. Courts Martial.
- (c) Furthermore, the meeting did not consider special cases e.g. of a seaman committing a crime of sabotage or other war crime which would deserve special consideration but only ordinary civil crimes e.g. drunkenness, rape, wounding, murder, etc.

2. Extension of Legislation.

In view of the very few serious cases that had arisen either in Italy or Sicily it was agreed that no case could be made for inviting the appropriate Government Department to ask Parliament to extend any existing legislation or regulation on the subject and the meeting proceeded to consider the best machinery to be adopted within the present legislative framework.

3. Trial by Naval Courts under Defence Reg. 47 AAB.

(a) Procedure under this regulation will always be carried out where it is applicable and in this connection it should be noted:

- (i) Persons who may be tried hereunder extend to all British and British protected personnel including Dominion personnel who are serving on a U.K. ship.
- (ii) Persons serving on a Dominion ship may not be tried hereunder even if they are U.K. personnel.
- (iii) This regulation is equally applicable in occupied or unoccupied territory.

4. Dominion Regulations.

The Dominions have no regulations corresponding to L7 AAB. Present policy of the Foreign Office is to continue the extension to L7 in this

of the authorities, the meeting did not consider special cases e.g. of persons committing a crime of sabotage or other war crime which would deserve special consideration but only ordinary civil crimes e.g. drunkenness, rape, wounding, murder, etc.

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In view of the very few serious cases that had arisen either in Italy or Sicily it was agreed that no case could be made for inviting the appropriate Government Department to ask Parliament to extend any existing legislation or regulations on the subject and the meeting proceeded to consider the best machinery to be adopted within the present legislative framework.

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(ii) Persons serving on a Dominion ship may not be tried hereunder even if they are U.K. personnel.

(iii) This regulation is equally applicable in occupied or unoccupied territory.

4. Dominion Regulations.

The Dominions have no regulations corresponding to 47 AAB. Present policy of the Foreign Office is against taking any extension to 47 AAB in this respect even if it were legally possible.

5. Trial in other cases of British Merchant Seamen.

In the following cases:

(i) Where British or British protected personnel (including Dominion personnel) serving on a U.K. ship are involved in crimes too serious to be tried under 47 AAB.

(ii) Where British or British protected personnel (including Dominion personnel) serving on a ship other than a U.K. ship are involved in any crimes, the procedure set out below will be adopted:

(a) Investigation by a Naval Court followed by a trial in Malta, Gibraltar or the U.K. See Secs. 687, 688(1)(c) & 689 of Merchant Shipping Act, 1893.

RESTRICTED

RESTRICTED

(b) The procedure in (a) above involves procuring the attendance of witnesses at the place of trial and if in any case this proves impossible the following procedure will be followed.

(2) In Occupied Territory.

If the crime is committed in occupied territory, the authority concerned will ask the Chief Legal Officer (CLO) to convene an Allied Military Court for trial of the accused. The CLO will ask the Military Governor to authorize the detention of the accused in a found guilty in an Army prison in occupied territory and if such authority is forthcoming in an Army prison in occupied territory will serve his sentence in an Army prison in occupied territory until the termination of occupation. If occupation ceases before the accused has finished serving his sentence and it proves impracticable to continue his imprisonment in an Army camp, instructions will be sought from AFHQ as to his release or continued detention in an Italian jail. This is an admittedly cumbersome procedure and only to be resorted to if trial under (a) above is out of the question. If the aforementioned consent of the Military Governor is not forthcoming, the procedure will be as in the next sub-paragraph.

(2) In Unoccupied Territory.

Where the crime is committed in unoccupied territory (e.g. Bari, Brindisi), as it is politically undesirable at the present time to imprison the personnel mentioned at the beginning of this para to an Italian jail, then if trial under sub-para (a) is out of the question it will be necessary to ask AFHQ for special instructions if and when any such case arises, as there appears no other method of trying the case except in the Italian Courts.

6. Trial of Foreign Nationals.

Where the accused merchant seaman is a national of one of the United Nations or a neutral nation, he will be tried in the appropriate Italian Court or if none are functioning in the locality, in an Allied Military Court, and in either event, if found guilty he will be imprisoned in an Italian jail. It was agreed that there was no objection to this on political grounds.

tence in an Army prison in occupied territory until the termination of occupation. If occupation ceases before the accused has finished serving his sentence and it proves impracticable to continue his imprisonment in an Army camp, instructions will be sought from AFHQ as to his release or continued detention in an Italian jail. This is an admittedly cumbersome procedure and only to be resorted to if trial under (a) above is out of the question. If the aforesaid consent of the Military Governor is not forthcoming, the procedure will be as in the next sub-paragraph.

(2) In Unoccupied Territory.

Where the crime is committed in unoccupied territory (e.g. Bari, Brindisi), as it is politically undesirable at the present time to imprison the personnel mentioned at the beginning of this para in an Italian jail, then if trial under sub-para (a) is out of the question it will be necessary to ask AFHQ for special instructions if and when any such case arises, as there appears no other method of trying the case except in the Italian Courts.

6. Trial of Foreign Merchant Seamen.

Where the accused merchant seaman is a national of one of the United Nations or a neutral nation, he will be tried in the appropriate Italian Court or if none are functioning in the locality, in an Allied Military Court, and in either event, if found guilty he will be imprisoned in an Italian jail. It was agreed that there was no objection to this on political grounds.

RESTRICTED

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APC 394

GHU/gmf

21 MAR 1944

20 March 1944.

ACC/4002/L

SUBJECT: Allied Courts in Unoccupied Territory.

TO : Executive Commissioner, ACC.

Ref my ACC/4002/L dated 17 March (erroneously headed Allied Courts - Occupied Territory) RLO Region 3 also reports non-receipt of Directive 283/42/CA dated 5 March.

Please supply copies to RC AND RLO Regions 3 & 4.

G. R. Upjohn
G. R. UPJOHN, Colonel
Chief Legal Officer.

see 62, 63 + 45

302

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.S. Section
APO 394

63

Ref/283/63/CA.

20 March 1944.

SUBJECT: Allied Courts in Occupied Territory.

TO : V.P. Admin. Section - For Legal Sub-Commission.

60

1. Reference your letter ACC/ACC2/L of 17 March 44.
2. The request contained in para.2 of the above reference has been complied with.

58
NORMAN S. FISKE
Colonel,
Deputy Executive
Commissioner.

Pa

3673

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

62

Ref/283/62/CA.

20 March 1944.

SUBJECT: Allied Courts in Occupied Territory.

TO : Regional Commissioner, Region IV.

61

1. At the request of the Legal Sub-Commission, there is forwarded herewith two copies of our Directive 283/42/CA of 5 Mar 44.
2. You are requested to deliver one copy of this Directive to the R.I.O. Region IV.

341
MORRIS E. FISKE
Colonel,
Deputy Executive
Commissioner.

263
19 MAR Recd

55
C.A.B.

TO ACC LEGAL SUB COMMISSION ACC HQ NAPLES
FROM REGION 3 AND

QAL 0556

FD3 17



GENERAL COURT ORDERED BY YOU AT FOGGIA FOR TRIAL OF CAMMINIENE VERON TAKES PLACE 23 MAR.
NEAREST AUTHORITY SAME COURT TO HEAR FIRE CUTTING CASE D. SCHILLER VITO. PRISONER ARRESTED
WITH HALF MILK FIRE IN HIS POSSESSION AND KNIFE WITH TRACE OF INSULATING CABLE. CASE
WILL LAST HALF DAY. PROSECUTOR MAJOR LEVIT ACCUSED REPRESENTED BY LOCAL ADVOCATE.

A.C.C. Dist

Action Legal SC

Info - ACC

Adm Sec

C.A.B.

Fale

Fleet
3014

SENT 18529 1817404

REC BA 4 SRL 18/1740

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

785017

19 MAR Recd
283

C.A. Br 2967

/gnt

60

PEAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

17 March 1944.

ACC/ACG2/L

SUBJECT: Allied Courts in Occupied Territory.

TO : Executive Commissioner, ACC.

1. HIO Region 4 advises that copy of Directive on a/m subject (ref 283/42/CA dated 5 March 44) has not been received.
2. May we request that copies thereof be supplied to HIO and RC Headquarters.

See 62

Thaddeus
THADDEUS J. GROSSMAN, Major
for Chief Legal Officer.

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

785017

FOLIOS

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TO FILE

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3672

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. SECTION

Ref/253/96/CA

10 March 1944.

SUBJECT: Powers of Regional Legal Officers.

TO : R.C., Region IV.

1. Reference your Ref/250.5/(B) of 25 February 1944.

2. Powers of Review. (Your paragraph 3). From the outset it was required under Proclamation No. 4, Article 7, Section 1, that all petitions of review be addressed to the Chief Civil Affairs Officer (now the Chief Commissioner). Executive Memorandum No. 15 (which implements Proclamation No. 14) not only does not revise for further centralization but, on the contrary, tends to more decentralization in that petitions for review under Proclamation No. 4 which were previously forwarded to Chief Legal Officer are now forwarded to the Regional Legal Officer (Proclamation No. 14, Article 1) thus enabling the Regional Legal Officer new opportunities for critically examining the work of the courts in his region.

a. It is the opinion of this Headquarters that the power of review on petition should, for the time being, be retained by the Chief Commissioner as now provided under Proclamations 4 and 14. No better means could be contrived for providing the Chief Commissioner with the information and means necessary for the adequate supervision of Allied Military Courts, for securing a uniform and effective administration of justice and an improvement in the standards, which at present are not satisfactory.

b. Experience does not support your statement that serious delay results from the procedure prescribed by the Proclamations No. 4 and 14. Except for some congestion following the disbanding of the 15th Army Group and certain delay consequent on the move to Salerno, reviews of appeals have been disposed of with reasonable speed. In the case of Vitozzi, Francesco, the trial took place in December, the appeal was forwarded on the 17th of January 1944 and sentence of ten years affirmed on the 23rd of February. It would seem, therefore, that about the same period of time elapsed between the trial and the forwarding of the appeal as was consumed in the final disposition of the latter.

c. Reference your paragraph 3 b the Chief Legal Officer says "There need be no confusion such as is suggested in the disposition of review of cases in which the sentence does not exceed two years imprisonment or a fine of 50,000 lire. The simple answer is that the Regional Commissioner can in such cases postpone a review until the thirty days have elapsed within which an appeal can be filed."

