

Declassified E.O. 12356 Section 3.3/NND No. 785020

ACC

10000/120/3225

A/023/200

MAR. 1945 -

Declassified E.O. 12356 Section 3.3/NND No. 785020

10000/120/3225 A/023/200 "Policy" Legal Policy

2619
2763

MAR. 1945 - FEB. 1946

COL - A/G.

My suggestions on Judicial Reform are attached.
If you agree to them in principle my idea
would be to discuss them with GEN BORSARI
or his representative with a view to finding
out their objections and difficulties, and the amount
of Legal Revision is necessary to get some form
of AD HOC Courts functioning.
I need guidance as to whether we must first
discuss with US representatives and do AC Legal
Sub Commission. The latter don't seem to be
much help judging from Hammond's letter at
Folio (24).

A.H.G.
24/9.

A.A.G

1. I agree with your proposals in general, except as follows:
(a) Court ought to sit where most convenient & be convened by any General officer holding command.
(b) Should they not also try junior officers?
(c) Para b. I think you mean to exclude the senior officers.
2. Later on we should have the proposals examined by our own DJAG. (Russell of Liverpool)
3. We discuss with the U.S. side (Hugh Capt Pacific)
4. We only ask A.C. if we need their help.
5. Go ahead on lines indicated & let me know progress.

2763

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150

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4. We only ask A.C. if we need their help.

5. Go ahead on lines indicated & let me know progress.

6. Take up at the same time alterations to "amnesty"

WP/ad 27 Sep

2763

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SUBJECT : Italian Army Judicial System. CONFIDENTIAL.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME.
A 023
20 Aug. 45

TO : A.C. (For Legal Sub Commissioner)

(Ref: Conversation Col. Pidsley - Lt.Col. Mumford)

1. The Italian Army, which has been cooperating with the Allies since Sept 1943 has been handicapped by an inadequate judicial and penal organisation. This has had an adverse effect on discipline and morale which is going from bad to worse now that the war is over.

2. The Italian Army is about to be reorganised and returned to the control of the Italian Government, will be a comparatively small one, and will therefore have to be of the highest quality. It is therefore essential to have a thoroughly efficient method of dealing with acts of indiscipline and crime.

3. The present system comprises :-

(a) summary awards by commanding officers for acts of indiscipline.

(b) trial by permanent and stable Military Tribunals for "crimes".

4. The powers of commanding officers seem to be fairly adequate, if properly used and in any case, any inadequacy in this matter is probably capable of being made good within the framework of existing law.

5. The Military Tribunals, on the other hand seem to be quite incapable of coping with the situation. It takes months to bring a man to justice on even the simplest charges, prisons are all overflowing with men awaiting trial, thousands, although denounced, cannot even be arrested because of the waiting list. Even when sentences are awarded they are generally inadequately carried out.

6. It would be comparatively simple to improve matters if the Military Tribunals served only the Army, instead of all three services and certain civilians as well. For this reason it seems that the question should be considered by the Italian Govt in consulting with the Legal Sub-Commission, A.C. from the general legal points of view, and particularly in regard to the following proposals.

2762

7. From the army point of view, there appear to be three alternatives:-

(a) to try to improve the present Military Tribunal machinery and make it work.

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6. The institution of ad hoc courts within the army would be a comparatively easy matter and would involve only

(a) Education of Officers in Military law

(b) Provision of a nucleus of legal officers as "judge advocates" to advise and assist members of courts and those responsible for the preparation and confirmation of cases.

It would ensure the prompt, and economical handling of the majority of criminal charges and tend to improve the quality of officers by bringing them into closer contact with their men.

9. These proposals are now being studied by the Italian "Procuratore Militare Generale" who realises that something must be done and appears to view the idea not unfavourably. The Italian Army authorities are also studying the matter.

10. It would be appreciated if A.C. would study and comment on this question from the overall point of view, and the effect of any proposed changes on the extra-army functions of the Military Tribunals.

Major General
M.M.I.A.

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mmf.

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SUBJECT : Italian Army Judicial System.

CONFIDENTIAL.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME.
A 023
30 Aug. 45

TO : A.C. (For Legal Sub Commissioner)

(Ref: Conversation Col. Pidsley - Lt.Col. Rumford)

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2751

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MEMORANDUM

SUBJECT: Italian Army Judicial System.

Type DA

Sub Commission

To. A.C. (Jn legal Section)

LAND FORCES SUB COM. A.C.
(M.M.I.A.) R O M E
A 023
Aug. 45

(Ref: conversation Col Pidals - Lt Col Hamapond .)

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10. It would be appreciated if AC would study this & comment on question from the overall point of view, & the effect of any proposed changes on the extra-army functions of the Military Tribunals ~~Court~~

~~Colonel "G"~~

Brig L

ek

Appreciated

3rd Comment

effect

B

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view the idea not unfavourably. The Italian Army authorities are also studying the matter.

10. It would be appreciated if AC would study (& comment on) this question from the overall point of view, & the effect of any proposed changes on the exclusively military functions of the Militär Luftwaffe.

~~Colonel "E"~~

Maj L

ek

Appreciated

B

2nd Comment

Effect on protective functions

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SUBJECT: Resume of Conference reference Italian Military legal and penal systems.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) R O M E
~~A-237~~ A023
Aug. 45

1. Present at Conference, held at 1000 on 15 August, were:

Excellency Dorsari,	Procuratore Militare Generale
Col. Pidsley,	MMIA
Capt. Pacini	MMIA
Capt. Todde ,	Gabinetto War Ministry

2. Purpose of Conference : A preliminary discussion on

(a) deficiencies of the present Italian military penal system,

(b) method for correcting these deficiencies in consideration of the smaller but better "interim" Italian army which is being planned.

3. Deficiencies of the present Italian military penal system:

In the opening remarks Col. PIDSLEY pointed out that discipline in an Army was dependent upon the ability of that army to enforce discipline. The approximately 125,000 untried cases before territorial military tribunals gives evidence of a system not flexible to meet changing conditions. Military personnel remain in prisons for long periods of time without being tried, yet prisons are full, with the additional trouble that the police force is negligent in making arrests because of the known prison conditions.

His Excellency BORSARI replied by stating that he felt much of the present condition was of a temporary nature. Territorial Military Tribunals, particularly in the south of Italy, are not keeping abreast of cases because of the tremendous backlog which has accumulated during the past two years. Recognizing this situation, discussions are now underway between the service Ministries and the Council of Ministers to eliminate this backlog by partial pardon or other means. Another reason for the slow procedure of the tribunals is the type of cases that Italian law have placed within the jurisdiction of Territorial Military Tribunals. These include political trials that are very involved and take much time, and trials against civilians who committed crimes against the Allied or Italian Army. Another drawback is the lack of technically qualified personnel, necessary because Italian military law is very involved and requires personnel expert in both civil and military law, because the latter is tied in with the former. This difficulty will be overcome, in part, as H.E. BORSARI has requested that the epuration Commission pass upon officers of the legal

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4. Method of Correcting the above deficiencies:

To eliminate the burden with which Territorial Military Tribunals are saddled, Col. PIDSLEY recommended that consideration be given to creating a system somewhat similar to that of the British and American Armies where commanders of major formations have the authority to create a military court when the necessity arises. The system was discussed in detail at the request of H.E. BORSARI who appeared interested. He felt such a system feasible for trial of minor crimes and recognized the elasticity which would prevent backlog.

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4. (Contd)

H.E. BORSARI has started a complete investigation of all prisoners for the purpose of bringing military personnel to trial at the earliest possible time. Complaints of men in prison for a long period of time without having been heard have come to the attention of all and must be corrected.

As stated in paragraph 3, the problems of lack of technically qualified personnel and backlog of cases are receiving serious consideration by the Italian Government and will soon be overcome.

H.E. BORSARI took this opportunity to again renew the plea for the retention of military prisoners, awaiting trial and serving short sentences, by military authorities in strictly military prisons apart and separated from hardened civilian criminals, as is the condition today because of MMIA policy. The Italian Government is eager to begin once more, as in pre-war days, the re-habilitation of military prisoners by starting once more workshops for the training of soldiers in prison in various trades, and continuation of military discipline in military prisons.

The points of the conference were summed up by Col. PIDSLEY who stated that in view of the fact that all Service Sub-Commissions are interested because Territorial Military Tribunals have jrisdiction over men of all Services, Col. PIDSLEY would write to the Legal Sub-Commission, A.C. requesting that it act as co-ordinating agency for proposals that would be made by MMIA for revision of penal procedure and systems to the Italian Government.

Major General
M.M.I.A.

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SUBJECT: Resume of Conference reference Italian Military legal and penal systems.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME
A 237
Aug. 45

1. Present at Conference, held at 1000 on 15 August, were:

Excellency Borsari,	Procuratore Militare Generale
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3. Deficiencies of the present Italian military penal system:

In the opening remarks Col. PIDSLEY pointed out that discipline in an Army was dependent upon the ability of that army to enforce discipline. The approximately 125,000 untried cases before territorial military tribunals gives evidence of a system not flexible to meet changing conditions. Military personnel remain in prisons for long periods of time without being tried, get prisons are full, with the additional trouble that the police force is negligent in making arrests because of the known prison conditions.

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Capt. Pacini — MMIA
Capt. Todde , — Gabinetto War Ministry

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4. Method of Correcting the above deficiencies:

2752

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Declassified E.O. 12356 Section 3.3/NND No. 785020

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Major General
M.M.I.A.

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Declassified E.O. 12356 Section 3.3/NND No. 785020

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Declassified E.O. 12356 Section 3.3/NND No. 785020

SUBJECT: Resume of Conference reference Italian Military legal and penal systems.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME
A 237
Aug. 45

1. Present at Conference, held at 1000 on 15 August, were:

Excellency Borsari,	Procuratore Militare Generab
Col. Pidsley,	MMIA
Capt. Pacini	MMIA
Capt. Todde ,	Gabinetto War Ministry

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Major General
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Declassified E.O. 12356 Section 3.3/NND No. 785020

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Declassified E.O. 12356 Section 3.3/NND No. 785020

SUBJECT: Resume of Conference reference Italian Military legal and penal systems.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME
A 237
Aug. 45

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Declassified E.O. 12356 Section 3.3/NND No. 785020

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Declassified E.O. 12356 Section 3.3/NND No. 785020

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2747

Declassified E.O. 12356 Section 3.3/NND No. 785020

SUBJECT : Italian Army Judicial System.

CONFIDENTIAL.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) R O M E .
A 023
30 Aug. 45

TO : A.C. (For Legal Sub Commissioner)

(Ref: Conversation Col. Pidsley - Lt.Col. Hannaford)

1. The Italian Army, which has been cooperating with the Allies since Sept 1943 has been handicapped by an inadequate judicial and penal organisation. This has had an adverse effect on discipline and morale which is going from bad to worse now that the war is over.

2. The Italian Army is about to be reorganised and returned to the control of the Italian Government, will be a comparatively small one, and will therefore have to be of the highest quality. It is therefore essential to have a thoroughly efficient method of dealing with acts of indiscipline and crime.

3. The present system comprises :-

(a) summary awards by commanding officers for acts of indiscipline.

(b) trial by permanent and statio Military Tribunals for "crimes".

4. The powers of commanding officers seem to be fairly adequate, if properly used and in any case, any inadequacy in this matter is probably capable of being made good within the framework of existing law.

5. The Military Tribunals, on the other hand seem to be quite incapable of coping with the situation. It takes months to bring a man to justice on even the simplest charges, prisons are all overflowing with men awaiting trial, thousands, although denounced, cannot even be arrested because of the waiting list. Even when sentences are awarded they are generally inadequately carried out.

6. It would be comparatively simple to improve matters if the Military Tribunals served only the Army, instead of all three services and certain civilians as well. For this reason it seems that the question should be considered by the Italian Govt in consulting with the Legal Sub-Commission, A.C. from the general legal points of view, and particularly in regard to the following proposals.

7. From the army point of view, there appears to be three alternatives

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7. From the army point of view, there appear to be three alternatives:-

(a) to try to improve the present Military Tribunal machinery and make it work,

(b) to abolish the Military Tribunals and replace them by Courts Martial or some other ad hoc courts.

(c) to retain the Tribunals for complicated cases or those involving other than Army personnel or property, and to institute ad hoc courts (martial) for the trial of army personnel accused of certain specified forms of crime.

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Declassified E.O. 12356 Section 3.3/NND No. 785020

SUBJECT: Resume of Conference reference Italian Military legal and penal systems.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) R O M E
A 257
Aug. 45

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Col. Pidsley,	MMIA
Capt. Pacini	MMIA
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Col A -

The decision as to which system will be adopted is purely an Italian matter. And if future events have would have to be changed. Maybe both systems would be best.

Your talks should be with how now to set up a military system which will overcome the faults. That system must be a compromise with Italian law and our way of thinking. It should be so set up that it will be able to work.

(K)

11 Army

note: * See ~~Behrens~~ Hannaford A C ✓

and then War Min. Wed. 15.

Inter - Branch Minute Sheet.

Date	Pass to (section)	Ref Folio	REMARKS.
10 Aug	2½	19 —	and previous correspondence I have made some preliminary enquiries about the revision to the Indian Military judicial system, about which you are in the picture. Before I can go any further we must get a fundamental ruling on the following question. Is the existing system of permanent Military Tribunals, having jurisdiction over all armed forces (and certain civilians) and composed of professional full-time judges to remain. OR is it to be replaced by a system of ad hoc Army Courts having jurisdiction of Army officers & men only, and composed of specially detailed senior officers who sit on these courts in addition to their other duties, to which they return as soon as the purpose for which

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Is the time come to put this to War Ministry or to Legal S.C (9743)

I suggest a talk with the latter as the next step. What are your wishes?