3. Italian Courts and Personnel. There is as suggested, some ambiguity with regard to paragraph 4 of Executive Memorandum No. 15 and a clarification

57
of this whole matter will . . . due course be sent to you.

4. Italian Military Tribunals. Enclosed is a copy of 'rules for the establishment of Italian Military Tribunals' as requested by you.

5. Legal Personnel. Your interpretation as to the disposition of legal personnel within your region is correct.

6. Legal Directives and Opinions. All legal questions should be referred to HQ AGC when they involve general questions of legal policy, e.g. general questions which may affect other regions either then or some later date, legal policy with the Italian Government and so on. It is, of course, not intended that the Regional Legal Officer should be prevented from giving advice on legal questions to his Regional Commissioner.

15840
NORMAN R. FISKE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

Rules for the establishment of Italian Military Tribunals

56

Italian Military Tribunal may be established in accordance with the Military Penal Code of War dated 20 February 1941. In areas occupied by the Allied Forces upon the following terms and conditions:

- (a) Italian Military Tribunals may try cases in respect of offences whether committed before or after the commencement of occupation.
- (b) No ordinary civilians, ex prisoners of war, members of the Police Forces, Carabinieri or civilians employed by the Military, Naval or Air Forces Authorities shall be charged before any Italian Military Courts without the consent of the Military Governor.
- (c) If any person is arrested by any Italian Military Authority for the purpose of being tried before a Military Tribunal then within 5 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 28 days from the date of service of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.
- (d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
- (e) Italian Military Tribunals will follow the procedure set forth in book 4 of the Military Penal Code for War. Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (f) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute, the sentence or order a new trial.

anyone of being tried before a Military Tribunal then within 5 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 23 days from the date of service of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.

(d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.

(e) Italian Military Tribunals will follow the procedure set forth in book 4 of the Military Penal Code for war. Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.

(f) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.

(g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.

(h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute, the sentence or order a new trial.

(i) Where the offence charged is also an offence against any Proclamation or Order issued or to be issued by the Military Governor or under his authority, OR,

(ii) is also an offence against the laws and usages of war, OR

(iii) is also an offence triable under the provisions of the Italian Penal Code then in such cases the name and rank of the accused, the offence with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.

(j) No sentence or death is posed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or

Brigadier to whom he have delegated such power in writing. The confirmation of the Italian Unit Commander is set forth in Article 231 of the Military Penal Code for War will not be required.

(k) The Military Governor may at any time appoint an officer or officers of the Allied Forces to execute all or any of the above mentioned powers.

(1) The Military Governor may at any time repeal, suspend or amend any of these rules.

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.L. & W. SUTTON
AUG 396

55

Ref/263/55/CA

9 March 1944.

SUBJECT: Trial of Civilians.

TO : Chief Administrative Officer,
HQ ACP (Adm Sec) CWP.

37

1. Reference your ACP/3075/A(o) of 29 February 1944.
2. No difficulty in fact arises on the apparent inconsistency mentioned in paragraph 2 of your letter under reference.
3. Any officer of the Allied Forces may sit in any court provided that a judicial officer also sits on a General or Superior Court.
4. If an officer of the Allied Forces is a qualified barrister or solicitor, he can be the "Judicial officer" on any court although he is not a member of the Allied Control Commission.
5. Officers, if possible qualified barristers or solicitors, are urgently required to clear off arrears of work in and around Naples and this HQ will be very grateful if some can be spared to us at once.

Ernest H.
BERNARD E. FINE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

3062

785017

283
8 MAR Recd
HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394.

MJD/emc

2371

54

ACG/4000/L.

7 March 1944.

SUBJECT: Powers of Regional Legal Officers.

TO : Executive Commissioner, ACG.

Pursuant to the request of the Deputy Executive Commissioner, the Legal Subcommittee has reviewed letter RA/250.5/(b) of 25 Feb 1944 of the Regional Commissioner of Region IV and its views are as follows:

1. Powers of Review.

Regional Commissioner of Region IV appears to assume that Executive Memorandum Number 18 had the effect of centralizing appeals for review in the Chief Commissioner. Such is not the fact. From the outset it was required that all petitions be addressed to the Chief Civil Affairs Officer (Procl. No. 4, Art. VII, Section 1). Executive Memorandum 18 which merely implements Procl. No. 14 not only does not provide for further centralization, but on the contrary tends toward decentralization. In that petitions for review which under Procl. No. 4 were forwarded to the Chief Legal Officer are now forwarded to the Regional Chief Legal Officer (Procl. No. 14, Art. I), thus newly enabling the Regional Chief Legal Officer critically to evaluate the work of the courts of his region. X

Such powers of review on petitions as were exercised by the Regional Commissioner Region IV were vested in him not by virtue of his office as such, but by special delegation from the Chief Civil Affairs Officer. The intention and objective under both Procl. No. 4 and Procl. No. 14 were to place the power of review on petition in the Chief Civil Affairs Officer (now the Chief Commissioner), and not on a regional level as is now being urged by the Regional Commissioner Region IV.

The Legal Subcommittee is of the opinion that the power of review on petition should, for the time being, be retained by the Chief Commissioner as now provided under Procls. 4 and 14. No better means could be contrived for providing the Chief Commissioner with the information and means necessary for an adequate supervision of Allied Military Courts for securing a uniform and effective administration of justice, and an improvement in the standard, which at present is not satisfactory. X

Actm 458
JMD

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Nor does this procedure shut off the Regional Commissioner from a source of full information with respect to the courts within his region since all petitions pass through his Regional Legal Officer.

It should be pointed out that the Chief Commissioner may as heretofore, if he chooses, delegate the power of Review on petition to a Regional Commissioner provided he be a judicial officer and otherwise qualified under Procl. No. 14. But it is urged by the Legal Subcommittee, for the reasons already stated, that the power of review on petition be not placed, by a delegation or otherwise, on a regional level at the present time.

Experience does not support the statement (letter of RC, RA/250.5/(b), para 3(a), 25 Feb 1944) that serious delay is incident to the procedure prescribed by the proclamations whereby petitions on review shall be addressed to the Chief Commissioner. Except for some congestion following the disbanding of the 15th Army Group and a certain delay consequent on the move to Salerno reviews on appeal have been disposed of with reasonable expedition. The illustration of alleged serious delay set forth on the letter of Regional Commissioner IV is not supported by the facts. In the case of Vitorzi Francesco the petition on appeal was forwarded on 17 Jan 1944 and the sentence of 10 years affirmed on 23 Feb 1944. Since the trial took place in Dec, as much or more time would seem to have elapsed between the trial and the forwarding of the appeal as was consumed in the final disposition of the latter.

There need be no confusion such as is suggested (letter of RC, RA/2 50.5/(b), para 3(b), 25 Feb 1944) in the disposition of reviews of cases in which the sentence does not exceed two years imprisonment or a fine of 50,000 lire. The simple answer is that the Regional Commissioner can in such cases postpone a review until the 30 days have elapsed within which an appeal can be filed.

2. Italian Courts and Personnel.

We believe there is as suggested some ambiguity with respect to para. 4 of Executive Memorandum No. 18, and shall in due course submit a suggested clarification thereof to you.

With regard to the directive dated 4 Dec 43 this Subcommittee has only recently been shown a copy. This directive (which it is believed is in the course of amendment) does not however cut across para 4 of Exec. Memo 18 but merely lays down machinery for the guidance of the R.C.

3. Italian Military Tribunals.

Enclosed is a copy of "Rules for the establishment of Italian Military Tribunals" as requested by Regional Commissioner, Region IV (letter of RC, RA/250.5/(b), para 5, 25 Feb 44). It is probable that a new directive will be issued after further consultation with the Italian Government.

3066

4. Legal Personnel.

The interpretation of the Regional Commissioner, Region IV (letter of RC, RA/250.5/(b), para 6) as to the disposition of legal personnel within the region is correct.

5. Legal Directives and Opinions.

The answer to the Regional Commissioner's query (letter of RC, RA/250.5/(b), para 7) as to why his Regional Legal Officer should not render opinions dealing with matters of general legal policy is that questions of this character were specifically reserved by para 1(c) of General Order No. 8 dated 23 Nov 43, a copy of which was no doubt sent to Region IV when AGO took over from 15 Army Group. On the other hand, it appears likely that Region IV put an unduly narrow construction on this sentence which should be construed in the light of the above mentioned General Order.

All questions should be referred to HQ AGO when they involve general questions of legal policy, e.g. general questions which may affect other regions either then or at some later stage, legal policy with the Italian Government and so on. No one desires to prevent the RLO giving advice on legal questions to the R.C.

Incl: Rules, copy of.

G. R. Upjohn
G. R. UPJOHN, Colonel
Chief Legal Officer.

Italian Military Code for the Establishment of Italian Military Tribunals

Italian Military Tribunals may be established in accordance with the Military Penal Code of War dated 20 February 1901, in areas occupied by the Allied forces upon the following terms and conditions:

- (a) Italian Military Tribunals may try cases in respect of offenses whether committed before or after the commencement of occupation.
- (b) No ordinary civilians, ex-prisoners of war, members of the Police Forces, Carabinieri or civilians employed by the military, naval or air forces authorities shall be charged before any Italian Military Courts although the members of the Military Government.
- (c) If any person is arrested by any Italian Military Authority for the purpose of being tried before a Military Tribunal then within 5 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 28 days from the date of service of such charges a request setting forth the reasons for such delay shall be transmitted to the Military Governor.
- (d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and any order that such case shall be heard and determined by such Tribunal as he may direct.
- (e) Italian Military Tribunals will follow the procedure set forth in book A of the Military Penal Code for War. Any procedure affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (f) The Military Governor may assign one or more officers of the Allied Forces to act as assistant Military Tribunal.
- (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may not make any modification or suspend, reduce or commute the sentence or order a new trial.
- (h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may make any modification or suspend, reduce or commute, the sentence or order a new trial.
- (i) Where the offense charged is also an offense against any Administration or Order issued or to be issued by the Military Governor or under his authority, etc.
- (ii) It is also an offense against the laws and usages of war, etc.
- (iii) It is also an offense against the provisions of the Italian Penal Code when in such cases the name and rank of the accused, the offense with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at the same time as the charges are made.

51

at any time required, without or without any 300% notice.

785017

283
[7 MAR 1944] Reed

6 MAR 1944 2294

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/601

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ACC/4002/L

6 March 1944.

SUBJECT: Trial of Civilians.

TO : Executive Commissioner, ACC.

Ref your 283/39/CA dated 2 March 44.

No difficulty in fact arises on the apparent inconsistency mentioned in the letter from CAO dated 29 Feb and any officer of the Allied Forces may sit in any Court provided that a Judicial officer also sits on a General or Superior Court.

If an officer of the Allied Forces is a qualified barrister or solicitor he can be the "Judicial officer" on any Court although not a member of ACC.

Officers, if possible qualified barristers or solicitors, are urgently required to clear off arrears of work in Naples and we shall be very grateful if 2 or 3 can be spared to us at once.

G. R. Lupton

G. R. LUPTON, Colonel
Chief Legal Officer.

W. R. L. 44
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306

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.C. SECTION
APO 39A

8 March 1944

Ref/281/49/CA

SUBJECT: Proceedings in Allied Military Courts.

TO : HQ ACOMF.

1. Reference your ACOMF/1466/1/C(15) of 23 Feb. It will be a matter for the Court to decide in each particular case whether a hearing in camera is necessary.

2. All the reasons except (d) given in your paragraph 1 appear reasonable and this HQ has no doubt that, in conformity with the directive issued to Allied Control Commission Legal Officers as to hearing cases in camera, proper cases will be so heard.

NORMAN E. FISKE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

283 ~~4~~
3 MAR Recd 02 MAR 1944 2034
REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394.

GHU/est 415

1 March 1944.

ACC/4002/L

SUBJECT: Allied Military Courts.

TO : Executive Commissioner, ACC.

dated 27 Feb 1944
Ref your 283/23/CA enclosing directive from ACMF returned herewith.

It will be a matter for the Court to determine in each particular case whether a hearing in camera is necessary. All their reasons given in para 3 except (d) appear to be reasonable and I have no doubt that in conformity with the directive issued by HQ ACC to its officers as to hearing cases in camera proper cases will be so heard. I see no reason to revise such directive which was very carefully considered by Lord Stanagate before issue.

see p. 101

G. R. Upjohn
G. R. UPJOHN, Colonel
Chief Legal Officer.

3061

Subject: Proceedings in Allied
Military Courts.

Headquarters
Allied Central Mediterranean Force

SECRET - U.S. CONFIDENTIAL

ACME/14692/G(1b).

Executive Comm. Order, A.C.C.

23 Feb 44.

Reference your 263/o/CA dated 10 Feb 44 enclosing Circular on "Closed Trials" issued by the Chief Legal Officer, A.C.C., No. ACC/4002/L dated 10 Feb 44.

1. The latter circular is acknowledged with thanks and a copy of it is being forwarded to I(b)/C.I. Staffs of Armies and Districts for their information.

2. It is considered essential for security reasons that the trial of alleged enemy agents should, as a general principle, be held in camera. By the term "enemy agent" is meant persons employed by the enemy Intelligence Services on espionage or sabotage missions.

3. It is considered that the Italian public should be excluded from such trials, for the following reasons:-

(a) The evidence given will normally contain references to personalities, H.Q.s, and methods of the Enemy Intelligence Services, with which the prisoner has been connected. It is naturally important that we should keep secret the extent of our knowledge of such matters.

(b) It will frequently happen that Allied officers engaged in counter-espionage (particularly S.I.(b) and O.S.S. officers) will be required to give evidence before the court. It is not desirable that their identity should be publicized.

(c) By describing the circumstances of the prisoner's detection and arrest, details of our Security/Counter-Intelligence organization and methods are likely to be revealed, and it is undesirable that such details should be made so readily available to the Italian public.

(d) If agents are acquitted through lack of evidence, the case should receive no publicity whatever, as such acquittals, if widely known, would tend to facilitate the German recruitment of Italian agents.

785017

ACC/4002/L dated 10 Feb 44.

1. The latter circular is acknowledged with thanks and a copy of it is being forwarded to I(b)/C.I. Staffs of Armies and Districts for their information.
2. It is considered essential for security reasons that the trial of alleged enemy agents should, as a general principle, be held in camera. By the term 'enemy agent' is meant persons employed by the enemy Intelligence Services on espionage or sabotage missions.
3. It is considered that the Italian public should be excluded from such trials, for the following reasons:-
 - (a) The evidence given will normally contain references to personalities, H.Qs. and methods of the Enemy Intelligence Services, with which the prisoner has been connected. It is naturally important that we should keep secret the extent of our knowledge of such matters.
 - (b) It will frequently happen that Allied officers engaged in counter-espionage (particularly S.I.(b) and O.S.S. officers) will be required to give evidence before the court. It is not desirable that their identity should be publicised.
 - (c) By describing the circumstances of the prisoner's detection and arrest, details of our Security/Counter-Intelligence organisation and methods are likely to be revealed, and it is undesirable that such details should be made so readily available to the Italian public.
 - (d) If agents are acquitted through lack of evidence, the case should receive no publicity whatever, as such acquittals, if widely known, would tend to facilitate the German recruitment of Italian agents.
4. We are therefore instructing Army I(b)/C.I. Staffs, when forwarding to them a copy of your Chief Legal Officer's circular, normally to apply for trials of alleged enemy agents to be held in camera, unless exceptional circumstances render this unnecessary. In view of the reasons set out in para 3 above, it is strongly urged that such applications should normally be supported by the A.C.C. legal officers concerned.

W.D. Liden *Hand*

Brigadier,
B.G.S.(I).

3050

1555

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & H.C. SECTION

3 March 1944

SUBJECT: Retention of money by C.I.D., I.S.D. in violation of order of court.

TO : Chief Legal Officer.

1. Reference is made to your letter of February 26, 1944 with regard to the case of Di Napoli Carmine, who was acquitted by one of our courts, of the charge of wrongful possession of property of the Allied Forces (10 cases of cigarettes).
2. Our Liaison Division states that the sum in question has now been repaid to Di Napoli by the Provost Marshal, Peninsula Base Section.
3. The file and accompanying papers are returned.

N. E. FINE
Colonel
Deputy Executive Commissioner.

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394.

Regional Control & Military Government Section.

5th March 1944.

Ref: 203/42/2.

SUBJECT: Allied Military Courts in Unoccupied Territory.

TO : Regional Commissioner, Regions I, II, III & VI.

1. On the landing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offences against the Allied Forces created by Proclamations and Orders will no longer exist as such.
2. The Allied Forces have reserved to themselves the right to hold military courts in unoccupied territory including the four provinces of Apulia and Calabria, for the trial of acts hostile to the Allied Forces. An extract from the decree conferring this power upon Allied Courts is appended hereto as Appendix "A". Such Courts will try only cases of a serious nature such as would normally have been brought before a General Military Court during occupation.
3. Where cases of this nature are alleged to have occurred it will be the duty of the Regional Commissioner to have the facts investigated and if he considers that trial by an Allied Military, as opposed to an Italian civil court, is necessary he will so report to H.C., A.C.C. with a request that a Military Court be appointed.
4. All such courts will be convened only by order of H.C., A.C.C. and as appears from the decree will punish offenders in accordance with the Italian laws, but will follow their own procedure.

(a) In view of these facts all charges will be framed under the Italian codes by H.C., A.C.C. and, therefore, it is essential that in requesting a Military Court pursuant to paragraph 1 heretofore, full and complete facts be supplied in order that the charges may be properly framed.

(b) Normally a member of the Department of Special Prosecutions will undertake the prosecution.

(c) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence not envisaged in the charge, or (ii) evidence of aggravating circumstances, the trial will continue.

2. The Allied Forces have reserved to themselves the right to hold military courts in unoccupied territory including the four provinces of Aquila and Teramo, for the trial of acts hostile to the Allied Forces. An extract from the decree authorizing this power upon Allied Courts is appended hereto as Appendix "A". Such Courts will try only cases of a serious nature such as would normally have been brought before a General Military Court during occupation.

3. Where cases of this nature are allowed to have occurred it will be the duty of the Regional Commissioner to have the facts investigated and if he considers that trial by an Allied Military, as opposed to an Italian civil court, is necessary he will so report to H.Q., A.C.C. with a request that a Military Court be appointed.

4. All such courts will be convened only by order of H.Q., A.C.C. and an appeal from the decree will punish offenders in accordance with the Italian Code, but will follow their own procedure.

(a) In view of these facts all charges will be framed under the Italian Code by H.Q., A.C.C. and, therefore, it is essential that in requesting a Military Court pursuant to paragraph 3 hereto, full and complete facts be supplied in order that the charges may be properly framed.

(b) Usually a number of the Department of Special Prosecutions will undertake the prosecution.

(c) Where it transpires in the course of hearing that there is established against the accused (1) any other fact constituting an offence not mentioned in the charge, or (2) evidence of aggravating circumstances (Art. 61, Penal Code) not mentioned in the citation or charge, then on such question being raised by the President or submitted by the Prosecutor, the accused may apply for an adjournment of not more than 3 days to prepare his defence (Art. 444, 445 and 446 Code Penal Procedure).

If the accused does not act for time, the offence in question or the aggravating circumstances are forthwith to be included in the charge and the trial proceeded with.

A note of compliance with these rules of procedure must appear on the record.

(3) The procedure to be followed will be the same as the procedure in a General Military Court in occupied territory, except, of course, that all sentences will be imposed in accordance with the applicable Penal Code.

(c) Reviews and appeals as dealt with in paras. 7, 8 and 9 below.

785017

-2-

5. Where a Regional Commissioner requests that a military court shall be appointed, his request will also specify the names of officers available to sit on the court (a court will normally consist of not fewer than 3 officers), the interpreter, the officer to act as prosecuting officer in case none is available from the Department of Special Prosecutions, and the officer to act for the defense in the event of the accused not being represented by an advocate.