W.P.C.

Declassified E.O. 12356 Section 3.3/NND No. 785020

8. The institution of ad hoc courts within the army would be a comparatively easy matter and would involve only

(a) Education of Officers in Military Law

(b) Provision of a nucleus of legal officers as "judge advocates" to advise and assist members of courts and those responsible for the preparation and confirmation of cases.

It would ensure the prompt, and economical handling of the majority of criminal charges and tend to improve the quality of officers by bringing them into closer contact with their men.

9. These proposals are now being studied by the Italian "Procuratore Militare Generale" who realises that something must be done and appears to view the idea not unfavourably. The Italian Army authorities are also studying the matter.

10. It would be appreciated if A.C. would study and comment on this question from the overall point of view, and the effect of any proposed changes on the extra-army functions of the Military Tribunals.

S P Archibald

Major General
M.M.I.A.

maf.

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2712

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

Translation. Urgent.

From:- M. of W. Ref:-102598/I.1

To:- MMIA. 023 Date:- 8th. Feb. 46.

Subject:- Revising of the legal system of the Italian Army.

Ref. your A/023 dated 1/2/46.

In view of speeding up and settling, as soon as possible, the question on the institution of Corps Tribunals, the Minister for War decided to form a commission, presided by him and at which, the u/m will take part:-

- the military general attorney - Lt.Gen.Umberto BORSARI.
- Prof. Ernesto BATTAGLINI - substituting the general attorney of Court of Cassation.
- Div. General Mario MARAZZANI
- Military Court Major Gen. Gaetano LUCATO.
- Vice Admiral Giuseppe MANFREDI
- Brigadier Arnaldo BONELLI.

The Commission will hold its first meeting next friday the 8th inst., ~~xxx~~ at the M. of W. 2711

We shall forward the decisions made by the above Commission.

Sgt. Fabre. Sgd. Lombardi.

Col A/G.
This is to be entered in my folio 42.
1916 11/2 WP

JACP 11/2

TR/vc

Ministero della Guerra
- Gabinetto -

Roma, 8 FEB 1946

URGENTE

Al LA LAND FORCES SUB COMMISSION
- A.C. - (M.M.I.A.)
ROMA

Divisione *Sez.* 102598 /I.1 *Allegati*

Risposta al Foglio del 1.2.946
Div. *Sez.* I A/023

118-3- OGGETTO riforma del sistema legale dell'Esercito Italiano.-

A.

Allo scopo di dare maggiore impulso e definire nel più breve tempo possibile la questione della istituzione dei Tribunali di Corpo, il Ministro della Guerra ha deciso di costituire una commissione da lui stesso presieduta ed alla quale parteciperanno:

- il Procuratore Generale Militare, Ten.Gen.Umberto BORSARI;
- il prof.Ernesto BATTAGLINI, sostituto procuratore generale di Cassazione;
- il Generale di divisione Mario MARAZZANI;
- il Maggiore generale della Giustizia Militare Gaetano LUCATO;
- il contrammiraglio Giuseppe MANFREDI;
- il generale di brigata Arnaldo BONELLI.

La Commissione terrà la sua prima seduta il prossimo venerdì 8 corrente al Ministero della Guerra.

Si fa riserva di comunicare le decisioni alle quali perverrà la suddetta Commissione.-

d'ordine
IL CAPO DI GABINETTO

TR

1600

Declassified E.O. 12356 Section 3.3/NND No. 785020

A.

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d'ordine
IL CAPO DI GABINETTO

TR
1600
Date 8/2
Time 17/00
8/2

P1 8/2

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

Subject : Reform of Legal System in the Italian Army.

(92)

Land Forces Sub Comm. AC.
(M.M.I.A.), R O M E.

A 023

Feb 46.

To : Ministry of War.

Ref our A023 dated 21 Nov 45 and your Gabinetto 100514/1.1 dated 10 Jan 46.

1. It is noted with satisfaction that certain reforms regarding the location and jurisdictional areas of the military tribunals have been agreed upon.

2. At the same time it is pointed out that the more urgent reform, viz the establishment of a system of Courts Martial or Corps Tribunals, has now been under discussion for some 6 months and it is understood that no concrete proposals have so far been adopted.

3. It would be appreciated therefore if this HQ could now be informed what is the precise position reached with regard to the discussions on the subject of Courts Martial referred to in the last paragraph of your a/q letter.

2739

FM 6.

Major-General,
M.M.I.A.

/I.G.

Land forces (MMA).

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

41

AC/4010/4/L. 023 18 January 1946.

SUBJECT : Italian Legislation Udine Province.

TO : Chief Commissioner and Executive Commissioner.
All Sections and Sub-Commissions.

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RECEIVED 21 JAN 46 DATE

Further to this Sub-Commission's memorandum AC/4010/4/L of 29 Dec 45 herewith the schedule of the decrees previously excluded from Allied Military Government territory or certain part thereof:

A.

SCHEDULE

R. Decree - Law No. 15 of 14 January 1944;
R. Decree - Law No. 133 of 5 May 1944;
R. Decree - Law No. 156 of 2 June 1944;
Legislative Decree of the Lieutenant General No. 211 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 212 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 224 of 10 August 1944;
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Giornale d'Italia" Official Gazette No. 63 of 3 October 1944);
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Il Messaggero" Official Gazette No. 63 of 3 October 1944); 2738
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Il Ramo Editoriale degli Agricoltori" Official Gazette No. 63 of 3 October 1944);
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Agenzia Stefani" Official Gazette No. 63 of 3 October 1944);
Ministerial Decree 5 October 1944 (appointing an extraordinary Commissioner for "Istituto Italiano di Credito Fondiario" Official Gazette No. 66 of 10 October 1944);
Ministerial Decree 8 October 1944 (Official Gazette No. 68 of 14 Oct. 1944);
Legislative Decree of the Lieutenant General No. 279 of 19 Oct. 1944;
Legislative Decree of the Lieutenant General No. 311 of 19 Oct. 1944;
Legislative Decree of the Lieutenant General No. 319 of 9 November 1944;
Legislative Decree of the Lieutenant General 31 August 1944 (Official Gazette No. 89 of 2 December 1944);
Legislative Decree of the Lieutenant General of 9 Nov. 1944 (Official Gazette No. 91 of 7 Dec. 1944);
Legislative Decree No. 395 of 12 December 1944;
Ministerial Decree of 5 March 1945 (Official Gazette No. 29 of 8 March 1945);

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A.

SCHEDULE

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R. Decree - Law No. 15 of 14 January 1944;
R. Decree - Law No. 133 of 5 May 1944;
R. Decree - Law No. 156 of 2 June 1944;
Legislative Decree of the Lieutenant General No. 211 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 212 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 224 of 10 August 1944;
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Giornale d'Italia" Official Gazette No. 63 of 3 October 1944);
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Il Messaggero" Official Gazette No. 63 of 3 October 1944);
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Il Ramo Editoriale degli Agricoltori" Official Gazette No. 63 of 3 October 1944);
Presidential Decree 22 Sept. 1944 (appointing a Commissioner for "Agenzia Stefani" Official Gazette No. 63 of 3 October 1944);
Ministerial Decree 5 October 1944 (appointing an extraordinary Commissioner for "Istituto Italiano di Credito Fondiario" Official Gazette No. 66 of 10 October 1944);
Ministerial Decree 8 October 1944 (Official Gazette No. 68 of 14 Oct. 1944);
Legislative Decree of the Lieutenant General No. 279 of 19 Oct. 1944;
Legislative Decree of the Lieutenant General No. 311 of 19 Oct. 1944;
Legislative Decree of the Lieutenant General No. 319 of 9 November 1944;
Legislative Decree of the Lieutenant General 31 August 1944 (Official Gazette No. 89 of 2 December 1944);
Legislative Decree of the Lieutenant General of 9 Nov. 1944 (Official Gazette No. 91 of 7 Dec. 1944);
Legislative Decree No. 395 of 12 December 1944;
Ministerial Decree of 5 March 1945 (Official Gazette No. 29 of 8 March 1945);
Ministerial Decree of 7 October 1945 (Official Gazette No. 34 of 20 March 1945);
Legislative Decree of the Lieutenant General No. 36 of 1 February 1945;
Ministerial Decree 10 October 1944 (Official Gazette of 3 April 1945);
Ministerial Decree of 15 February 1945 (Official Gazette No. 40 of 3 April 1945);
Legislative Decree of the Lieutenant General No. 13 of 25 January 1945;
Royal Decree - Law No. 25/B of 7 December 1943;

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Royal Decree No. 12 of 13 January 1944;
Royal Decree - Law No. 103 of 23 March 1944;
Royal Decree No. 121 of 23 March 1944;
Royal Decree No. 122 of 5 April 1944;
Royal Decree No. 156 of 2 June 1944;
Legislative Decree of the Lieutenant General No. 276 of 20 July 1944;
Ministerial Decree of 28 September 1944 (Official Gazette No. 79 of 9 November 1944);
Legislative Decree of the Lieutenant General No. 303 of 2 November 1944;
Legislative Decree of the Lieutenant General No. 351 of 19 October 1944;
Legislative Decree of the Lieutenant General No. 360 of 19 October 1944;
Legislative Decree of the Lieutenant General No. 386 of 2 November 1944;
Legislative Decree of the Lieutenant General No. 400 of 4 December 1944;
Legislative Decree of the Lieutenant General No. 424 of 5 November 1944;
Legislative Decree of the Lieutenant General No. 434 of 22 November 1944;
Legislative Decree of the Lieutenant General No. 28 of 4 January 1945;
Bando No. 3 of 8 October 1943;
Bando No. 10 of 4 November 1943;
Bando No. 11 of 4 November 1943;
Bando No. 12 of 1 November 1943;
Royal Decree-Law No. 12/B of 2 December 1943;
Royal Decree-Law No. 14/B of 2 December 1943;
Royal Decree - Law No. 21/B of 13 December 1943;
Royal Decree - Law No. 6 of 3 January 1944;
Royal Decree - Law No. 11 of 13 January 1944;
Royal Decree - Law No. 18 of 2 January 1944;
Royal Decree - Law No. 19 of 24 January 1944;
Royal Decree - Law No. 34 of 31 January 1944;
Royal Decree - Law No. 43 of 20 January 1944;
Royal Decree - Law No. 74 of 2 March 1944;
Royal Decree - Law No. 80 of 2 March 1944;
Royal Decree - Law No. 84 of 10 March 1944;
Royal Decree - Law No. 102 of 27 January 1944;
Royal Decree - Law No. 108 of 27 January 1944;
Royal Decree No. 129 of 13 April 1944;
Legislative Decree of the Lieutenant General No. 152 of 3 July 1944;
Royal Decree - Law No. 158 of 4 June 1944;
Legislative Decree of the Lieutenant General No. 187 of 10 August 1944;
Legislative Decree of the Lieutenant General No. 230 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 231 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 233 of 8 September 1944;
Legislative Decree of the Lieutenant General No. 234 of 8 September 1944;
Legislative Decree of the Lieutenant General No. 240 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 248 of 26 September 1944;
Legislative Decree of the Lieutenant General No. 253 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 254 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 275 of 21 September 1944;
Legislative Decree of the Lieutenant General No. 295 of 19 October 1944;
Legislative Decree of the Lieutenant General No. 312 of 26 October 1944;
Legislative Decree of the Lieutenant General No. 329 of 28 September 1944;
Legislative Decree of the Lieutenant General No. 335 of 17 November 1944;
Legislative Decree of the Lieutenant General No. 376 of 23 November 1944;
Legislative Decree of the Lieutenant General No. 377 of 29 September 1944;
Legislative Decree of the Lieutenant General No. 380 of 9 November 1944;
Legislative Decree of the Lieutenant General No. 406 of 22 December 1944;
Legislative Decree of the Lieutenant General No. 18 of 3 January 1945;