6. Every accused will be defended by a legal representative. Where the financial position of the accused does not permit him to engage the services of a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 128) and of the Rules of Penal Procedure contained in the Decree No. 602 of 28 May 1931 (Article 3 et seq). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

- (a) an examining magistrate (giudice istruttore);
- (b) the public minister (procuratore del Re or procuratore generale);
- (c) president of a tribunal (presidente di tribunale);
- (d) the proctor (proteore).

The several jurisdictions of Italian courts being determined by standard complicated rules, applications should be addressed in the first instance to the proctor of the local court or to a procurator of a tribunal, whichever is the most expeditious or convenient, so that this official may determine the proper functionary having the power to take immediate action in each instance. The advocates or defense procurators, as the case may be, who are nominated under these rules, are obliged to appear for the accused, and are selected for this purpose from an official roll established locally at the seat of each Tribunal. If no such arrangements can be made, the accused must be defended by an allied officer.

7. Any person convicted by a Military Court may, within 30 days of the imposition of sentence, file with the Regional Commissioner a petition addressed to the Chief Commissioner, R.C., A.C.C. submitting reasons why the conviction should be set aside or the sentence modified.

8. Where a petition is so filed, the petition together with the record of the case shall be forwarded by the Regional Commissioner to H.Q. A.C.C. for review. Where no such petition is filed the record of the case shall at the expiration of 30 days from the imposition of sentence be transmitted to H.Q. A.C.C. for review.

9. In any case in which sentence of death is imposed whether a petition is filed or not, the record of the case at the expiration of the 30 days or on filing of a petition, whichever shall be sooner, shall be forwarded by the Regional Commissioner to H.Q. A.C.C. for review.

jurisdiction for each case by one of the following judicial officials:

- (a) an assisting magistrate (giudice istruttore);
- (b) the public minister (procuratore del Re or procuratore generale);
- (c) president of a tribunal (presidente di tribunale);
- (d) the praetor (pretore).

The several jurisdictions of Italian courts being determined by a recent complicated rule, applications should be addressed in the first instance to the praetor of the local court or to a procurator of a tribunal, whichever is the most expeditious or convenient, so that this official may determine the proper functionary having the power to take immediate action in each instance. The advocates or defense procurators, as the case may be, who are nominated under these rules, are obliged to appear for the accused, and are selected for this purpose from an official roll established locally at the seat of each Tribunal. If no such arrangements can be made, the accused must be defended by an Allied officer.

7. Any person convicted by a Military Court may, within 30 days of the imposition of sentence, file with the Regional Commissioner a petition addressed to the Chief Commissioner, H.Q., A.C.C. submitting reasons why the conviction should be set aside or the sentence modified.

8. Where a petition is so filed, the petition together with the record of the case shall be forwarded by the Regional Commissioner to H.Q. A.C.C. for review. Where no such petition is filed the record of the case shall at the expiration of 30 days from the imposition of sentence be transmitted to H.Q. A.C.C. for review.

9. In any case in which sentence of death is imposed whether a petition is filed or not, the record of the case at the expiration of the 30 days or on filing of a petition, whichever shall be sooner, shall be forwarded by the Regional Commissioner to H.Q. A.C.C. for confirmation of such sentence by the Chief Commissioner.

10. The above directive does not apply in any area which has been declared a military zone. If any area is hereafter declared to be a military zone further instructions will be issued for that area concerning the holding of Allied Military Courts.

W. S. Lusk
Brigadier,
Executive Commissioner.

Copy to: Regional Commissioner, Regions IV and V.

H.Q., A.C.C. 2.
H.Q., No. 1 District
H.Q., No. 2 District
H.Q., No. 3 District
Legal Sub-Commission (5)

41
Appendix "A" to 26342/GA
dated 5th March 1944

Article 3 of Royal Decree Law No. 31,
11th February 1944.

Whoever within the liberated Italian territory
recruits a hostile act or crime against property to the
prejudice of the Allied Military Forces or of any member
thereof or of any functionary, representative or agent of
United Nations, or whoever takes part in seditious manifestations
against the Allied Forces or commits any act which in whatever
way may hamper the war effort or help the enemy, shall be
punishable under Italian penal law and shall be tried in Allied
Military Courts according to their own procedure.

In the case contemplated by the preceding paragraph
1 any member of the Allied Armed Forces can effect the arrest
of any person who may be reasonably believed to be implicated
in acts herein above contemplated, except where an Italian
officer or high government official is concerned, in which case
the Italian Government or the appropriate superior local authority
will be requested to co-operate in the premises to the extent
necessary.

...a hostile act or crime against property to the
prejudice of the Allied Military Forces or of any member
thereof or of any functionary, representative or agent of
United Nations, or whoever takes part in seditious manifestations
against the Allied Forces or commits any act which in whatever
way may hamper the war effort or help the enemy, shall be
punishable under Italian penal law and shall be tried in Allied
Military Courts according to their own procedure.

In the case contemplated by the preceding paragraph
1 any member of the Allied Armed Forces can effect the arrest
of any person who may be reasonably believed to be implicated
in acts herein above contemplated, except where an Italian
officer or high government official is concerned, in which case
the Italian Government or the appropriate superior local authority
will be requested to cooperate in the premises to the extent
necessary.

3057

Big book.

1. Pl. See 36 and draft L'side copy.
2. If approved, ~~that~~ is the form correct
to not an Executive Memorandum
since it is going to 3 Reports
only?

Shelton 2/3/44.

See Sherrill

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.C. Section
APO 394

Ref/AB3/39/CA.

2 March 1944.

SUBJECT: Allied Military Courts in Occupied Territory.

TO : Regional Commissioner, Region III (For R.C.L.O.)

1. Reference Memorandum JWC/oa 3/6105/L of 23 Feb 44 from R.C.L.O. your Region to C.L.O. Legal Sub-Commission, A.C.O. Rear H.Q.

2. It was decided by Brig. Lush and Col. Spofford in January on the recommendation of the Legal Sub-Commission that as a matter of policy it was desirable to confine the appointment of General Courts in areas other than army areas to HQ, AOC. This recommendation was made as the result of experience and with the object of improving the standard of these Courts by a careful selection of personnel. In really important cases it is contemplated that the Chief Judicial Officer will preside.

3. There seems at the present no ground for revising this policy which is considered sound. There is normally bound to be some delay in the sitting of a General Court in order that the case may be properly investigated and the evidence be prepared for trial, and it is not thought that any further delay will be caused by H.Q. AOC being responsible for convening the Court, provided Regions make their application at an early stage.

Edwards
NORMAN B. PREE
Colonel, Cavalry,
Deputy Executive
Commissioner.

Copy to: C.L.O. Legal Sub-Commission
(Through Admin. Sec.)

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.C. Section
APO 394

2 March 1944.

Ref/283/38/CA.

SUBJECT: Trial of Civilians.

TO : C.L.O. Legal Sub-Commission.
(Through Admin. Section)

Your comments are requested on the contents of the
enclosed copy of a memorandum from H.Q. A.C.M.F. (Adm Ech).

5
NORMAN E. FISKE
Colonel, Cavalry,
Deputy Executive
Commissioner.

3654

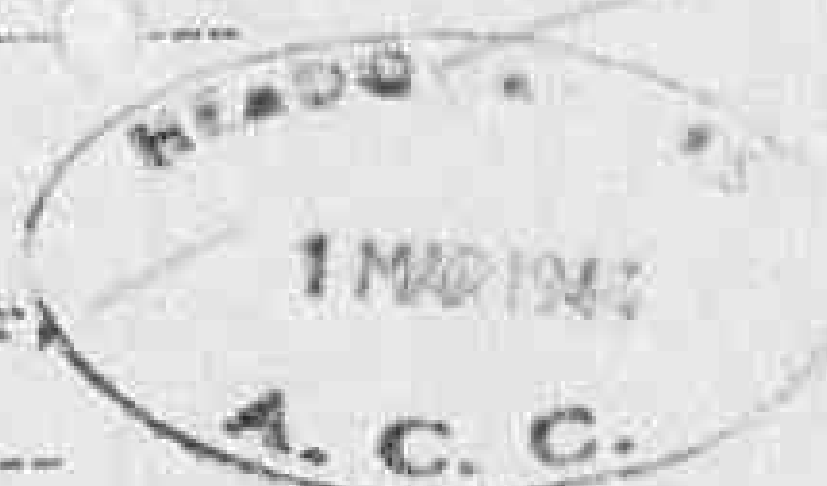
785017

283
SUBJECT:- Trial of Civilians.

URGENT

U-71437
HQ ACMP (Adm. Bch),
C.M.F.

Executive Commissioner
A.C.C.



ACMF/3073/A(0).

29 Feb '47.

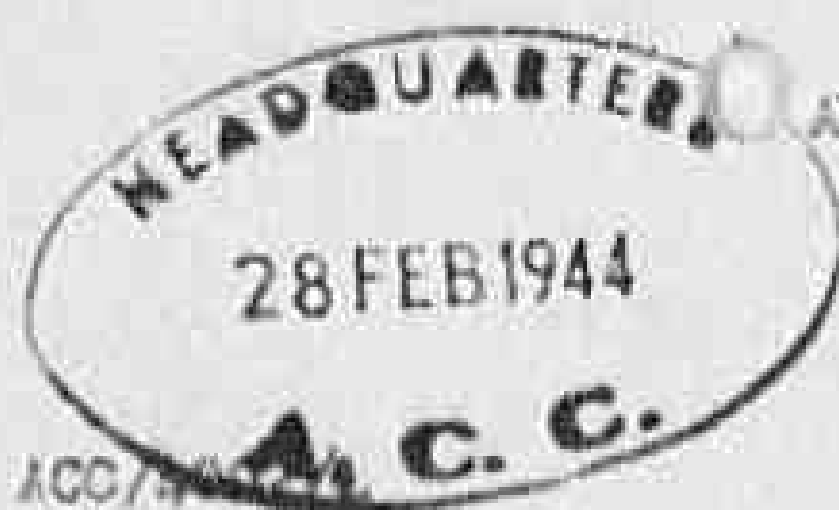
1. It has been suggested to H.Q. No. 3 District that assistance might be given to A.M.G. by the nomination of certain military officers, outside RAFILES, to officiate in Summary Courts.
2. The matter is under consideration and it is hoped to provide this assistance. It had been suggested, however, that A.M.G. Proclamation No. 4, Article III, Sec 3 is modified by A.M.G. General Admin. Instruction No. 7. B.4(c) and that military officers are possibly not now qualified to officiate.
3. Will you please inform this H.Q. whether military officers can be appointed, when necessary, and when the local A.M.G. authorities desire it.

see 38

CSP/XM.