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Bando No. 11 of 4 November 1943;
Bando No. 12 of 1 November 1943;
Royal Decree-Law No. 12/B of 2 December 1943;
Royal Decree-Law No. 14/B of 2 December 1943;
Royal Decree - Law No. 24/B of 13 December 1943;
Royal Decree - Law No. 6 of 3 January 1944;
Royal Decree - Law No. 11 of 13 January 1944;
Royal Decree - Law No. 18 of 2 January 1944;
Royal Decree - Law No. 19 of 24 January 1944;
Royal Decree - Law No. 34 of 31 January 1944;
Royal Decree - Law No. 43 of 20 January 1944;
Royal Decree - Law No. 74 of 2 March 1944;
Royal Decree - Law No. 80 of 2 March 1944;
Royal Decree - Law No. 84 of 10 March 1944;
Royal Decree - Law No. 102 of 27 January 1944;
Royal Decree - Law No. 108 of 27 January 1944;
Royal Decree No. 129 of 13 April 1944;
Legislative Decree of the Lieutenant General No. 152 of 3 July 1944;
Royal Decree - Law No. 158 of 4 June 1944;
Legislative Decree of the Lieutenant General No. 187 of 10 August 1944;
Legislative Decree of the Lieutenant General No. 230 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 231 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 233 of 8 September 1944;
Legislative Decree of the Lieutenant General No. 234 of 8 September 1944;
Legislative Decree of the Lieutenant General No. 240 of 24 August 1944;
Legislative Decree of the Lieutenant General No. 248 of 28 September 1944;
Legislative Decree of the Lieutenant General No. 253 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 254 of 3 August 1944;
Legislative Decree of the Lieutenant General No. 275 of 21 September 1944;
Legislative Decree of the Lieutenant General No. 295 of 19 October 1944;
Legislative Decree of the Lieutenant General No. 312 of 26 October 1944;
Legislative Decree of the Lieutenant General No. 329 of 28 September 1944;
Legislative Decree of the Lieutenant General No. 335 of 17 November 1944;
Legislative Decree of the Lieutenant General No. 376 of 23 November 1944;
Legislative Decree of the Lieutenant General No. 377 of 29 September 1944;
Legislative Decree of the Lieutenant General No. 380 of 9 November 1944;
Legislative Decree of the Lieutenant General No. 486 of 22 December 1944;
Legislative Decree of the Lieutenant General No. 18 of 5 January 1945;
Legislative Decree of the Lieutenant General No. 29 of 11 January 1945;
Legislative Decree of the Lieutenant General No. 31 of 19 January 1945;
Legislative Decree of the Lieutenant General No. 35 of 1 February 1945;
Legislative Decree of the Lieutenant General No. 39 of 18 January 1945;
Legislative Decree of the Lieutenant General No. 53 of 1 February 1945;
Legislative Decree of the Lieutenant General No. 56 of 12 March 1945;
Legislative Decree of the Lieutenant General No. 57 of 18 January 1945;
Legislative Decree of the Lieutenant General No. 60 of 8 March 1945;
Legislative Decree of the Lieutenant General No. 87 of 8 February 1945;

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Legislative Decree of the Lieutenant General No. 91 of 19 March 1945;
Legislative Decree of the Lieutenant General No. 104 of 1 February 1945;
Decree of the Chief of the Government of 30 December 1943 (Official Gazette No. 21 of 22 April 1944);
Ministerial Decree of 2 May 1944 (Official Gazette No. 24 of 3 May 1944);
Ministerial Decree of 19 April 1944 (Official Gazette No. 26 of 10 May 1944);
Ministerial Decree of 25 May 1944 (Establishing the amount of remuneration to be taken into account when computing contributions due for labour accide Official Gazette No. 33 of 3 June 1944);
Ministerial Decree of 28 March 1944 (Official Gazette No. 38 of 5 July 1944);
Ministerial Decree of 28 June 1944 (Official Gazette No. 38 of 5 July 1944);
Ministerial Decree 26 July 1944 (Official Gazette No. 40 of 27 July 1944);
Ministerial Decree of 31 May 1944 (Official Gazette No. 44 of 8 August 1944);
Ministerial Decree of 19 September 1944 (Official Gazette No. 59 of 23 Sept. 1944);
Ministerial Decree of 14 November 1944 (Official Gazette No. 82 of 16 November 1944);
Ministerial Decree of 1 December 1944 (Official Gazette No. 6 of 13 January 1945);
Ministerial Decree of 1 January 1945 (Official Gazette No. 7 of 16 January 1945);
Ministerial Decree of 22 January 1945 (Official Gazette No. 13 of 30 January 1945);
Ministerial Decree of 15 February 1945 (Official Gazette No. 21 of 17 February 1945);
Ministerial Decree of 30 March 1945 (Official Gazette No. 41 of 5 April 1945);
Legislative Decree of the Lieutenant General No. 148 of 22 April 1945;
Legislative Decree of the Lieutenant General No. 149 of 26 April 1945;
Decree of the President of the Council of Ministers of 21 April 1945 (Official Gazette No. 55 of 2nd May 1945);
Legislative Decree of the Lieutenant General No. 156 of 5 April 1945 (as stated in para three of the AMG Order published in the Official Gazette No. 62 of 24 May 1945);
Legislative Decree of the Lieutenant General No. 167 of 5 April 1945;
Legislative Decree of the Lieutenant General No. 169 of 22 March 1945;
Legislative Decree of the Lieutenant General No. 198 of 29 March 1945;
Legislative Decree of the Lieutenant General No. 202 of 26 April 1945;
Legislative Decree of the Lieutenant General No. 211 of 8 February 1945;
Legislative Decree of the Lieutenant General No. 226 of 22 March 1945;
Legislative Decree of the Lieutenant General No. 228 of 5 April 1945;
Decree of the President of the Council of Ministers of 10 May 1945 (appointing a Commissioner for Societa' Mutua Assicurazione Enti Cooperativi with head office in Milano) Official Gazette No. 76 of 26 June 1945;
Ministerial Decree of 19 May 1945 (establishing an average or conventional daily remuneration to be paid to agricultural workers for the 1945 treshing of crops) Official Gazette No. 64 of 28 May 1945;
Legislative Decree of the Lieutenant General No. 243 of 15 March 1945;
Legislative Decree of the Lieutenant General No. 244 of 22 March 1945;
Legislative Decree of the Lieutenant General No. 250 of 14 April 1945;
Decree of the President of the Council of Ministers of the 28 May 1945 (establishing the remuneration to be paid to the Vice Commissioners of the High Commissariat for Alimentation) Official Gazette No. 68 of 7 June 1945;
Ministerial Decree of 4 June 1945 (Prices for the 1945 crops of cereals to be consigned to the Peoples' Granaries) Official Gazette No. 68 of 7 June 1945);
Ministerial Decree of 8 June 1945 (Rules relating to the amassing of dry leguminous seeds of the 1945 production) Official Gazette No. 72 of 16 June 1945;
Legislative Decree of the Lieutenant General No. 286 of 26 April 1945;
Ministerial Decree of 7 June 1945 (Freezing fertilizers, fungicides and insecticides) Official Gazette No. 74 of 21 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (Appointing

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Ministerial Decree of 30 March 1945 (Official Gazette No. 41 of 5 April 1945);
Legislative Decree of the Lieutenant General No. 148 of 22 April 1945;
Legislative Decree of the Lieutenant General No. 149 of 26 April 1945;
Decree of the President of the Council of Ministers of 21 April 1945 (Official Gazette No. 55 of 2nd May 1945);
Legislative Decree of the Lieutenant General No. 156 of 5 April 1945 (as stated in para three of the AMG Order published in the Official Gazette No. 62 of 24 May 1945);
Legislative Decree of the Lieutenant General No. 167 of 5 April 1945;
Legislative Decree of the Lieutenant General No. 169 of 22 March 1945;
Legislative Decree of the Lieutenant General No. 198 of 29 March 1945;
Legislative Decree of the Lieutenant General No. 202 of 26 April 1945;
Legislative Decree of the Lieutenant General No. 211 of 8 February 1945;
Legislative Decree of the Lieutenant General No. 226 of 22 March 1945;
Legislative Decree of the Lieutenant General No. 228 of 5 April 1945;
Decree of the President of the Council of Ministers of 10 May 1945 (appointing a Commissioner for Societa' Mutua Assicurazione Enti Cooperativi with head office in Milano) Official Gazette No. 76 of 26 June 1945;
Ministerial Decree of 19 May 1945 (establishing an average or conventional daily remuneration to be paid to agricultural workers for the 1945 treshing of crops) Official Gazette No. 64 of 28 May 1945;
Legislative Decree of the Lieutenant General No. 243 of 15 March 1945;
Legislative Decree of the Lieutenant General No. 244 of 22 March 1945;
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Ministerial Decree of 4 June 1945 (Prices for the 1945 crops of cereals to be consigned to the People' Granaries) Official Gazette No. 68 of 7 June 1945);
Ministerial Decree of 8 June 1945 (Rules relating to the amassing of dry leguminous seeds of the 1945 production) Official Gazette No. 72 of 16 June 1945;
Legislative Decree of the Lieutenant General No. 281 of 20 April 1945;
Ministerial Decree of 7 June 1945 (freezing fertilizers, fungicides and insecticides) Official Gazette No. 74 of 21 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (Appointing a Commissioner for the temporary administration of the "Societa' Anonima Editrice Reggiana", publisher of the newspaper "Il Solco Fascista" of Reggio Emilia) Official Gazette No. 77 of 28 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (appointing a Commissioner for the temporary administration of the "Societa' Editrice" of the daily paper "Gazzetta dell'Emilia" of Modena) Official Gazette No. 77 of 28 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (appointing a Commissioner for the temporary administration of the Societa' Editrice of the daily paper "Il Popolo di Friuli" of Udine) Official Gazette No. 77 of 28 June 1945;

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Decree of the President of the Council of Ministers of 15 June 1945 (appointing a Commissioner for the temporary administration of the S.A.G.A. Societa' Editrice of the daily paper "Il Veneto" of Padua) Official Gazette No. 77 of 28 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (appointing a Commissioner for the temporary administration of the Societa' Editrice of the daily paper "L'Arena" of Verona) Official Gazette No. 77 of 28 June 1945;
Decree of the President of the Council of Ministers of 15 June 1945 (appointing a Commissioner for the temporary administration of the Societa' Editrice of the daily paper "La Provincia" of Como) Official Gazette No. 77 of 28 June 1945;
Decree of the Prime Minister of 15 June 1945 (Appointing a Commissioner for the temporary administration of the Societa' Editrice of the daily paper "Vedetta Fascista" of Vicenza) Official Gazette No. 77 of 28 June 1945;
Bando of the Chief of the General Staff No. 49 of 24 June 1945;
Legislative Decree of the Lieutenant General No. 352 of 4 June 1945;
Ministerial Decree of 15 June 1945 (Official Gazette No. 88 of 24 July 1945);
Ministerial Decree of 1 August 1945 (Prices for dry leguminous seeds of the 1945 production consigned to the People's Granaries) Official Gazette No. 93 of 4 August 1945;
Ministerial Decree of 8 September 1945 (modifying the Ministerial Decree of 8 June 1945 relating to the reserving of dry leguminous seeds of the 1945 production) Official Gazette No. 112 of 18 September 1945;
Articles 14, 15, 16 of the Legislative Decree of the Lieutenant General No. 625 of 5 October 1945;
Legislative Decree of the Lieutenant General No. 545 of 7 September 1945 (as stated in para two of the Allied Military Government Order published in the Official Gazette No. 127 of 23 October 1945);
Legislative Decree of the Lieutenant General No. 546 of 7 September 1945 (as stated in para two of the Allied Military Government Order published in the Official Gazette No. 127 of 23 October 1945);
Price List No. 26 of 17 September 1945 relating to oil prices (Official Gazette No. 115 of 23 September 1945);
Price List No. 28 of 5 October 1945, relating to prices of Sulphur and Glass produced at Vietri sul Mare as well as for fertilisers (Official Gazette No. 125 of 18 October 1945);
Legislative Decree of the Lieutenant General No. 621 of 14 September 1945;
Ministerial Decree of 19 October 1945 (Official Gazette of 25 October 1945);
Decree of the Lieutenant General No. 695 of 1 August 1945;
Legislative Decree of the Lieutenant General No. 702 of 9 November 1945 (as stated in para two of the Allied Military Government Order published in the Official Gazette No. 147 of 7 December 1945);
Price List No. 29 of 3 November 1945 relating to prices of tires for bicycles and motor vehicles (Official Gazette No. 142 of 27 November 1945);
Price List No. 31 of 7 November 1945 relating to prices of gun powder and perphosphate. (Official Gazette No. 142 of 27 November 1945);
Legislative Decree of the Lieutenant General No. 669 of 12 October 1945;
Legislative Decree of the Lieutenant General No. 721 of 5 October 1945.

Declassified E.O. 12356 Section 3.3/NND No. 785020

28 June 1945;
Bando of the Chief of the General Staff No. 49 of 24 June 1945;
Legislative Decree of the Lieutenant General No. 332 of 4 June 1945;
Ministerial Decree of 15 June 1945 (Official Gazette No. 88 of 24 July 1945);
Ministerial Decree of 1 August 1945 (Prices for dry leguminous seeds of the 1945 production consigned to the People's Granaries) Official Gazette No. 93 of 4 August 1945;
Ministerial Decree of 6 September 1945 (modifying the Ministerial Decree of 8 June 1945 relating to the reserving of dry leguminous seeds of the 1945 production) Official Gazette No. 112 of 18 September 1945;
Articles 14, 15, 16 of the Legislative Decree of the Lieutenant General No. 625 of 5 October 1945;
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Legislative Decree of the Lieutenant General No. 546 of 7 September 1945 (as stated in para two of the Allied Military Government Order published in the Official Gazette No. 127 of 23 October 1945);
Price List No. 26 of 17 September 1945 relating to oil prices (Official Gazette No. 115 of 25 September 1945);
Price List No. 28 of 5 October 1945, relating to prices of Sulphur and flour produced at Vietri sul Mare as well as for fertilisers (Official Gazette No. 125 of 18 October 1945);
Legislative Decree of the Lieutenant General No. 621 of 14 September 1945;
Ministerial Decree of 19 October 1945 (Official Gazette of 23 October 1945);
Decree of the Lieutenant General No. 695 of 1 August 1945;
Legislative Decree of the Lieutenant General No. 702 of 9 November 1945 (as stated in para two of the Allied Military Government Order published in the Official Gazette No. 147 of 7 December 1945);
Price List No. 29 of 3 November 1945 relating to prices of tires for bicycles and motor vehicles (Official Gazette No. 142 of 27 November 1945);
Price List No. 31 of 7 November 1945 relating to prices of gun powder and perphosphate. (Official Gazette No. 142 of 27 November 1945);
Legislative Decree of the Lieutenant General No. 669 of 12 October 1945;
Legislative Decree of the Lieutenant General No. 721 of 5 October 1945.

JOHN K. WEBER,
Colonel, Infantry,
Chief Legal Advisor.

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

TRANSLATION

40

From: M.of.W. Ref: 100514/I.1
To: M.M.I.A. Date: 10/1/46

A023

Subject: Reform of the legal system in the Italian Army

33

1 Further to letter 128466/I.1 dated 8th December 1945, we inform you that the suggestions for a reform of the legal system in the Italian Army, have been examined at a meeting of military representatives, in the presence of 2 senior M.M.I.A. officers. The meeting took place on the 20th December 1946 at the office of the Judge Advocate General.

2 It has been agreed upon that a new military tribunal should be set up at Genoa , ~~at~~ because at that military territorial H.Q. no tribunal at present exists; agreements have also been made to amend the ~~territorial~~ jurisdictional areas of the military tribunals, so that as far as possible, this areas may coincide with those of the territorial ~~Area~~. Commands.

Genoa 4th Feb. 1947

3 The La Spezia Military Tribunal, as well as that of Taranto, will remain formed at the Royal Navy, and their jurisdictional powers will cover all the provinces in the territory coming under Florence Military H.Q.

4 The a/m measures will be applied as soon as the military legal position has been normalised. 2734

5 The military Attorney General has then been appointed i/c of forming and presiding over a regular Commission which will study in detail, the possibility of forming Corps Tribunals, (as suggested by M.M.I.A.) and of presenting concrete

BF 1 Feb.

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Tr/ig

Ministero della Guerra
Gabinetto

Roma, 10 GEN 1946

Al LA LAND FORCES SUB COMMIS=
SION A.C.(M.M.I.A.)
R O M A

Decisione *Sez.*
Prot. 100514/I.1 *Allegati*

Risposta al Foglio del 21.11.45
Div. *Sez.* *N.* 2/023

OGGETTO riforma del sistema legale dell'Esercito Italiano

A. 3

A seguito della lettera n.128466/I.1 dell'8 dicembre 1945 si comunica che le proposte di una riforma del sistema legale dell'Esercito Italiano sono state esaminate in una riunione di rappresentanti militari alla quale hanno partecipato anche due ufficiali superiori della M.M.I.A., tenutasi il 20 dicembre scorso presso la Procura Generale Militare.-

E' stata concordata la istituzione di un nuovo Tribunale Militare a Genova, costituito presso quel Comando Militare Territoriale che ne è attualmente sprovvisto, e la modificazione della circoscrizione dei Tribunali Militari in modo da farla coincidere il più possibile con quella dei Comandi Territoriali.-

Il Tribunale Militare di La Spezia, come quello di Taranto, resterebbe costituito presso la Marina ed avrebbe giurisdizione su provincie facenti tutte parte del territorio del Comando Militare di Firenze.-

I suddetti provvedimenti saranno applicati non appena la situazione della giustizia militare sarà normalizzata.-

Il Procuratore Generale Militare è stato poi incaricato di formare e presiedere una regolare Commissione che studierà dettagliatamente la possibilità di istituire i Tribunali di Corpo, come suggerito da codesta M.M.I.A., e di presentare in merito concrete proposte che si fa riserva di comunicare.-

TRANSMISSION

d'ordine
IL CAPO DI GABINETTO

Declassified E.O. 12356 Section 3.3/NND No. 785020

A. 3

A seguito della lettera n.128466/I.1 dell'8 dicembre 1945 si comunica che le proposte di una riforma del sistema legale dell'Esercito Italiano sono state esaminate in una riunione di rappresentanti militari alla quale hanno partecipato anche due ufficiali superiori della M.M.I.A., tenutasi il 20 dicembre scorso presso la Procura Generale Militare.-

E' stata concordata la istituzione di un nuovo Tribunale Militare a Genova, costituito presso quel Comando Militare Territoriale che ne è attualmente sprovvisto, e la modificazione della circoscrizione dei Tribunali Militari in modo da farla coincidere il più possibile con quella dei Comandi Territoriali.-

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2748

TRANSMISSION
IN 0930
Date 14/
OUT Time 1015
Date 14/

P1 B034

d'ordine
IL CAPO DI GABINETTO

Declassified E.O. 12356 Section 3.3/NND No. 785020

A.023

TRANSLATION

FROM: Air Force Ministry REF: 36247

TO: War Ministry DATE: 18.12.45

39

SUBJECT: Cessation of the state of war

Further to the above quoted letter, this Ministry agrees with the point of view that at the time of the declaration of the cessation of the state of war, the total demobilisation of the armed forces should likewise be carried out, in order that the peacetime military penal laws may be applied to all military at the same time.

This is provided that that above mentioned total demobilisation may be effected without different measures, even of a partial nature, being requested by the Allied High Command. 2732

Sgd. CEVOLOTTO

Minister.

FROM: Ministry of War REF: 129465/1.1

TO: M.M.I.A. and other addressees DATE: 27.12.45

Declassified E.O. 12356 Section 3.3/NND No. 785020

with the point of view that at the time of the declaration of the cessation of the state of war, the total demobilisation of the armed forces should likewise be carried out, in order that the peacetime military penal laws may be applied to all military at the same time.

This is provided that that above mentioned total demobilisation may be effected without different measures, even of a partial nature, being requested by the Allied High Command. 2732

Sgd. CEVOLOTTO

Minister.

FROM: Ministry of War REF: 129465/1.1

TO: M.M.I.A. and other addressees DATE: 27.12.45

..... for information, with reference to letter 126926/1.1. of 1st. December, relative to the cessation of the state of war.

F38.

Sgd. LOMBARDI

Col.

C. Danin Cpl.

Declassified E.O. 12356 Section 3.3/NND No. 785020

C O P I A

MINISTERO DELL'AERONAUTICA
Gabinetto del Ministro

n.36247 di prot. Roma, 18 dicembre 1945

AL MINISTERO DELLA GUERRA - Gabinetto -
R O M A

OGGETTO: Cessazione dello stato di guerra

In esito al dispaccio sopracitato questo Ministero concorda nell'avviso che all'atto della dichiarazione di cessazione dello stato di guerra debba altresì addivenirsi alla smobilitazione totale delle forze armate, così da poter applicare a tutti i militari nello stesso tempo le disposizioni della legge penale militare di pace.-

Ciò purchè alla anzidetta smobilitazione totale possa giungersi senza che siano richiesti diversi provvedimenti, anche di carattere parziale, da parte del Comando Superiore Alleato.-

IL M I N I S T R O
F.to Cevolotto

Tr/ig

MINISTERO DELLA GUERRA
Gabinetto

n. 129365/I.1 di prot. Roma, 27 DIC. 1945
133-12-1

AL MINISTERO DELLA MARINA - Gabinetto - 27 ROMA
ALLO STATO MAGGIORE GENERALE ROMA
ALLO STATO MAGGIORE REGIO ESERCITO SEDE
ALLA PROCURA GENERALE MILITARE ROMA
ALLA LAND FORCES SUB COMMISSION A.C. (M.M.I.A.) ROMA

.....per conoscenza, in riferimento alla lettera n.126926/I.1 del 1° dicembre c.a., relativa alla cessazione dello stato di guerra.-

d'ordine
IL CAPO DI GABINETTO

Declassified E.O. 12356 Section 3.3/NND No. 785020

to di guerra debba altresì addivenirsi alla smobilitazione totale delle forze armate,così da poter applicare a tutti i militari nello stesso tempo le disposizioni della legge penale militare di pace.-

Ciò purchè alla anzidetta smobilitazione totale possa giungersi senza che siano richiesti diversi provvedimenti,anche di carattere parziale, da parte del Comando Superiore Alleato.-

IL MINISTRO
F.to Cevoletto

Tr/ig

MINISTERO DELLA GUERRA
Gabinetto

n. 129365/I.1 di prot. Roma, 27 DIC. 1945
133-12-1

AL MINISTERO DELLA MARINA - Gabinetto - ROMA
ALLO STATO MAGGIORE GENERALE ROMA
ALLO STATO MAGGIORE REGIO ESERCITO SEDE
ALLA PROCURA GENERALE MILITARE ROMA
ALLA LAND FORCES SUB COMMISSION A.C. (M.M.I.A.) ROMA

.....per conoscenza, in riferimento alla lettera n.126926/I.1 del 1° dicembre c.a.,relativa alla cessazione dello stato di guerra.-

d'ordine
IL CAPO DI GABINETTO

1000
Date 31/.2
1020
7/1

Priority 3

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

TRANSLATION

A023. 38.

From : M of War

Ref : 126926/I.1
133-12-1

To : Addressees & copy to MAIA

Dtd : 1 Dec 45

Subject : Cessation of State of War.

The Military Attorney General has forwarded to this Ministry, a project for a legislative decree, containing rules intending to govern the passing from the Military Penal Code (War time) to the Military Penal Code (Peace time). The Attorney General points out that this would only be applicable in part whenever, upon declaration of the cessation of a state of war, there existed units still mobilised, and would not be applicable at all, if on the said date of declaration of cessation, there persisted the present state of general mobilisation of the Italian Armed Forces.

In fact, while Article 3 of the Military Penal Code (War time), is applicable to offences committed under the act stipulated therein, and committed from the moment of declaration of a state of war to the moment of declaration of cessation of same, Article 11 of the same Code - with reference to persons - is applicable to military offences committed by those belonging to the mobilised forces, independent of whether or not there exists a state of war.

Taking into account the grave difficulties with which the Administration of the Military Legal Corps would meet (difficulties common to all the Armed Forces) should at the moment of declaration of the cessation of a state of war, there still exist general or partial mobilisation measures, I beg you kindly to review the possibility of adopting the necessary measures whereby previously, or at least simultaneously contemporaneously with the declaration of cessation of a state of war, there could be brought about the demobilisation of the Italian Armed Forces, so that instructions for the Military Penal Code (peace time) may be applied to all military personnel at the same time.

I respectfully await your communication with regard to the above.

sgd. the Minister,
Jacini

Declassified E.O. 12356 Section 3.3/NND No. 785020

D R A F T O R D E R

WHEREAS the Allied military Government in Italy will be discontinued on 31 December 1945 except in Venezia Giulia and in the Province of Udine ,

Now, Therefore, I, ... Brigadier, C.B.E., ...O., in the name and on behalf of the Chief Civil Affairs Officer, Allied military Government , hereby order as follows:

1. The decrees listed in the schedule below which have been previously excluded from Allied Military Government territory or certain parts thereof including the Province of Udine shall become operative and shall have full force and effect of law in the Province of Udine as from the 1st January 1946.

2. All decrees promulgated in the Gazzetta Ufficiale issue No. 144 of 1st December 1945 and in following issues shall until further order become effective in the Province of Udine on the same date as in the territory administered by the Italian Government without an express order of the AMG to that effect. Provided, however, that the Provincial Commissioner of the said Province shall have power to suspend or modify in part or in full by Provincial Order the provisions of any decree contained in any of the aforementioned issues of Gazzetta Ufficiale as applied in the said Province.

Date :

2723

Note : Schedule will be sent under separate cover.

Declassified E.O. 12356 Section 3.3/NND No. 785020

TRANSLATION

FROM: Military Attorney General of the Realm

REF: 4388 S.G.

TO: M.M.I.A.

DATE: 27.12.45

SUBJECT: Proposals for alteration of the present organisation of the Military Legal Branch.

We forward for your information a copy of the report regarding the examination of the prpposals for alteration of the present organisation of the Military Legal Branch.

Sgd. BORSARI

M.A.G.

O.Danin Cpl.

AAG/ Am so Time marches on, and Borsari only lookables. B.F. 4 Feb. 4 Jan 46.

2728

Declassified E.O. 12356 Section 3.3/NND No. 785020

REGNO
D'ITALIA

PROCURA GENERALE MILITARE DEL RE IMPERATORE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 4388 Prot. S. Q. Roma, li 27 dicembre 1945

Risposta a nota del N. Alleg. 1

STAMPERIA REALE DI ROMA

Oggetto: Proposte di modificazioni al vigente ordinamento giudiziario militare.-

A.

ALLA COMMISSIONE ALLEATA
M. M. I. A.
R O M A

66

^^^^^^^^^^

Si trasmette per conoscenza copia del verbale relativo all'esame di proposte di modifiche al vigente ordinamento giudiziario militare.

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

1600
IN Date 28/12
Time
2
Pages

Nr. Bonn.
2727

TRANSLATION

The following assembled at the office of the Military Attorney General on the 20th.December 1945,to examine some proposals for alteration to the present organisation of the Military Legal Branch :

Lieut.General,Chief of the M.L.B.,BORSARI - Military Attorney Gen.,
Lt.Col. SALVI - for the Army General Staff
Major MONTU - for the Cabinet of the War Ministry
Colonel,Commissariat,PENSA } - for the Ministry of Marine
Major,Commissariat,PACIDIO }

Lieut.Col. ROCCO - for the Air Force Ministry
Major,M.L.B.,PANTANO - of the office of the Military Attorney Gen.

The following attended as representatives of the Allied Commission (M.M.I.A.) :

Lieut.Col. GILMOUR and Major BAUMAN.

==========

On the first item on the agenda :

Modification of the present areas of jurisdiction of the military tribunals,to bring them into line with those of the Military Territorial Commands.

The Military Attorney General observed that the above mentioned modifications seem desirable from the point of view of evident practical utility : but he considers that for the moment, and till such time as a satisfactory arrangement in the

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Major, Commissariat, PACIBIC)

Lieut.Col. ROCCO - for the Air Force Ministry

Major, M.L.B., PANTANO - of the office of the Military Attorney Gen.