C. H. 1
Major-General,
Chief Administrative Officer.

3053



REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
A.P.O. 394

28.3
U-45035
28 FEB Recd
60961

ACC/4

27th February 1944

Subject: Allied Military Courts

To : Executive Commissioner

1. I enclose copy of letter 3/6105/L dated 23rd February 1944 from Region III requesting that the appointment of General Military Courts be delegated to R.L.O. Region III.

2. The recommendation of this Sub-Commission in respect of this matter will be found in my letter dated 26 February - ACC/4002/L - copy attached.

A handwritten signature in dark ink, appearing to read "Gerald R. Upjohn".

GERALD R. UPJOHN
Colonel,
Chief Legal Officer.

Copy to: R.L.O. (thru RC) Region III

COPY

HEADQUARTERS
REGION 3 ALLIED MILITARY GOVERNMENT
LEGAL DIVISION
APO 394, U.S. Army

JWC/os
3/6105/L

23 February 1944

SUBJECT: Allied Military Courts in Occupied Territory.

TO : Chief Legal Officer, Legal Subcommittee, Rear Headquarters,
Allied Control Commission.

1. Reference to your ACC/4002/L, 16 February, 1944.
2. Request is made that the Chief Commissioner, HQ ACC delegate to the Regional Legal Officer, Region 3, AMG, the authority to appoint General Military Courts for that Region.
3. Will you please place this request before the Chief Commissioner together with such recommendation as you desire to make.

Sgd John W. Chapman
JOHN W. CHAPMAN
Lt. Col. J.A.G.D.,
R.C.L.O.

COPY

HEADQUARTERS
REGION 3 ALLIED MILITARY GOVERNMENT
LEGAL DIVISION
APO 394, U.S. Army

34

JWC/on
3/6/05/L

23 February 1944

SUBJECT: Allied Military Courts in Occupied Territory.

TO : Chief Legal Officer, Legal Subcommittee, Rear Headquarters,
Allied Control Commission.

1. Reference to your ACC/4002/L, 16 February, 1944.
2. Request is made that the Chief Commissioner, HQ ACC delegate to the Regional Legal Officer, Region 3, AMG, the authority to appoint General Military Courts for that Region.
3. Will you please place this request before the Chief Commissioner together with such recommendation as you desire to make.

3021

Sgd John W. Chapman
JOHN W. CHAPMAN
Lt. Col. J.A.G.D..
R.C.L.O.

COPY

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GHU/gmf

26 February 1944.

ACC/4002/L

SUBJECT: General Military Courts.

TO : V.P. RC & MI Section.

Ref your 283/20/CA dated 23 Feb it was decided by Brig. Lush and Col. Spofford in January on the recommendation of this Subcommittee that as a matter of policy it was desirable to confine the appointment of General Courts in areas other than army areas to HQ ACC. This recommendation was made as the result of experience and with the object of improving the standard of these Courts by a careful selection of personnel. In really important cases it is contemplated that the Chief Judicial officer will preside.

There seems no ground for revising this policy so soon, which is in the view of this Subcommittee a sound one. In particular, no hardship is caused, at any rate for the time being, having regard to the fact that Region Hq is in Naples; furthermore, even when various Hq are not so conveniently situated there is normally bound to be some delay in the sitting of a General Court in order that the case may be properly investigated and the evidence be prepared for trial and it is not thought that any delay will be caused by asking Hq ACC to convene the Court, provided Regions do this at an early stage and do not wait until the eleventh hour.

With regard to the second para, if several cases are ready for trial the appointment can be framed so as to give jurisdiction to the Court to try other offenders. The actual terms of the appointment are quite flexible and no question of principle arises thereon.

(sgcl) G. R. UPJOHN
Colonel
Chief Legal Officer.

HEADQUARTERS,
ALLIED CONTROL COMMISSION
APO 394.

12th February, 1944.

EXECUTIVE MEMORANDUM

NUMBER 15

TO : Regional Commissioners,
Regions III, IV & V.

POWERS OF REGIONAL LEGAL OFFICERS.

MILITARY COURTS.

1. The Regional Commissioner shall have the authority and is responsible for the establishment of Superior and Summary Military Courts in his region. He will request HQ. A.C.C. to appoint a General Military Court whenever necessary.
2. Reviews of the decisions of Allied Military Courts will be in accordance with Proclamation No. 14. As it amends Proclamation No. 4 which provides for reviews substantially in the following manner:-

Any person convicted by a Military Court may, within thirty days after imposition of sentence, file with the trial court or forward to the Chief Legal Officer of the Region a petition addressed to the Chief Commissioner submitting reasons why the conviction should be set aside or the sentence should be modified.

Every record of trial by an Allied Military Court shall be transmitted to the Chief Legal Officer of the Region for examination and file. The record in any case may on the recommendation of the Chief of the Legal Sub-Commission, and shall, in the event of the sentence exceeding two years imprisonment or a fine of £50,000 be reviewed by the Chief Commissioner or by an officer of the Allied Military Government not below the rank of Lieutenant Colonel who may be appointed by the Chief Commissioner for that purpose. Where there has been no petition of appeal as above provided and the sentence does not exceed two years imprisonment or a fine of £50,000 the Chief Legal Officer of the Region shall review the case and may appoint a judicial officer not below the

POWERS OF REGIONAL LEGAL OFFICERS.

MILITARY COURTS.

1. The Regional Commissioner shall have the authority and is responsible for the establishment of Superior and Summary Military Courts in his region. He will request His A.G.C. to appoint a General Military Court whenever necessary.

2. Reviews of the decisions of Allied Military Courts will be in accordance with Proclamation No. 14 as it reads Proclamation No. 1 which provides for reviews substantially in the following manner:-

Any person convicted by a Military Court may, within thirty days after imposition of sentence, file with the trial court or forward to the Chief Legal Officer of the Region a petition addressed to the Chief Commissioner submitting reasons why the conviction should be set aside or the sentence should be notified.

Every record of trial by an Allied Military Court shall be transmitted to the Chief Legal Officer of the Region for examination and file. The record in any case may on the recommendation of the Chief of the Legal Sub-Commission, and shall, in the event of the sentence exceeding two years imprisonment or a fine of L. 50,000 be reviewed by the Chief Commissioner or by an officer of the Allied Military Government and below the rank of Lieutenant Colonel who may be appointed by the Chief Commissioner for that purpose. Where there has been no petition of appeal as above provided and the sentence does not exceed two years imprisonment or a fine of L. 50,000 the Chief Legal Officer of the Region shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. Confirmation of death sentences remains as heretofore.

3. By Proclamation No. 14 referred to above the Regional Commissioner may order an Allied Military Court to sit in camera. The Chief Legal Officer of the Region may also perform the functions previously assigned to the Chief of the Legal Sub-Commission (G.L.S.) in connection with the detection of suspects. See Proclamation 2, Article VII, Section 2.

ITALIAN COURTS AND PERSONNEL.

4. The Regional Commissioner may remove Italian Judges and Officials connected with the Italian Courts and on a temporary basis during occupation may fill existing vacancies. He may appoint Notaries when vacancies occur, upon the recommendation of the Municipal Council of the district in which such vacancies exist. For the purpose of securing assistance

- 2 -

and advice on Italian legal and judicial matters, he may appoint a Central Committee of Italian Citizens. The Regional Commissioner will report in detail to Hq. ACC on any proposed appointment, promotion or transfer of judges and court officials except in an emergency when an appointment, promotion or transfer may be made subject to confirmation by Hq. ACC. Any removal will be reported to Hq. ACC as soon as possible.

5. The opening and functioning of all Italian Courts, criminal, civil, is the responsibility of the Regional Commissioner.

ITALIAN MILITARY TRIBUNALS

6. The Regional Commissioner acting on the advice of the Chief Legal Officer of the Region will be responsible for permitting Italian Military Tribunals to function within his region in accordance with the Directive issued in that regard.

PRISONERS

7. The Regional Commissioner shall be responsible for investigating the circumstances of all prisoners held in jail without trial and for investigating all cases of complaint by prisoners that they have been unjustly condemned for their political views. The Regional Commissioner shall forward to Hq. ACC his recommendations for release of all such prisoners and may pending receipt of orders thereon grant provisional or conditional liberty or release, on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crimes and never brought to trial because of political connections and report made to Hq. ACC.

ITALIAN LEGISLATION AND LAWS

8. The Regional Commissioner shall not abrogate or amend any laws on the ground that they are discriminatory or of a fascist nature and this matter is reserved to Hq. ACC. The Regional Commissioner may, however, temporarily amend Italian rules of procedure for the more expeditious hearing of trials but only in accordance with directives already issued.

GENERAL

9. Hq. ACC will issue orders and directives binding upon regions, to assign, attach, relieve or replace regional legal personnel, and to review decisions of Allied Military Courts in accordance with paragraph 3 above.

10. The Chief Legal Officer of the Region will NOT issue directives or render opinions dealing with matters of general legal policy without previous reference to Hq. ACC. He will NOT fix penalties for prescribed offenses but it is his duty to secure reasonable uniformity of sentences commensurate with the provisions of law.

ITALIAN MILITARY TRIBUNALS.

5. The Regional Commissioner acting on the advice of the Chief Legal Officer of the Region will be responsible for permitting Italian Military Tribunals to function within his region in accordance with the Directive issued in that regard.

PRISONERS.

7. The Regional Commissioner shall be responsible for investigating the circumstances of all prisoners held in jail without trial and for investigating all cases of complaint by prisoners that they have been unjustly condemned for their political views. The Regional Commissioner shall forward to Hq. AGC. his recommendations for release of all such prisoners and any pending receipt of orders thereon grant provisional or conditional liberty or release, on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crimes and never brought to trial because of political connections and report made to Hq. AGC.