The following attended as representatives of the Allied Commission (M.M.I.A.) :

Lieut.Col. GILMOUR and Major BAUMAN.

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On the first item on the agenda :

Modification of the present areas of jurisdiction of the military tribunals, to bring them into line with those of the Military Territorial Commands.

The Military Attorney General observed that the above mentioned modifications seem desirable from the point of view of evident practical utility : but he considers that for the moment, and till such time as a satisfactory arrangement in the functioning of the judicial offices has been reached, a reform would not be advisable : any change in present conditions, as was shown in the recent changes (closing down of the Maierata Military Tribunal and the Catanzaro Section), would harm the normal development of the numerous proceedings pending; the weakness of the police forces and the known difficulties of communications and penal establishments would not permit of the placing at the disposal of the new judge with the due promptness, the prisoners whose cases are to be completed.

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Consideration must also be given to the situation, which is permanent, of the Military Tribunals of La Spezia and Taranto which must necessarily exercise their jurisdiction in territory which at the same time is under the command of one Military Territorial H.Q.

In respect of the asserted necessity of arranging urgently for the changing of the areas of jurisdiction, it is recalled that in the period during which the military territorial tribunals were reduced to six, each of them exercised their jurisdiction in the territory of several Army Corps and no appreciable difficulties were complained of.

The Military Attorney General then requested the representatives of the various departments concerned to express their opinion, especially with regard to the difficulties pointed out.

The discussion touched mainly on the position of the Military Tribunals of La Spezia and Taranto.

For the General Staff, Lieut.Col.Salvi proposed that the La Spezia tribunal change its location to Genoa and exercise its jurisdiction in the territory under the control of the Military Territorial Command of that city, even though remaining formed at the Navy.

2725

For the Navy, Col.Pensa pointed out in opposition that the tribunals formed at the H.Q.s of naval departments are located at La Spezia and Taranto because the highest coastal Naval Commands are also located, and these exercise their jurisdiction in a territory in which are found the most important military naval bases, over

Declassified E.O. 12356 Section 3.3/NND No. 785020

difficulties were complained of.

The Military Attorney General then requested the representatives of the various departments concerned to express their opinion, especially with regard to the difficulties pointed out.

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2723

For the Navy, Col.Pensa pointed out in opposition that the tribunals formed at the H.Q.s of naval departments are located at La Spezia and Taranto ~~where~~ because the highest coastal Naval Commands are also located, these and exercise their jurisdiction in a territory in which are found the most important military naval bases, over which the major part of the Navy shore forces are distributed.

It is thus rendered possible that, without deviating from the principle of unity of jurisdiction for all members of the armed forces, the La Spezia and Taranto tribunals deal with the majority of crimes committed by Naval personnel.

Lieut.Col. Gilmour of the M.M.I.A. considered that the difference could be overcome by creating for La Spezia the same situation as that existing for the Taranto Tribunal in respect of

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the Bari Military Command;i.e.,the Military Tribunal of La Spezia,losing the province of Genoa,could exercise its jurisdiction only in the provinces of La Spezia,Apuania,Lucca, Pisa,and Leghorn,which are all included in the territory under the control of the Florence Military Territorial Command.

Another Military Territorial Tribunal could be formed at Genoa,having jurisdiction over the territory under the control of the Genoa Military Territorial Command.

Lieut.Col.Salvi of the General Staff upheld the same thesis;that all the Military Territorial Commands,and therefore also that of Genoa,must have their own tribunal.

After having expressed their own points of view,the assembly agreed in considering that the formation of the Genoa Military Tribunal would permit of attaining the result of a tribunal being formed at each territorial command.This would,moreover,avoid the Navy having to renounce one of the two tribunals formed at its H.Q.s.

The advisability was likewise affirmed of modifying the areas of jurisdiction of the Tribunals provided that it was possible to thus attain the desired territorial equality between Tribunals and Military Commands.

- 2724 -

In line with the specific observations of the Military Attorney General the point was stressed that the reform must, however,follow,in time,the putting into effect of the following measures,already announced as forthcoming shortly:

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The advisability was likewise affirmed of modifying the areas of jurisdiction of the Tribunals provided that it was possible to thus attain the desired territorial equality between Tribunals and Military Commands.

In line with the specific observations of the Military Attorney General the point was stressed that the reform must, however,follow,in time,the putting into effect of the following measures,already announced as forthcoming shortly:

1) - Measure of Sovereign clemency.
2) - Declaration of the cessation of the state of war.
3) - Measure abrogating Art.11 of L.D.L. No.106 of 8th.Feb.1945, relating to more severe treatment of crimes of absence, which has caused excessive crowding of prisons.

Only when the above measures have shown results in their effects will it be possible to approximate a normal situation which will be of help in any change of areas of jurisdiction.

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The second item on the agenda was then discussed:

Institution of court martials or Corps tribunals.

The Military Attorney General expounded the main lines of a primary scheme,pointed out for the larger part to the Allied Commission (M.M.I.A.) and the Ministry of War,compiled bearing in mind the basic principles of the Shipboard Tribunals and the Special Military Tribunals and those of the British CourtsMartial.Afterwards,pointing out that the institution of Corps Tribunals would represent a radical innovation to the present laws of procedure and military judicial organisation,the M.A.G. considered that two essential points should first be clarified, the first by the representatives of the Allied Commission, the second by the representatives of the armed forces Ministries:

1) Whether the proposal to form corps tribunals has been suggested by M.M.I.A. as a remedy of a temporary circumstantial nature to obviate present inconveniences,caused through the large number of proceedings pending at the military tribunals, or as a reform of a permanent nature,which would still have effect even after the not far distant return to normal of the military legal branch,in view of objective reasons of real usefulness which are recognised in the work of the units to be formed. 2125

Recalling the discussion on the first item on the agenda, the M.A.G. considered that he could affirm that,when the afore mentioned measures had been put into effect,we should undoubtedly reach that return to normal of the service which will permit of the territorial military tribunals carrying

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laws of procedure and military judicial organisation, the M.A.G. considered that two essential points should first be clarified, the first by the representatives of the Allied Commission, the second by the representatives of the armed forces Ministries:

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Recalling the discussion on the first item on the agenda, the M.A.G. considered that he could affirm that, when the aforè mentioned measures had been put into effect, we should undoubtedly reach that return to normal of the service which will permit of the territorial military tribunals carrying out properly and speedily the judicial labours which are their duty.

Lieut.Col.Gilmour stated that for all that the proposal may have originated due to a desire to see a speedy elimination of the large number of proceedings pending at the tribunals, it is in accordance with the conviction that even in peace time the corps tribunals could favour a speedier settlement of proceedings and would correspond to the requirements of good judgement.

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In theory, which finds precedent in the military organisation of the various Italian states before their unification in the territory of the Realm, it has met with success in the legislation of England and other countries.

He considered that in any event, any definite decision should be made on the basis of the particular situation of the Italian armed forces.

2) Whether, on account of the preparation of the officers who would have to be called on to form part of the corps tribunals as judges, on account of prevailing conditions, in which the said units would have to exercise their jurisdiction, and on account of the repercussions which they would have on the discipline of the units, the reform appears advisable to the representatives of our armed forces.

Major Montù, for the Liaison Office of the War Ministry, stated the opinion of Undersecretary General Chatrian, who held that the reform would not be advisable, bearing in mind above all that the difficulties which the Corps Tribunals would have to obviate, will soon be overcome by a series of radical measures which will have a positive and tangible effect on the clearing up of the arrears.

The reform does not find the atmosphere of army officers prepared and for their new task they would not have that specific technical preparation which is required for their duties as judges. 2722

Differences in judgement would easily be met with and at

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The reform does not find the atmosphere of army officers 2722 prepared and for their new task they would not have that specific technical preparation which is required for their duties as judges.

Differences in judgement would easily be met with, and, at least in the early days of the putting into effect of the reform, the selection of judges would be found difficult, in view of the fact that at the moment many officers may be considered unsuitable to fulfill the duties of judge in view of their position before being re-employed in service.

Lieut. Col. Salvi, for the General Staff, did not show himself against the reform, which, however, would have to be more widely valued.

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For the Navy, Col.Pensa and Major Pacidio observed that officers of the Italian Navy, who have practically all had occasion to form part of shipboard tribunals, could, without difficulty, be called on to form part of Corps Tribunals; but they expressed their personal doubts as to the convenience of the reform, especially at the present moment.

For the Air Force, Lieut.Col.Rocco expressed, in the main, a favourable opinion.

After having discussed some points of the project in greater detail and listened to the explanations of the Allied representatives regarding the functioning of Court Martials in the English Armed Forces, the assembly, although admitting the importance of the concern expressed on some points by the various parties, expressed a favourable opinion on a more detailed study of the matter which should lead to the production of a definite legal measure draft.

The M.M.I.A. representatives stated that they were prepared to supply information and explanations at any time.

2121

O.Danin Cpl.

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heard and listened to the explanations of the Allied representatives regarding the functioning of Court Martials in the English Armed Forces, the assembly, although admitting the importance of the concern expressed on some points by the various parties, expressed a favourable opinion on a more detailed study of the matter which should lead to the production of a definite legal measure draft.

The M.M.I.A. representatives stated that they were prepared to supply information and explanations at any time.

2121

O. Danin Cpl.

Declassified E.O. 12356 Section 3.3/NND No. 785020

L'anno 1945, il 20 del mese di dicembre presso la Procura Generale Militare si sono riuniti per l'esame di alcune proposte di modifiche al vigente ordinamento giudiziario militare:

Ten.Gener.Capo G.M. BORSARI - Procuratore Generale Militare

Ten.Col. SALVI - per lo Stato Maggiore del R.E.

Magg. MONTU' - per il Gabinetto del Ministero della Guerra - Ufficio Coordinamento

Col.Commiss. PENSA) { per il Ministero della Marina

Magg. " PACIDIO) { per il Ministero della Marina

Ten.Col. " ROCCO - per il Ministero dell'Aeronautica

Magg.G.M. PANTANO - della Procura Generale Militare.

Sono intervenuti in rappresentanza della Commissione Alleata (M.M.I.A.):

Ten.Col. GILMORE ed il Maggiore BAUMAN.

==========

Sulla prima questione all'ordine del giorno:

<u>Modifiche alle attuali circoscrizioni dei tribunali militari, per renderle aderenti a quelle dei comandi militari territoriali</u>.

Il Procuratore Generale Militare, osserva che le predette modifiche appaiono desiderabili perchè rispondenti a criteri di evidente pratica utilità; ma ritiene che per il momento e fino a quando non si avrà un assetto soddisfacente nel funzionamento degli Uffici giudiziari una riforma non sia consigliabile: ogni cambiamento nelle attuali circostanze, come è dimostrato dei mutamenti più recenti (soppressione del Tribunale Militare di Macerata e della Sezione di Catanzaro) danneggerebbe il normale svolgimento

Declassified E.O. 12356 Section 3.3/NND No. 785030

Col.Commiss. PENSA) { per il Ministero della Marina
Magg. " PACIDIO)
Ten.Col. " ROCCO - per il Ministero dell'Aeronautica
Magg.G.M. PANTANO - della Procura Generale Militare.

Sono intervenuti in rappresentanza della Commissione Alleata (M.M.I.A.):
Ten.Col. GILMORE ed il Maggiore BAUMAN.

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./.

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E' inoltre da considerare la situazione, permanente que_
sta, dei Tribunali militari di La Spezia e Taranto, i quali ne_
cessariamente debbono esercitare la loro giurisdizione in terri_
torio sottoposto, nello stesso tempo, ad un Comando Militare Ter_
ritoriale del R.E.

Quanto alla asserita necessità di provvedere con urgenza
ai mutamenti di circoscrizione, ricorda che nel periodo di tempo
durante il quale i tribunali militari territoriali erano stati
ridotti a sei, ciascuno di essi esercitava la sua giurisdizione
sul territorio di più Corpi d'Armata, e non si lamentavano note_
voli inconvenienti.

Il Procuratore Generale Militare chiede quindi ai rappre_
sentanti dei vari Enti interessati di esprimere il loro parere,
specie in ordine alle prospettate difficoltà.

La discussione tocca principalmente la posizione dei tri_
bunali militari di La Spezia e Taranto.

Per lo S.M. il Ten.Col. Salvi propone che il tribunale
di La Spezia sposti la sua sede a Genova ed eserciti la sua
giurisdizione sul territorio sottoposto al Comando militare ter_
ritoriale di quella città, pur rimanendo costituito presso la
R.Marina.

Per la R.Marina il Col. Pensa oppone che i tribunali
costituiti presso i Comandi di dipartimento marittimo hanno
la loro sede in La Spezia e Taranto, perchè colà si trovano i
più alti Comandi Marittimi costieri ed esercitano la giurisdizio_
ne su un territorio in cui si trovano le più importanti basi
militari marittime, presso le quali è distribuita la maggior par_
te delle forze a terra della Marina.

Ciò rende possibile che, senza venir meno al criterio
della unicità di giurisdizione per tutti gli appartenenti alle

Declassified E.O. 12356 Section 3.3/NND No. 785020

ridotti a sei, ciascuno di essi esercitava la sua giurisdizione sul territorio di più Corpi d'Armata, e non si lamentavano notevoli inconvenienti.

Il Procuratore Generale Militare chiede quindi ai rappresentanti dei vari Enti interessati di esprimere il loro parere, specie in ordine alle prospettate difficoltà.

La discussione tocca principalmente la posizione dei tribunali militari di La Spezia e Taranto.

Per lo S.M. il Ten.Col. Salvi propone che il tribunale di La Spezia sposti la sua sede a Genova ed eserciti la sua giurisdizione sul territorio sottoposto al Comando militare territoriale di quella città, pur rimanendo costituito presso la R.Marina.

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Ciò rende possibile che, senza venir meno al criterio della unicità di giurisdizione per tutti gli appartenenti alle forze armate, i tribunali di La Spezia e Taranto conoscano della maggior parte dei reati commessi dai marinai.

Il Ten. Col. Gilmore della M.M.I.A. ritiene che il contrasto si potrebbe risolvere creando per La Spezia la stessa situazione esistente per il Tribunale di Taranto di fronte al

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Comando militare di Bari: cioè il Tribunale militare di La Spe_ zia, perdendo la provincia di Genova, potrebbe esercitare la sua giurisdizione solo sulle provincie di La Spezia, Apuania, Lucca, Pisa e Livorno, che sono tutte comprese nel territorio sottoposto al Comando militare territoriale di Firenze.

A Genova si potrebbe istituire un altro Tribunale mili_ tare territoriale avente giurisdizione su tutto il territorio dipendente dal Comando militare territoriale di Genova.

Il Ten.Col. Salvi dello S.M. sostiene la stessa tesi; che tutti i Comandi militari territoriali, e pertanto anche quello di Genova, debbono avere il proprio tribunale.

Dopo aver espresso i loro particolari punti di vista, gli intervenuti concordano nel ritenere che l'istituzione del Tribunale militare di Genova permetterebbe di raggiungere il risultato che presso ogni Comando territoriale sia costituito un tribunale. Ciò eviterebbe inoltre che la R.Marina debba ri_ nunciare ad uno dei due tribunali costituiti presso i suoi Co_ mandi.

Parimenti viene affermato la convenienza di modificare le circoscrizioni dei Tribunali sì che possa conseguirsi la de_ siderata corrispondenza territoriale tra Tribunali e Comandi militari.

In conformità delle specifiche osservazioni del Procura_ tore Generale Militare, viene espresso l'avviso che la riforma debba però seguire nel tempo l'attuazione dei seguenti 2718 provvedi_ menti, già annunziati come prossimi:

1) Provvedimento di Sovrana clemenza.
2) Dichiarazione di cessazione dello stato di guerra.
3) Provvedimento di abrogazione dell'art.11 del D.L.L.8 febbraio 1945 n°106 relativo al più rigoroso trattamento dei reati di

Declassified E.O. 12356 Section 3.3/NND No. 785020

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2) Dichiarazione di cessazione dello stato di guerra.
3) Provvedimento di abrogazione dell'art.11 del D.L.L.8 febbraio 1945 n°106 relativo al più rigoroso trattamento dei reati di assenza dal servizio, che ha creato un eccessivo affollamento delle carceri.

Solo quando i predetti provvedimenti avranno spiegato i loro effetti, sarà possibile agire su una situazione normale, che renderà agevole ogni spostamento di circoscrizione.

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Viene successivamente discussa le seconda questione all'ordine del giorno:

Istituzione di Corti marziali o tribunali di Corpo.

Il Procuratore Generale Militare espone le linee fondamentali di un primo schema di massima comunicato alla Commissione Alleata (Sottocommissione per l'Esercito) ed al Ministero della Guerra, compilato tenendo presenti insieme i criteri informatori dei tribunali di bordo e dei tribunali militari straordinari e quelli delle Corti marziali britanniche. Indi, ponendo in rilievo che la istituzione dei Tribunali di corpo rappresenterebbe una radicale innovazione alle leggi di procedura e di ordinamento giudiziario militare vigenti, ritiene che vadano preliminarmente chiariti due punti essenziali, il primo da parte dei rappresentanti della Commissione Alleata, il secondo da parte dei rappresentanti dei Ministeri militari:

1) Se la proposta di istituire dei tribunali di corpo sia stata suggerita dalla M.M.I.A. come rimedio di carattere contingente per ovviare agli attuali inconvenienti, derivanti dal grande numero dei processi pendenti presso i tribunali militare, ovvero quale riforma di carattere permanente, che dovrebbe aver vigore anche dopo la non lontana normalizzazione dei servizi della giustizia militare, in vista di obbiettivi motivi di intrinseca utilità che si ravvisino nell'opera degli istituendi organi.

Richiamandosi alla discussione svoltasi in ordine alla prima questione, ritiene di potere affermare, che quando avranno avuto attuazione i provvedimenti prima specificati, si raggiungerà indubbiamente quella normalizzazione dei servizi che consentirà ai tribunali militari territoriali di svolgere con regolarità e sollecitudine il lavoro giudiziario di loro competenza. 2717

Il Ten.Col.Gilmore dichiara che per quanto la proposta

Declassified E.O. 12356 Section 3.3/NND No. 785020

e quelli delle Corti marziali britanniche. Indi, ponendo in ri_
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e sollecitudine il lavoro giudiziario di loro competenza.

Il Ten.Col.Gilmore dichiara che per quanto la proposta sia stata occasionata dalla preoccupazione di vedere eliminato in breve tempo il grande numero dei procedimenti pendenti presso i tribunali, essa risponde al convincimento che i tribunali di corpo potrebbero anche per il tempo di pace favorire una più ra_
pida e pronta definizione dei processi e corrisponderebbe alle

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Declassified E.O. 12356 Section 3.3/NND No. 785020

esigenze di una buona giustizia.

In sistema, che trova precedenti negli ordinamenti militari di vari stati italiani prima della unificazione del territorio del Regno, è stato accolto con successo nelle legislazioni dell'Inghilterra e di altri paesi.

Ritiene in ogni modo che ogni decisione definitiva in merito debba essere presa in base alla particolare situazione delle forze armate italiane.

2) Se per la preparazione degli ufficiali che dovrebbero essere chiamati a far parte dei tribunali di corpo come giudici, per le condizioni ambientali, in cui i detti organi dovrebbero esercitare la loro giurisdizione e per i riflessi che se ne avrebbero sulla disciplina dei reparti, la riforma appare consigliabile ai rappresentanti delle nostre forze armate.

Il maggiore Montù per l'Ufficio Coordinamento del Ministero della Guerra riferisce il parere del Sottosegretario Generale Chatrian, il quale ritiene che la riforma non sia opportuna tenuto conto sopratutto del fatto che le difficoltà, cui i Tribunali di corpo dovrebbero ovviare stanno per essere superate da tutta una serie di radicali provvedimenti, che avranno positivo e tangibile effetto per la liquidazione dell'arretrato.

La riforma non trova preparato l'ambiente degli ufficiali del R.Esercito i quali non avrebbero per il nuovo compito quella preparazione tecnica specifica che si richiede per le funzioni di giudice.

Si andrebbe facilmente incontro a difformità di giudicati, ed almeno nei primi tempi di attuazione della riforma difficile riuscirebbe la scelta dei giudici, dato che sul momento molti ufficiali potrebbero essere ritenuti non idonei per la funzione di giudice in vista della loro posizione precedente al

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Il Ten.Col. Salvi per lo Stato Maggiore non manifesta sfavore per la riforma, che dovrebbe però essere vagliata più ampiamente.

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Per la Marina il Col. Pensa ed il Magg. Pacidio osservano che gli ufficiali della R. Marina, che hanno quasi tutti avuto occasione di partecipare a Tribunali di bordo, potrebbero senza difficoltà essere chiamati a far parte dei Tribunali di corpo; ma esprimono i loro personali dubbi sulla convenienza della riforma specie nel momento attuale.

Per la R.Aeronautica il Ten. Col. Rocco esprime avviso favorevole in via di massima.

Dopo aver discusso più particolarmente alcuni punti del progetto e sentiti i chiarimenti dei rappresentanti Alleati sul funzionamento delle Corti marziali presso le forze armate inglesi gli intervenuti, pur ammettendo l'importanza delle preoccupazioni da varie parti manifestate, esprimono parere favorevole allo studio più dettagliato dell'argomento che dovrebbe condurre alla redazione di uno schema definitivo di provvedimento legislativo.

I rappresentanti della M.M.I.A. si dichiarano disposti a fornire in qualunque momento chiarimenti e notizie.

Declassified E.O. 12356 Section 3.3/NND No. 785020

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OFFICE NOTE

WP 35

Reference this HQ letter A 023 of 21 Nov.

A meeting was held in Gen Borsari's office on 19 Dec.
There were present Gen BORSARI and representatives of SMRE, the Military Under Secretary and the Italian Navy.

The meeting opened with a long rambling statement by BORSARI as to why it was inopportune and inadvisable to reorganise the judicial areas of the Military Tribunals to correspond with those of the Territorial Commands. The representative of the Military Under Secretary supported Borsari. The officer from SMRE however was vehement that it could and should be done. After a considerable amount of talk it was agreed that by adding one Military Tribunal it could be done quite easily, and General Borsari agreed that it would be done in about 3 months time which time they hope to have passed the Amnesty.

BF 1 April

General Borsari then went on to the question of setting up Courts Martial. He explained what was involved and gave a number of reasons why it was inadvisable to do it, the usual statement that if nothing was done the regrettable existing situation would right itself in time, was made. I pointed out that this was not so and that the situation was getting steadily worse not better.

General Borsari then asked me whether we had put forward our suggestion because of the excellence of our systems or because of the deplorable situation existing in the Italian Army. I answered that we put it forward as being a perfectly workable system which in our opinion was the only solution to their problem. The Navy representative then pointed out it could mean more work for himself and his officers . His fear of this seemed very real.

The representative of the Military Under Secretary then made a long speech. He was a young officer obviously carefully briefed to come to the meeting and oppose the proposal strongly. His objections amounted to the fact that the Italian officers for a variety of reasons just can not be trusted to administer justice impartially. He explained that some are ex fascists, some ex partisans some regulars, some have themselves been epurated or are being epurated, and that no two would take the same view as to the gravity of an offence or the punishment to be awarded. I told him that we appreciate the difficulty and saw sense in some of his arguments but that if our proposed solution was inacceptable what measures could be suggested to overcome the situation which had got to be overcome.
The answer was none.

The SMRE representative then spoke and supported the introduction of Courts Mariel, in which he saw no grave difficulties. General discussion then followed in which they asked several questions as to how we ran our own Courts.

2714

General Borsari then summed up in favour of the introduction of Courts Martial (this change of front at the end of a long session is a common habit of his) All (except the Under Secretary's rep.) agreed that these courts could and would be set up.

General Borsari said it would take some little time to draw up the necessary legislation and get it passed the Council of Ministers.

The situation will require careful watching. I am not at all sure that

Declassified E.O. 12356 Section 3.3/NND No. 785020

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B.F. 1 apart. The situation will require careful watching. I am not at all sure, that Borsari intends to do anything in the matter.

C.O.C. for information WP.

Lord Jellicoe talk to Prime Minister about Fascist time I met him

27 Dec

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Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

Translation (34)

from: Gen. Mil.Attorney
To : MMIA

023

ref. 4268/P.G.
I5 December 1945

Subject: Reform of the Military Penal procedure.

On 20 Dec.I945, at I000 hrs, a Commission will meet at this Gen.Mil.Attorney Office. This Commission will examine the matters contained in letter A/023 dated 2I Nov.I945 of MMIA.

The representatives of M of W (SMRE and A Office) of the Navy and Air Force will will attend this meeting.

We beg you, if you will deem it advisable, to send one of your representatives, who will thus become acquamnted with the items to be dealt with and take part in the discussion.

C/u

(30)

Borsari

713

Translation
JACP
17/12

PROCURA GENERALE MILITARE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

Roma, addì 15 dicembre 1945

N. 4268 prot. S. G., risp. a f. del 21.11.1945 n. A/023

STAMPERIA REALE DI ROMA

ALLEGATI N.

A

OGGETTO: Riforma del procedimento penale militare.

36

ALLA COMMISSIONE ALLEATA
Sottocommissione per l'Esercito (M.M.I.A.)

= ROMA =

Il 20 dicembre p.v., alle ore 10 si riunirà presso questa Procura Generale Militare, per incarico del Ministero della Guerra, una Commissione che prenderà in esame le questioni trattate nel foglio A/023 del 21 novembre 1945 di codesta Sottocommissione.

Alla riunione interverranno i rappresentanti dei Ministeri della Guerra, (Stato Maggiore R.Esercito e Ufficio Coordinamento), della Marina e dell'Aeronautica.

Si prega codesta Sottocommissione di volere, ove lo ritenga opportuno, far partecipare alla predetta riunione un suo rappresentante, perchè possa venire a conoscenza degli argomenti che saranno trattati e prendere parte alla discussione.

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

OGGETTO: Riforma del procedimento penale militare.

36

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IL PROCURATORE GENERALE MILITARE
(U. Borsari)

4712

W. Borsari

TRANSMISSION
... 0600
(Date 15/12
(Time 530
19/12.

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

33

TRANSLATION

FROM: Ministry of War

REF: 128466/1.1

TO: M.M.I.A.

023

DATE: 8.12.45

SUBJECT: Reformation of the Italian Army legal system

The questions submitted by your Mission in letter A/023 of the 21st. November, are the subject of very close study on the part of the competent technical departments of this Ministry which are concerned, each for its own part, in the matter.

The second proposal in particular, that of the formation of Corps Tribunals, would be a substantial innovation to the traditional Italian system, and as such we consider that it must be closely valuated from the military and juridical point of view before deciding on the advisability of introducing it into our legislation.

This Ministry, however, promises once more that it will with proceed with all possible speed to the examinxation of the reforms suggested by your Mission in respect of military justice, and will communicate with you further on the matter.