ITALIAN LEGISLATION AND LAWS.

8. The Regional Commissioner shall not abrogate or amend any laws on the ground that they are discriminatory or of a fascist nature and this matter is reserved to Hq. AGC. The Regional Commissioner may, however, temporarily amend Italian rules of procedure for the more expeditious hearing of trials but only in accordance with directives already issued.

GENERAL.

9. Hq. AGC., AGC. will issue orders and directives binding upon regions, to resign, attach, relieve or replace regional legal personnel, and to review decisions of Allied Military Courts in accordance with paragraph 3 above.

10. The Chief Legal Officer of the Region will NOT issue directives or render opinions dealing with matters of general legal policy without previous reference to Hq. AGC. He will NOT fix penalties for prescribed offenses but it is his duty to secure reasonable uniformity of sentences commensurate with the prevalence of any particular type of crime in his region, and commensurate with the particular crime itself.

By the command of Lieut-General MASON MACFARLANE.

M. S. Lusk
M. S. LUSK
Brigadier,
Executive Commissioner.

HEADQUARTERS
ARMED CONTROL COMMISSION
A.C. & M.C. Section
APO 394

29 February 1944.

Ref/283/31/CA

SUBJECT: Powers of Regional Legal Officers

TO : Vice President, Administrative Section

1. A copy of a letter from Regional Commissioner, Region IV, is forwarded with the request that the Legal Sub-Commission be asked to express their views.

2. Para. 2 of the enclosed letter has already been dealt with.

NORMAN K. FISKE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

Incl
As above.

bu with
week
W 29th
204

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.O. & M.O. Section
APO 394

Raf/265/29/DA

28 February 1944.

SUBJECT: General Military Courts

TO : Regional Commissioner, Region IV

1. Reference your RA/250.5b of 19 February 1944.
2. It was decided by Brig. Lust and Col. Spofford in January on the recommendation of the Legal Sub-commission that as a matter of policy it was desirable to confine the appointment of General Courts in areas other than army areas to HQ, ACC. This recommendation was made as the result of experience and with the object of improving the standard of these Courts by a careful selection of personnel. In really important cases it is contemplated that the Chief Judicial Officer will preside.
3. There seems at the present no ground for revising this policy which is considered sound. There is normally bound to be some delay in the sitting of a General Court in order that the case may be properly investigated and the evidence be prepared for trial, and it is not thought that any further delay will be caused by HQ, ACC being responsible for convening the Court, provided Regions make their application at an early stage.
4. In regard to para. 3 of your letter, if several cases are ready for trial, the appointment can be framed to give jurisdiction to the Court to try more than one offender. The actual terms of the appointment are quite flexible and no question of principle arises.

4
NORMAN E. FISKE,
Colonel, Cavalry,
Deputy Executive
Commissioner.

283 27 FEB Recd

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REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/gmf

26 February 1944.

ACC/4002/1.

SUBJECT: General Military Courts.

TO : V.P. RC & M: Section.

Ref your 283/20/CA dated 23 Feb/it was decided by Brig. Lush and Col. Spofford in January on the recommendation of this Subcommittee that as a matter of policy it was desirable to confine the appointment of General Courts in areas other than army areas to HQ ACC. This recommendation was made as the result of experience and with the object of improving the standard of these Courts by a careful selection of personnel. In really important cases it is contemplated that the Chief Judicial officer will preside.

There seems no ground for revising this policy so soon, which is, in the view of this Subcommittee a sound one. In particular, no hardship is caused, at any rate for the time being, having regard to the fact that Region Hq is in Naples; furthermore, even when various Hq are not so conveniently situated there is normally bound to be some delay in the sitting of a General Court in order that the case may be properly investigated and the evidence be prepared for trial and it is not thought that any delay will be caused by asking Hq ACC to convene the Court, provided Regions do this at an early stage and do not wait until the eleventh hour.

With regard to the second para, if several cases are ready for trial the appointment can be framed so as to give jurisdiction to the Court to try other offenders. The actual terms of the appointment are quite flexible and no question of principle arises thereon.

G. R. Upjohn

G. R. UPJOHN
Colonel
Chief Legal Officer.

3040

283/27 FEB Recd V-302 RPN/JAM

HEADQUARTERS REGION 4
Allied Military Government
APO 394

HEADQUARTERS
25 FEB 1944

TO : HQ, AGO + RC & MGS

FROM : HQ, Region 4 AMJ

SUBJECT: Powers of Regional Legal Officers

REF : R4/250.5(b)

DATE : 25 February, 1944

1. Executive Memorandum No. 10, dated 14 February, 1944, deals with a number of subjects, which I have discussed with the Regional Legal Officer, and I now desire to bring the following points to your notice.

2. General Military Courts

I refer to my R4/250.5(b) of 19 Feb. 44, in which I pointed out what I conceive to be the disadvantages of the policy of centralisation with regard to this. I am now waiting your reply.

3. Powers of Review

It is suggested that the policy of centralisation whereby all petitions for review must be submitted to the Chief Commissioner, is a mistake. Hitherto, petitions for review where the sentence did not exceed 2 years imprisonment or a fine of 50,000 Lire, have been dealt with at Regional level, in pursuance of delegation of authority by Brigadier Lush to myself on the 14th December, 1943. This procedure has worked smoothly in practice and should, it is submitted, be adhered to. The change now proposed, under Executive Memorandum No. 10, is in my opinion open to the following objections:-

(a) It will lead to very serious delay in dealing with petitions for review. Petitions if considered at Regional

1. Executive Memorandum No. 18, dated 14 February, 1944, deals with a number of subjects, which I have discussed with the Regional Legal Officer, and I now desire to bring the following points to your notice.

2. General Military Courts

I refer to my H4/250.5(b) of 19 Feb. 44, in which I pointed out what I conceive to be the disadvantages of the policy of centralisation with regard to this. I am now waiting your reply.

3. Powers of Review

It is suggested that the policy of centralisation whereby all petitions for review must be submitted to the Chief Commissioner, is a mistake. Hitherto, petitions for review where the sentence did not exceed 2 years imprisonment or a fine of 50,000 Lire, have been dealt with at Regional level, in pursuance of delegation of authority by Brigadier Lush to myself on the 14th December, 1943. This procedure has worked smoothly in practice and should, it is submitted, be adhered to. The change now proposed, under Executive Memorandum No. 18, is in my opinion open to the following objections:-

(a) It will lead to very serious delay in dealing with petitions for review. Petitions, if considered at Regional level, can be dealt with very expeditiously, taking at most a few days. Owing to delays in communication, this is not possible if every petition has to be forwarded to the Chief Commissioner. As an illustration of this, I would cite the case of Vitozzi Francesco, petition for review of which was forwarded on 17 Jan. 1944. Up to the time of handing over Foggia Province, no intimation of the decision on review had been received at this HQ. It is not known whether since the handing over the decision has been communicated to HQ, Region 5. As this case was originally tried in December, it is considered that the delay in reaching a determination is most undesirable. If all petitions are in practice to be forwarded to the Chief Commissioner, the chances of delay will be immediately increased.

TO: HQ, AOC

24 February, 1944

(b) Cases arise from time to time when a decision involving punishment of less than 2 years imprisonment or a fine of 50,000 Lire, is reviewed without petition at Regional level, under the powers conferred by Proclamation 14, and subsequently a petition for review in the same case is received. Cases of this sort have actually occurred. Such a petition should surely be dealt with by the officer conducting the original review. If the petition has to be forwarded to the Chief Commissioner, nothing but confusion will result, since there will be two decisions on review in the same case.

4. Italian Courts and Personnel

Paragraph 4 of Executive Memorandum No. 10 is not fully understood. By the first sentence I am given power to remove Italian Judges and Officials and to make temporary appointments. Later in the same paragraph it is stated that I am to report to HQ, AOC, on any proposed appointment, promotion or transfer, except in emergency, when I am given power to ~~act~~ subject to confirmation. The instructions referred to above appear to be materially inconsistent, and further clarification is desired. There also appears to be conflict between the terms of this paragraph and the directive dated 4 December, 1943, with regard to "Screening of Italian Officials" which delegated power of removal of the senior officials to the Regional Commissioner and of the minor officials to the Provincial Commissioner.

5. Italian Military Tribunals

Paragraph 5 of Executive Memorandum No. 10 refers to a Directive issued with regard to Italian Military Tribunals. I am unable to trace receipt of any such Directive. I consider it vitally important that I should receive detailed instructions with regard to the constitution and powers of Military Tribunals authorized to sit within territory under AMG control, and the duties of AMG legal officers in relation thereto. May I, please, have your instructions in this respect?

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6. Legal Personnel

Paragraph 9 of Executive Memorandum No. 10 is not clear to me. It is presumed that the power of HQ, AOC to assign, attach, relieve or replace Regional legal personnel is not intended to interfere with my disposition of legal personnel within the Region, which, according to normal practice, would be a matter for my decision on the advice of the Regional Legal Officer.

7. Legal Directives and Opinions

With reference to paragraph 10 of Executive Memorandum No. 10, it is not clear to me why my Regional Legal Officer should not render opinions, for the guidance of myself and the heads of other Divisions, on matters of general legal policy. Hitherto I had assumed that one of his primary functions

U-302 24

To: HQ, AGO

24 February, 1944

was to keep me advised on all legal matters arising out of the administration of the Region.

C. May I, please, have your comments and instructions with regard to the above points?

McLan Bigelow
Regional Commissioner
Region 4, AMR

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

785017

Regional Commissioner
Region 4, AMJ

3043

-3-

HEADQUARTERS
ALLIED CONTROL COMMISSION
R. & M.G. Section
APO 394

Ref/283/22/CA.

27 February 1944

SUBJECT: Appointment of General Military Court.

TO : Admin Section - For Legal Sub-Commission.

Reference your ACC/4002/L/L of 21 Feb 44, the document
duly signed by the Executive Commissioner, is returned herewith.