2711

Sgd. LOMBARDI

Col.

O. Denin Col. 2716

Declassified E.O. 12356 Section 3.3/NND No. 785020

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Col.

O.Danin Cpl.

Declassified E.O. 12356 Section 3.3/NND No. 785020

Tr/ig

Urgentissimo

Roma, 8 DIC. 1945

Ministero della Guerra
Gabinetto

Translate to Italian

30

Al LA LAND FORCES SUB COMMIS=
SION A.C. (M.M.I.A.)
R O M A

Divisione ___ Sez. ___ 022

Prot. 12866/I.1 Allegati ___
118.1.13

Risposta al Foglio del 21.11.45
Div. ___ Sez. n.A/023

OGGETTO riforma del sistema legale dell'Esercito Italiano

A.

Le questioni prospettate da codesta Sottocommissione per l'Esercito nella lettera A/023 del 21 novembre scorso sono oggetto di attentissimo studio da parte dei competenti organi tecnici di questo Ministero interessati, ciascuno per la sua parte, nella questione.-

In ispecie la seconda proposta, quella della istituzione di Tribunali di Corpo, sarebbe una innovazione sostanziale al sistema tradizionale italiano e come tale si ritiene debba essere attentamente vagliata dal punto di vista militare e giuridico prima di decidere sulla opportunità di introdurla nella nostra legislazione.-

Questo Ministero si ripromette pertanto di procedere con la maggiore possibile sollecitudine all'esame delle riforme suggerite da codesta Sottocommissione in tema di giustizia militare e fa riserva di ulteriori comunicazioni in merito.-

2710

TRANSLATION

d'ordine
IL CAPO DI GABINETTO

Declassified E.O. 12356 Section 3.3/NND No. 785020

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2710

d'ordine
IL CAPO DI GABINETTO

TRANSLATION

1215
10/12

1015
11/12

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

(32)

SUBJECT:- Organisation of Military Justice

Land Forces Sub Comm. AC,
(M.M.I.A.), R O M E.

A 023

22 Nov 45.

To : H.E. Gen. Borsari,
Procuratore Militare.

Receipt is acknowledged of your letter 3738 P.G. dated 8 Nov 45. The trouble you have taken in giving all the detail contained in your letter is much appreciated.

The whole matter is now under consideration and it is hoped that it will be possible to arrange a meeting to discuss the matter in the near future.

(Sgd) A.H. Gilmore, Lt Col,
for Major-General,
M.M.I.A.

AHG/jws

Declassified E.O. 12356 Section 3.3/NND No. 785020

Trans[illegible]tion

From Gen. Mil. Attorney.

To M.[illegible].A.

Ref. 3931/P.G. 31

Date 19/II/45

Subject Organisation of Military Justice.

With ref. to letter 3783/P.G. dated 8/II/45, ~~in which was forwarded to you~~ enclosing the scheme of regulations for the possible institution of Corp Tribunals, we inform you that in para.5 of "Points to be taken into consideration in order to ~~decide~~ whether the complete innovation can be considered useful" should read:

"The Italian justice tradition is not inclined to see penal proceedings entrusted only to judges ~~only~~ not technicians.

DAK

U. Borsari.

270

Roma, addì 19 Novembre 1945

PROCURA GENERALE MILITARE DEL REGNO

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 3931 prot. P.G. risp.

STAMPERIA REALE DI ROMA

ALLEGATI N.

OGGETTO : Organizzazione della giustizia militare.

—

ALLA COMMISSIONE ALLEATA

SOTTOCOMMISSIONE PER L'ESERCITO

(M.M.I.A.)

ROMA

^^^^^^^^^^^^^^^^^^

Con riferimento al foglio n.3783/P.G. dell'8 novembre 1945, con il quale venne inoltrato a codesta Sottocommissione lo schema di norme per l'eventuale istituzione di Tribunali di Corpo, si comunica che nel n.5 dei "Punti da prendere in considerazione per valutare se nel suo insieme l'innovazione possa considerarsi utile" deve leggersi:

"La tradizione giuridica italiana non è incline a vedere affidati i procedimenti penali unicamente a giudici non tecnici".

2707

IL PROCURATORE GENERALE MILITARE

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

OGGETTO : Organizzazione della giustizia militare.

Indicare sempre nella risposta la data e i numeri della presente.

ALLA COMMISSIONE ALLEATA
SOTTOCOMMISSIONE PER L'ESERCITO
(M.M.I.A.)
R O M A

^^^^^^^^^^^^^^^^^^^

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2707

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

U. Borsari

TRANSLATION
... 1640
Date 19/11
... 1600
20/11

Declassified E.O. 12356 Section 3.3/NND No. 785020

Subject: Reform of Italian Army Legal System.

(30)

Land Forces Sub-Comm A.C.,
(M.M.I.A.) R O M E

A 023

21 Nov '45.

To : Ministry of War.

1. MMIA have for some time been in touch with H.E. General BORSARI, Procuratore Militare, over the question of Tribunals. Various suggestions for speeding up trial and sentence of Italian military personnel have been dis--cussed and methods for easing the task facing military tribunals have been considered. The stage reached so far is that the establishment of personnel for Military Tribunals be increased to 390 and that personnel, while remaining posted to one Military Tribunal, may be attached to others where the work calls for the presence of additional personnel.

2. There are two questions on which the considered opinion of the Ministry of War would be appreciated. They are as follows :-

(a) The Territorial areas over which the Military Territorial Tribunals hold jurisdiction do not correspond with the areas under the Military Territorial Command. It seems highly desirable that the Tribunal areas should be standardized as far as possible to cover the same areas as the Territorial Commands. General BORSARI is in agree--ment but thinks it would be inadvisable to do anything at the moment.

2706

It seems, however, that with the setting up and operating of the Territorial HQs the time is appropriate to standardise the jurisdictional areas of the Military Tribunals.

(b) General BORSARI has supplied much valuable

Declassified E.O. 12356 Section 3.3/NND No. 785020

of Tribunals. Various suggestions for speeding up trial and sentence of Italian military personnel have been dis--cussed and methods for easing the task facing military tribunals have been considered. The stage reached so far is that the establishment of personnel for Military Tribunals be increased to 350 and that personnel, while remaining posted to one Military Tribunal, may be attached to others where the work calls for the presence of additional personnel.

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It seems, however, that with the setting up and operating of the Territorial HQs the time is appropriate to standardise the jurisdictional areas of the Military Tribunals.

(b) General BORSARI has supplied much valuable information on the possible functioning of a form of CORPS TRIBUNAL (Courts Martial) similar to those set up for the administration of penal military justice on His Italian Majestics Ships. These might be set up at Regimental HQs or other units corres--ponding to the Regiment.

The constitution of these Courts and the procedure followed bears a very strong resemblance to British Military Courts Martial. These CORPS TRIBUNALS if set up (in addition to existing Military Tribunals) would have the following advantages :-

(i) The regulations are such that offenders must be brought to trial within a certain time limit.

/2.

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(ii) The personnel constituting the Court need not, with one exception, have legal qualifications.

(iii) By dealing with the lesser offences they would relieve the Military Tribunals of much work, leaving them free to deal more expeditiously with the serious offences.

It is felt that the setting up of Courts such as these, would go a very long way in overcoming the existing deplorable position in the time taken to administer Military justice. General BORSARI has pointed out certain legal disadvantages to the inovation of these courts. It is felt perhaps, that these disadvantages could and should be overcome unless there are some military objections of a serious nature, such as a feel--ing of all ranks that they would not receive justice from these courts, or a feeling amongst the officers that they are unable to administer justice through the medium of such courts.

3. Leaving aside all question of an Amnesty, the figures show that in any one month, the number of new "denouncements" is far in excess of the number of cases being dealt with by the Military Tribunals in the same month. It is quite clear therefore that unless something is done the position cannot improve.

The whole question is for your consideration and your considered opinion on para 2 (a) and (b) would be much appreciated.

2705

P.W. Grimsdale L-Col

for Major General,
M.M.I.A.

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-ing of all ranks that they would not receive justice from these courts, or a feeling amongst the officers that they are unable to administer justice through the medium of such courts.

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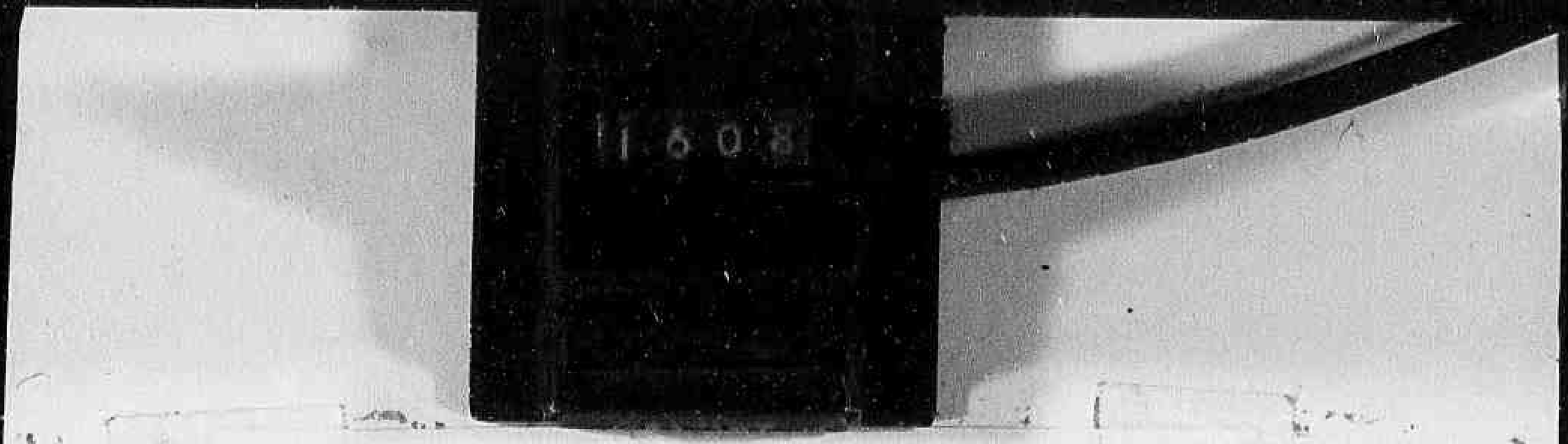
2705

For Major General,
D.M.I.A.

After Lt/Col Sillitoe 3 Dec. He stated that he felt agreed in principle. They were getting opinions of various organs and would reply as soon as possible. He difficulties were those stated in the letter.

AHG/ecc.

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C29

Translation

From Military Attorney — Ref. 3783 T.G.

To M.M.I.A. — Date 8/II/45

Subject Organisation of Military Justice.

We forward you:

I) - A pamplet illustrating our proposals for the organisation of military justice for the transition armed forces.

2) - A first general scheme of regulations for possible actuation of M.M.I.A.'s suggestion concerning the institution of " " Court Martials".

Both the proposals for the organisation of military justice and the ~~xxxx~~ scheme on the court martials require, in our opinion, further clarification, which could be brought about in a meeting, if you are of the same opinion.

DAH — U. BORSARI.

AAG. So far so good. Get a reply to folio 29302 21/11/44 none comes agitati on 1 Dec + then in the light of that reply we will meet + discuss. Meanwhile thank Borsari for his trouble + say it has hindered

WD 21 NOV

Translation

ILLUSTRATION OF THE PROPOSALS FOR THE OGANISATION OF MILITARY JUSTICE IN THE TRANSITION ARMY

I°)MILITARY LEGAL OFFICES.

A - a) A Military Territoral Tribunal formed for each Military Territoraal Command .(the military tribunal formed at Naval Hq. Spezia will work for Military Territorial Command Genoa.)

b)a Military Territorial Tribunal formed at the Navy Department Hq.Taranto, having jurisditiion over the provinces of Taranto, Lecce and Brindisi.

c)Two Independent Sections one at Caglieri,branch ~~for~~ from the Tribunal of Rome,and one at Catania,branch ~~for~~ from the Tribunal of Palermo (this latter section,until such time as general conditions require it and not past the end of I947)

The territorial areas will have to be reveived in order to standardize them as much as possible with Mil. Terr. Commands. Such revision is,at the moment,unadviseable,because the transfering of ~~cases~~ guilty and detained personnel from one Hq to another would again produce those very serious inconviences that have been met recently,on the occasion of the suppression or changing of some territorial tribunals.

(1)

The military tribunal Rome will work two sections,the other tribunals will be formed in such a way as to be able when necessary to also work two sections,through the posting of the most senior judge to duties of president to the second section.
Concerning the military territorial tribunals and independant sections the legal staff will have to continue to be composed of a president,a judge relator and three military judges.Only after the settlement of the serious trials in progress at military tribunals following the happenings after the 8 Sept. and the

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of Rome,and one at Catania,branch ~~for~~ from the Tribunal of Palermo (this latter section,until such time as general conditions require it and not past the end of 1947)

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d)On his majesties ships penal military justice is administrated by military tribunals on board that are formed every so often when proceedings have to be taken for an offence that concerns them.

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M.M.I.A's suggestion concerning the forming of "Court Martials" at corps, concerned in with judging in a summary way the lighter offences, will have to be, incase of favourable acceptance, put into appropiate legal measures. The regulations for the forming and working of these "Court Martials", that may be named "Corps Tribunals" could be in part similar to those in force for military tribunals aboard and special military tribunals.