(FB)
NORMAN E. FISKE
Colonel, Cavalry,
Deputy Executive
Commissioner.

3042

HEADQUARTERS
ALLIED MILITARY COMMISSION
I.M.C. & M.C. Section
APO 394

23
27 February 1944.

Ref/283/23/CA.

SUBJECT: Allied Military Courts.

TO : Admin. Section - For Legal Sub-Commission.

Attached memo No. ACME/1460/1/G(Ib) of 23 Feb 44 is
forwarded for your comments and return.

SB
NORMAN E. PENCE
Colonel, Cavalry,
Deputy Executive
Commissioner.

3641

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

785017

Folio 21

ACME/1460/1/6(15)

dttd. 23/2/44

extracted see

Folio 23

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.O. & M.G. Section
APO 394

Ref/283/20/CA

23 February 1944.

SUBJECT: General Military Courts
TO : Administrative Section

1. Attached copy of RA/250.5(b) of 19 February 1944 is forwarded to you for favor of comment by the Legal Sub-Commission.

Incl
As above.

T. FARLEY SMITH,
Lt Col,
G-1, R.O. & M.G. Section.

785017

22 FEB 1944

22 FEB 1944

283
REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394.

LT/gmf

21 February 1944.

ACC/4002/1/L

SUBJECT: Appointment of General Military Court, Region 5.

TO : Executive Commissioner, ACC.

1. Enclosed is appointment of General Military Court for Region 5 in usual form which I have approved. This Court will sit on or about 1 March 1944.

2. Will you please sign and return the appointment to me if approved by you.

See 22
Richard H. Wilmer
RICHARD H. WILMER
Lt. Col. GAC
Deputy Chief Legal Officer.

3040

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1944
HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
AWC 394.

20 February 1944.

ACC/4002/L

SUBJECT: Transfer of Territory.

TO : Executive Commissioner, ACC.

1. With reference to my letter of 17 February 1944, regarding the responsibilities for Allied Military Courts in the Islands of Pantelleria, Lampedusa and Linosa, I am enclosing a copy of a letter dated 15 Feb. 1944 received today from the DMIO Region 1 on this general subject of which Allied Military Courts is only one part.

G. R. Upjohn
G. R. UPJOHN
Colonel
Chief Legal Officer

Letter being taken by the Supply Unit -

Re: Newcomer

(7B)

C O P Y

ALLIED CONTROL COMMISSION
SICILY REGION II.
APO 394

FILE: RLE 013.054/HD

15 February 1944

SUBJECT: Transfer of Territory.

TO : C.I.G., A.C.G. Hq., APO 394 (Salerno Detachment).

1. A question has arisen regarding the making of an Order affecting a legal functionary in the island of Pantelleria, which prior to the 11th February would have been signed by the R.C.A.G. Region I.

2. Advice is requested as to whether the R.C.A.G. Region I retains the same powers as before in respect of Pantelleria, Lampedusa and Linosa, which have been excluded from the transfer of territory or, if not, in whose such powers are now vested.

For Lt. Col. POLETTI:

H. M. DICKIE,
Squadron Leader,
D.R.L.O.

At Fowles 2000

1. Please see memo. 14.
2. In 13 pages I have say that a general Court because of its power and power. I have been appointed by the and that in a general Court.
3. In 13 pages I have say that a general Court is responsible to about 100 only of the particular case - this again because of the particular power. The position from the 18th March referred to. General Court that have been the account. It is not understood that since the Court is constituted, it can try the many laws as there are to try to an effective period.
4. I have given the other facts. In 20 pages including 14th Sept 1920.

N.B.

Further to above I have consulted my Memo. 520
 Page 8. I have given it in his opinion that the fact
 say as to the appointment of a general Court should be
 that through the C.C. should have been established in

7850, 7

respecting it para 112 to para 114 &
 former Court a application to stand with only
 one particular case - this again becomes
 of its birds present. The question from the
 1891st must refer to, Court case law
 here than one allowed, It is not better that
 that once the Court is established it can
 say the many laws as before - here to say
 for any certificate provided

4. Deep Dye for the White Purples
 (including 14.14.20) 14.20

NB.

Further to above I have consulted Maj. Mercier 5-20
Maj. & others who give it as his opinion that the Court
say on the appointment of a general Court should be
held through the H.C. Should be the recommendation
be name of officers to sit on the Court since he is
in a position to know their availability. He reported
the second point in 3 above Maj. Mercier opinion
is that a general Court should only be appointed
in particular ^{cases} which must be stated and the
accused & charges named. It must not be app-
ointed for a period. 5-26-20

N.B. "para 1 (1)" is incorrect. In Hong Kong (Country Regis.) General Comds are appointed by C. General of the Army or R. S. A. Hqs appointed by Lt. C. General.

88 262000

19 FEB Recd

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FEB C.A. Br 13

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HEADQUARTERS REGION 4
ALLIED MILITARY GOVERNMENT
A.P.O. 394

TO : MAIR. H.Q. A.C.C. APO 394
FROM : R.C., HQ., Region 4 A.M.G.
SUBJECT : General Military Courts.
REFERENCE : R4/280.5b
DATE : 19 February, 1944.

1. Reference Executive Memorandum No. 6 (Ref./45/18/CA) of 10 February 1944, paragraph 1.

2. It is respectfully requested that the policy of centralization whereby appointment of General Courts is restricted to the C.C.A.C. personally be reconsidered. In the case of Region 4, power to establish General Courts was delegated by Brigadier Lush to Brigadier Carr, R.C.A.C., Region 4, by instrument of 14 December 1943. So far as is known this delegated power has not been abused within Region 4. It is considered that, with present difficulties of communication, undesirable delay will inevitably result if every application for a General Court has to be referred to H.Q., A.C.C. It is suggested that this is a matter which can quite competently, and with greater convenience, be dealt with at Regional level.

3. If the provisions of para. 1 of Executive Memorandum No. 6 are to stand, the following point is brought to your attention, and a ruling is requested. Having regard to paragraph 1(3) of the memorandum it appears that in future a General Court will only be assembled to deal with one particular case. If my interpretation of the memorandum is not correct in this respect, I request that I may so be informed. If my interpretation is correct, I would point out that it will become necessary to alter the form for appointment of a General Court, as prescribed by General Administrative Instruction No. 7, paragraph 8, at P. 129 of the AMGOT Manual. The form as it stands purports to appoint the Court "for the trial of all persons who may be brought before it"-i.e. it is contemplated that a court, once properly constituted, shall continue to sit for the trial of successive cases, as required, till the members of the court cease to be available and it is necessary to appoint a new one. I submit that this is a very

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convenient arrangement particularly in the static conditions prevailing in territory under Regional administration. It is submitted that under the new arrangement a considerable volume of avoidable correspondence will become necessary every time a General Court case arises, in addition to which there will invariably be much undesirable delay in the disposal of General Court cases.

McLarr Bigden
M. CARR, Brigadier
Regional Commissioner.

HEADQUARTERS
ALLIED CONTROL COMMISSION
E.C. & M.C. Section
APO 39A

Ref: 45/15/DA.

EXECUTIVE MEMORANDUM.)

NUMBER

6)

10 February 1944.

ALLIED MILITARY COURTS IN OCCUPIED TERRITORY.1. General Military Courts.

- (1) No General Military Court shall be appointed other than by the C.O.A.C., H.Q. A.C.C.
- (2) Application for the appointment of a General Military Court shall be addressed to the C.L.O., H.Q. A.C.C.

(3) The application shall specify :-

- (a) the nature of the charges;
- (b) the date on which the prosecution will be ready to proceed with the case;
- (c) the names of the officers available to sit in the Court;
- (d) the names of the prosecuting officer, interpreter, and officers available to act for the defense in the event of the accused not being represented by counsel;
- (e) the expected duration of the case.

2. Superior Military Courts.

- (1) Except where a judicial officer is specially authorized by the C.L.O., H.Q. A.C.C. to sit alone as a Superior Military Court, a Superior Military Court shall consist of at least two officers, one of whom shall be a judicial officer. Application for such special authorization may be made forthwith accompanied by a statement of the officer's experience and qualifications.

- (2) Every Superior Court shall be properly convened by the S.O.A.C. of the Province in which the Court shall sit.

- (3) In no case shall an officer while sitting as a Summary Court assume the powers of a Superior Court by an assumption to that effect or otherwise. If the case which is being heard as a Summary Court proves to be one which should be dealt with by a Superior Court, the officer shall remit the case for trial by a Superior Court and a Superior Court will be duly convened. Such Summary Court Officer is

(1) No General Military Court shall be appointed other than by the C.C.A.O., H.Q. A.C.C.

(2) Application for the appointment of a General Military Court shall be addressed to the C.C.A.O., H.Q. A.C.C.

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- (b) the date on which the prosecution will be ready to proceed with the case;
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- (d) the names of the prosecuting officer, interpreter, and officers available to act for the defense in the event of the accused not being represented by counsel;
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(2) Every Superior Court shall be properly convened by the C.C.A.O. of the Province in which the Court shall sit.

(3) In no case shall an officer while sitting as a Summary Court assume the powers of a Superior Court by an arrangement to that effect or otherwise. If the case which he is hearing as a Summary Court proves to be one which should be dealt with by a Superior Court, the officer shall remit the case for trial by a Superior Court and a Superior Court will be duly convened. Such Summary Court Officer is not disqualified from sitting as a member of the Superior Court to try the case so remitted.

3. Procedure.

(1) Attention is called to the statement in Special Administrative Instructions Legal No. 1 that "it is as important that justice should seem to be done as that it should be done". Every care should be taken

(a) to ensure not only that judges are impartial, but that they ^{appear} to be impartial alike to prosecution and defense. No officer who has taken part in the investigation of any case (other than merely determining whether the case is suitable for trial by a General, Superior or Summary Court) is eligible to hear that case;

-2-

(b) to ensure that the evidence is fairly and accurately interpreted, particularly where evidence for the prosecution is given in a language other than Italian. The judge should address his remarks directly to the witness and the interpreter should interpret literally the judge's words. Interpreters should not be allowed to frame questions themselves nor to give merely the purport of questions and answers.

(c) A time limit for speeches should not be imposed on defending advocates, but they may be directed to confine themselves to arguments based on facts adduced in evidence.

M. S. LUSH,
Brigadier,
Executive Commissioner.

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ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394.

283
19 FEB Recd
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17 February 1944.

ACC/ACC2/1

SUBJECT: Allied Military Courts.

TO : Executive Commissioner, ACC.

In view of the exclusion of the islands of Pantelleria, Lampedusa and Linosa from the territory of Region I restored to the Italian Government, this Subcommittee would like to be advised of its responsibilities for the conduct of Allied Military Courts on such islands.

Gold R. Hyatt

G. R. HYATT
Colonel
Chief Legal Officer.

Col. Cooke

Proclamation No. 4 still runs in these islands. but they cannot be under Reg. I for m.A. purposes.

It becomes a question of placing them under a higher echelon of m.A., either this Hq district, Region III as geographically nearest or Tripoli.

Adm. has taken up (Difficult while)
Reg. D.W. 343.1
19 Feb

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394

Regional Control and Military Government Section.

Ref: 283/9/CA.

18th February 1944

Subject: Proceedings in Allied Military Courts.

To : HQ. No. 1 District
HQ. No. 2 District
HQ. No. 3 District
HQ. Peninsular Base Section.

Enclosed is a copy of a directive dated 10 February, 1944, from the Chief Legal Officer, Hq. Allied Control Commission, which you may think desirable to bring to the attention of intelligence officers under your command.

M. S. LUSH,
Brigadier,
Executive Commissioner.

3632

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref/BDJ/G/CA.

18 February 1944.

SUBJECT: Proceedings in Allied Military Courts.

TO : Headquarters, A.C.M.F., I Branch.

Enclosed is a copy of directive dated 10 February 1944 from the Chief Legal Officer, H.Q. Allied Control Commission, which you may think desirable to bring to the attention of intelligence officers under your command.

M. S. LUSH
Brigadier,
Executive Commissioner.

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref: 45/15/CA.

EXECUTIVE MEMORANDUM)

NUMBER

6)

10 February 1944.

ALLIED MILITARY COURTS IN OCCUPIED TERRITORY.

1. General Military Courts.

(1) No General Military Court shall be appointed other than by the C.C.A.C., H.Q. A.C.C.

(2) Application for the appointment of a General Military Court shall be addressed to the C.L.O., H.Q. A.C.C.

(3) The application shall specify :-

- (a) the nature of the charges;
- (b) the date on which the prosecution will be ready to proceed with the case;
- (c) the names of the officers available to sit in the Court;
- (d) the names of the prosecuting officer, interpreter, and officers available to act for the defense in the event of the accused not being represented by counsel;
- (e) the expected duration of the case.

2. Superior Military Courts.

(1) Except where a judicial officer is specially authorized by the C.L.O., H.Q. A.C.C. to sit alone as a Superior Military Court, a Superior Military Court shall consist of at least two officers, one of whom shall be a judicial officer. Application for such special authorization may be made forthwith accompanied by a statement of the officer's experience and qualifications.

(2) Every Superior Court shall be properly constituted by the S.C.A.C. of the Province in which the Court shall sit.

(3) In no case shall an officer while sitting as a Summary Court assume the powers of a Superior Court by an announcement to that effect or otherwise. If the case which is being heard as a Summary Court proves to be one which should be dealt with by a Superior Court, the officer shall remit the case for trial by a Superior Court and a Superior Court shall be held at that time. Such Superior Court Officer is

General Military Courts.

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-2-

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- (c) A time limit for speeches should not be imposed on defending advocates, but they may be directed to confine themselves to arguments based on facts adduced in evidence.

M. S. LUSH,
 Brigadier,
 Executive Commissioner.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
(SALENO DETACHMENT)
LEGAL SUB-COMMISSION
A.P.O. 394

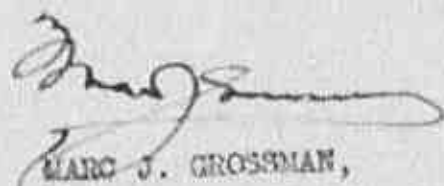
ACC/4002/L

SUBJECT: Allied Military Courts in Occupied Territory

TO : Major Driffield White,
80 Provincia Building,
Main H.Q. A.C.C.

7th February 1944

Pursuant to your request we enclose a copy of this Sub-Commission letter, ACC/4002/L dated 25th January 1944.


MARC J. GROSSMAN,
Major,
for, Chief Legal Officer.

Incl. ACC/4002/L dated 25th January 1944

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.M.G. 394

100/1002/L

SUBJECT: Allied Military Courts in Occupied Territory

TO : C.A.A.G., Region I
C.A.A.G., Region II

FROM : H.Q., A.M.G.

25th January 1944

1. General Military Courts

(1) No General Military Court shall be appointed other than by the C.A.A.G., H.Q., A.M.G.

(2) Application for the appointment of a General Military Court shall be addressed to the C.A.A.G., H.Q., A.M.G.

(3) The application shall specify :-

- (a) the nature of the charges;
- (b) the date on which the prosecution will be ready to proceed with the case;
- (c) the names of the officers available to sit in the Court;
- (d) the names of the prosecuting officer, interpreter, and officers available to act for the defense in the event of the accused not being represented by counsel;
- (e) the expected duration of the case.

2. Superior Military Courts

(1) Except where a judicial officer is specially authorized by the C.A.A.G., H.Q., A.M.G. to sit alone as a Superior Military Court, a Superior Military Court shall consist of at least two officers, one of whom shall be a judicial officer. Application for such special authorization may be made forthwith accompanied by a statement of the officer's experience and qualifications.

(2) Every Superior Court shall be properly convened by the C.A.A.G. of the Province in which the Court shall sit.

(3) In no case shall an officer while sitting as a Superior Court assume the powers of a Superior Court by an announcement to that effect or otherwise. If the case which he is hearing as a Superior Court proves to be one which should be dealt with by a Superior Court, the officer shall remit the case for trial by a Superior Court and a Superior Court will be duly convened. Such Superior Court Officer is not disqualified from sitting as a member of the Superior Court to try the case so remitted.

3. Procedure

- (1) Attention is called to the statement in Special Administrative Instructions Legal No. 1 that "It is as important that justice should seem to be done as that it should be done". Every care should be taken
- (a) to ensure not only that judges are impartial, but that they appear to be impartial alike to prosecution and defense. No officer who has taken part in the investigation of any case (other than merely determining whether the case is suitable for trial by a General, Superior or Summary Court) is eligible to hear that case;
 - (b) to ensure that the evidence is fairly and accurately interpreted, particularly where evidence for the prosecution is given in a language other than Italian. The judge should address his remarks directly to the witness and the interpreter should interpret literally the judge's words. Interpreters should not be allowed to frame questions themselves nor to give merely the purport of questions and answers.
 - (c) a time limit for speeches should not be imposed on defending advocates, but they may be directed to confine themselves to arguments based on facts adduced in evidence.

CHARLES E. SHOFERD.
Colonel, G.S.C.
Deputy Chief Civil Affairs Officer.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

10 February 1944.

ACC/ACOR/2/L.

SUBJECT: Allied Military Courts.

TO : Executive Commissioner, ACC.

1. I am enclosing herewith two copies of a directive that I have sent out, with approval of Lord Stenagata, following receipt of a communication from the Senior Legal Officer, 5th Army, concerning open trials particularly in espionage cases.

2. Also enclosed is a suggested form of letter that you may wish to send out to HQ AFM.

see 8

G. W. H. H. H.

GERALD HUGHES
Colonel
Chief Legal Officer.

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DRAFT

SUBJECT: Proceedings in Allied Military Courts.

TO : Headquarters ACF, I Branch.

Enclosed is a copy of directive dated 10 February 1944 from the Chief Legal Officer, Hq Allied Control Commission, which you may think desirable to bring to the attention of intelligence officers under your command.

Brigadier
Executive Commissioner
Allied Control Commission.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

10 February 1944.

ACC/4002/1/L

SUBJECT: Closed Trials.

TO : HCLG (thru HCL) Regions III, IV, and V.
SLO (thru SCIG) 5th & 8th Army.

1. In certain trials before Allied Military Courts it is necessary that intelligence personnel attend as witnesses, particularly in espionage cases. For security reasons it may be important in any particular trial that the testimony of such witnesses be given in secret. Under the provisions of Proclamation No. 4, as amended by Proclamation No. 14, the CDAO (now Chief Commissioner) or HCLG (now Regional Commissioner) or any court may direct that a trial may be conducted in camera. The same powers of the HCLG in this instance should be construed as being lodged in the SCAGs of 5th and 8th Army Area.

2. In the event that any intelligence branch requests for security reasons that a particular trial in whole or in part shall be conducted in camera the trial court or other authorized officer as above mentioned should so order, provided, however, if the officer to whom such request has been made is not satisfied with the reasonableness of it, the trial should be postponed or suspended and such officer should submit all pertinent facts and circumstances to the CLO Hq ACC for decision. Obviously without any request a court or authorized officer should order a case to be heard in whole or in part in camera at any time during the trial if it appears likely that the evidence to be given may prejudice the security of the Allied Forces.

3. It must be borne in mind in this connection, however, that except in unusual and compelling circumstances all trials before Allied Military Courts should be open to the Public.

4. The presiding officer of any Allied Military Court, which shall have conducted any case in whole or in part in camera pursuant to the foregoing, will promptly make a report of such case (through channels) to the CLO Hq ACC giving the reasons for such trial in camera and stating on whose application the trial was so conducted. If at the conclusion of such case

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2. In the event that any intelligence branch requests for security reasons that a particular trial in whole or in part shall be conducted in camera the trial court or other authorized officer as above mentioned should so order, provided, however, if the officer to whom such request has been made is not satisfied with the reasonableness of it, the trial should be postponed or suspended and such officer should submit all pertinent facts and circumstances to the CIO HQ ACC for decision. Obviously without any request a court or authorized officer should order a case to be heard in whole or in part in camera at any time during the trial if it appears likely that the evidence to be given may prejudice the security of the Allied Forces.

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[Signature]

FRANK W. WATKINS

Colonel

Chief Legal Officer.

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