Since Corps Tribunals, should they be INSTITUTED inaccordance with the text of the suggestion, would have to be formed together with a Corps Officer, while a magistrate would only intervene as adviser and could be drawn each time from the territorial tribunals, the measures that will be adopted concerning this will have no influence neither concerning the number of H.'s of normal military tribunals nor on the formation of the W/E suggested.

B - Supreme Military Tribunal. with HQ at Rome for appeals against sentences of military tribunals.

The Supreme Tribunal will have to continue to judge with a court of 7 members: president, adviser relator, 2 military judges, 3 counsellors.

II) COMPOSITION OF THE W/E FOR THE MILITARY TRIBUNAL OFFICES.

A - Court Staff

a) Military Territorial Tribunals.

1 president, holding rank of Brig. General or corresponding rank in other armed forces of the state.

4 military judges, with at least 3 senior officers. Of the latter at least a Col. or Lt.Col. (for the military tribunal Rome 8 military judges, with at least 6 senior officers. Of the latter at least ... Cols. or Lt. Cols.)

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1 president, holding rank of Brig. General or corresponding rank in other armed forces of the state.

4 military judges, with at least 3 senior officers. Of the latter at least a Col. or Lt.Col. (for the military tribunal Rome 8 military judges, with at least 6 senior officers. Of the latter at least 4 Cols. or Lt. Cols.)

The military judge of highest rank or seniority presides over the second section where it is permanently formed (Rome) or where the requirements of the service advise the the formation of it.

The supplementary military judges are chosen from those having other duties and on the strength of other corps or units.

b) Independent Sections

-1 president holding rank of Col. or equivalent.

-3 military judges of which at least 2 senior officers.

c) Supreme Tribunal.

-1 president, holding rank not lower than general or

27/09
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c) Supreme Tribunal.

-I president holding rank not lower than Corp General or equivalent.

-3 military judges(officers of general rank not higher than Div. Gen. or equivalent)

-3 officers attached to the Presidents Office.

B --Military Justice Court Personnel.

a) Military Attorney General at Military Territorrial Tribunals:

- I Military Attorney. General
- I Vice Military Attorney General
- Judge Relators
- Military Attorney General Subsitutes
- Instructor Judges
-Internal assistants
- Secretary
- Clerks

b) Military Attorney Gens. with Independent Sections

--I Military Attorney Gen.
- Judge Relators
- Military Attorney Gen. Subsitutes.
- Instructor Judges
- Internal assistants
- Secretary
- Clerks

c) Military Attorney Gen.with Supreme Military Tribunal.

- I Military Attorney Gen.
- Adviser Relators
- Military Attorney Gen. Subsitutes.
- Military magistrates,milita ry clerks and internal assistants for the following duties:

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- Military Attorney General Subsitutes
- Instructor Judges
-Internal Assistants
- Secretary
- Clerks

b) Military Attorney Gens. with Independent Sections

--I Military Attorney Gen.
- Judge Relators
- Military Attorney Gen. Subsitutes.
- Instructor Judges
- Internal Assistants
- Secretary
- Clerks

c) Military Attorney Gen.with Supreme Military Tribunal.

- I Military Attorney Gen.
- Adviser Relators
- Military Attorney Gen. Subsitutes.
- Military magistrates,milita ry clerks and internal assistants for the following duties:Attorney Gen. Office (secretary,studies and legislation), Guard and Execution of Sentance Office,Personnel Office, Grace Office, Suppressed Tribunal Office, War Criminals Office

4101

For a period of two years,in the complete number shown in the attached list.Little by little as the requirements of the service permits and in any case within the period of two years the personnel will be reduced to not more than 190,which, added to the judging staff,will not exceed in all 250.

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During the first period,which will not have to exceed 2 years, we do not deem it adviseable to subdivide,with specification of the respective duties ,magistrates and military clerks,whose complete number is shown for each ~~Judicial Office~~ judicial office.

Moreover,we must warn that ,~~due to leaving~~ while the ~~whole~~ total number of personnel assigned to military ~~justice~~ judicial duties remain unchanged,it is necessary ~~that~~ to retain the prerogative to increase or decrease ~~it~~ the number at each seat in accordance with requirements of the service. ~~be retained.~~

Note concerning this that, for reasons of State economy, the transfering system is prefered ~~rather than~~ to the posting system ~~by which~~ whereby personnel destined to other parts continue to remain on the strength of the old seat.

~~In case of the forming of~~ Reference Corps Tribunals, the consulting military ~~adviser~~ magistrates will be,as already said,supplied,without increase in O/E ,by Military Tribunals formed at the HQ that has the power to assemble it.

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Military attorney General
~~GENERAL MILITARY ATTORNEY~~ OF THE KINGDOM
with
SUPREME MILITARY TRIBUNAL

TABLE OF WAR ESTABLISHMENT FOR MILITARY TRIBUNAL.

TRIBUNALS	MAXIMUM TRANSITORY W/E At the most up to the end of 31 Dec. 1947)		MAXIMUM W/E not to be brought into effect before 31 Dec. 1947)	
	Judging Staff (President and military judges)	Personnel under ~~Gen.~~ Attorney General or Military Attorney	Judging staff (President and military judges	Personnel under General (attorney or Military Attorney
Sup. Mil. Trib.	7 (I)	54	7	40
Mil. Terr. Tribs.				
Turin	5	I2	4	I2
Milan	5	I2	4	I2
Verona	5	I2	4	I2
Udine	5	I2	4	I2
La Spezia	5	I2	4	I2
Bologna	5	I2	4	I2
Florence	5	I2	4	I2
Rome	8	22	5	I2
Rome (independent Sec.)	4	I0	4	6
Bari	5	I6	4	I2
Taranto	5	20	4	I2
Naples	5	24	4	I2
Palermo	5	I4	4	I2
Palermo (independent Sec.)	4	I0	+	+

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	military judges)	Military Attorney	and military judges	attorney or Military Attorney
Sup. Mil. Trib.	7 (I)	54	7	40
Mil. Terr. Tribs.				
Turin	5	I2	4	I2
Milan	5	I2	4	I2
Verona	5	I2	4	I2
Udine	5	I2	4	I2
La Spezia	5	I2	4	I2
Bologna	5	I2	4	I2
Florence	5	I2	4	I2
Rome	8	22	5	I2
Rome (independent Sec.)	4	I0	4	6
Bari	5	I6	4	I2
Taranto	5	20	4	I2
Naples	5	24	4	I2
Palermo	5	I4	4	I2
Palermo (independent Sec.)	4	I0	+	+
	78	254	60	I90

Totals	78 + 254	60 + I90
	332	250
Possible requirements	I8	
General Totals.	350	250

3 persons at the disposal of the presidence.

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CORPS TRIBUNALS

1) - Corps Tribunals are concerned with the judging of personnel of rank not higher than Capt. who are directly under command of the xx. HQ at which the tribunal is assembled, accused of offences subject to military jurisdition, as shown in the following article, who have been caught ~~are surprised~~ while committing the offence or ~~is~~ have confessed on the first questioning of having committed it.

The authority of the Corps Tribunal is limited to recognition of the offence for which it has been assembled.

The assembling of the Corps Tribunal cannot be ordered or, if ordered, must be revoked when the offence has been committed together with other military ~~xx~~ under command of different unit HQ's, or by military together with persons beyond the control of the militia, or when several connected offences are to be tried, of which some do not come into the limits of authority of Corps Tribunals.

2) - Corps tribunals are ~~xxxxxx~~ authorised to ~~judge~~ the following offences, in the hypothesis for which the law lays down sentence of military confinement of not more than 3 years:

- Leaving post and failing to comply with standing orders;
- Drunk on duty;
- Breaking in case
- Resistence, threats or insults to a sentry, lookout or escort;
- Resistence to armed force;
- Absence without leave and desertion, if the time of absence exceeds 10 days;
- Destruction or sale of clothing items or military equipment;
- Failing to comply with an order;
- Falsehood in leave pass, travel etc.;
- Fighting;
- Threats;
- Theft from other military.

3) - Corps Tribunals can be assembled at regimental HQ's or other

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together with other military ~~of~~ under command of different unit HQ's, or by military together with persons beyond the control of the militia, or when several connected offences are to be tried, of which some do not come into the limits of authority of Corps Tribunals.

27 - Corps tribunals are ~~authorised~~ authorised to judge the following offences, in the hypothesis for which the law lays down sentence of military confinement of not more than 3 years:

- Leaving post and failing to comply with standing orders;
- Drunk on duty;
- Breaking in camp
- Resistence, threats or insults to a sentry, lookout or escort;
- Resistence to armed force;
- Absence without leave and desertion, if the time of absence exceeds 10 days;
- Destruction or sale of clothing items or military equipment;
- Failing to comply with an order;
- Falsehood in leave pass, travel etc.;
- Fighting;
- Threats;
- Theft from other military.

3) - Corps Tribunals can be assembled at regimental HQ's or other units corresponding to the regiment.

Within 24 hrs of the first questioning the C.O. of the unit forwards proposal to Military Territorial Command for the assembling of the Tribunal, accompanied by an informative report on the fact and the antecedents of the guilty person, from facts collected on the basis of investigations.

The unit Commander can adopt any precautional measures that he thinks fit in order to prevent the guilty person escaping justice.

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4) - The Military Territorial Commandant, when conditions shown in art.1 occur and where it is deemed advisable and he thinks the accused, in case of guilt, may be awarded a term of imprisonment not more than (a year, orders, after hearing the military attorneys advice, the assembly at the seat of the command that sent the proposal.

art.2 says 3 year

The Tribunal must be assembled within 3 days from the arrival of the assembly orders.

5) - The Corps Tribunal is composed of president and two judges drawn f om officers belonging to the unit.

The duties of president are carried out by the most senior officer after the commandant.

When officers are tried, the president and the judges must be of a higher rank than the accused.

Officers affected by or included in the offence and having made the report cannot carry out the duties of president or judge.

A list showing personnel of the tribunal is brought to the notice of the accused, who can reject one of them, with the exception of the president, without being obliged to give reason.

The rejected judge is immediately replaced by another officer with the required qualifications, chosen by the president.

The duties of public ministry and clerk are carried out by officers nominated by the unit C.O.

2697

6) - For the trial verbal, sentence and the verbal process of trials, as far as applicable, the regulations Para.2 of the fith

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5) - The Corps Tribunal is composed of president and two judges drawn from officers belonging to the unit.

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When officers are tried, the president and the judges must be of a higher rank than the accused.

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The rejected judge is immediately replaced by another officer with the required qualifications, chosen by the president.

2697

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6) - For the trial verbs, sentence and the verbal process of trials, as far as applicable, the regulations Para.2 of the fith chapter of the third book of penal militaryxxxxxx peacetime code will be observed except the following instructions.

The defence in court is assumed by an officer belonging to the unit, chosen by the accused, or failing this, nominated by the C.O.

The defending officer must be of a lower rank than the president

The Corps Tribunal cannot proceed if the accused is not present.

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When during a trial the lack of any qualifications as required by the law for the assembly is noted, the tribunal declares its incompetence and forwards the findings to the military tribunal concerned in accordance with normal regulations.

The Corps Tribunal must declare its own incompetence even when during court proceedings it is noted that it concerns an offence different from that shown in art.2

7) - The Military Corps Tribunal assembled, the president and the judges are sworn in as per the procedure laid down by law concerning the arrangement of military justice.

The president questions the accused as to place of birth, date of birth etc. and informs him of the offence that forms the subject of the accusation; thence the discussion proceeds in the order and by the regulations laid down for any other military tribunal.

The trial closed, the accused taken away and the public ministry and defending officer withdrawn, the tribunal settles the sentence This re-read and undersigned, the accused is again taken before the tribunal to hear the finding of it, which id done by the president.

Terr.

8) - A military magistrate of the military tribunal is nominated by the military attorney to give assistance as legal adviser, to the unit commandant and court staff as far as the assembly and working of the Corps Tribunals are concerned. The legal adviser may assist in judging, but does not take part in the discussion of the sentence in the jury room.

2696

9) - The Corp Tribunals sentence must, within 3 days of its pronouncemen be forwarded in order to be confirmed by the territorial commandant who has ordered the assembly of the tribunal together with all the findings of the court.

The sentence, stamped seen and confirmed by the commandant

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2696

9) - The Corp Tribunals sentance must, within 3 days of its pronouncemen be forwarded in order to be confirmed by the territorial commandant who has ordered the assembly of the tribunal together with all the findings of the court.

The sentence, stamped seen and confirmed by the commandant must be forwarded for its execution to the Military Attorney of the Region of the territory concerned within ten days of the expiry of the period shown in the previous para.

When the commandant decides not to ratify the sentence of the Corp Tribunal, he anulls it and forwards the findings to the military attorney in order that the facts are checked that form subject of the sentence, in the normal way.

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Ænefhdknigkjthegdfarse gfgavdhgtgrthedackdffahyhgfgtjen
rxxmxrsdxrequisites

In such cases the Military Attorney without delay will have to take measures within his power concerning the freedom of the accused.

10) - Against the Corps Tribunal sentence ratified by the Military Territorial Commandant no appeal can be made for the anulling at the Supreme Military Tribunal, if ~~it is not~~ the reasons are not due to incompetence or illegitimate forming of the judging staff ~~composition~~.

POINTS TO BE TAKEN INTO CONSIDERATION IN ORDER TO VALUE WHETHER THE COMPLETE INNOVATION CAN BE CONSIDERED USEFUL.

1) - The forthcoming return to peacetime military penal justice will greatly reduce the work of normal military tribunals concerning persons and offences and simplify the work.

2) - Regarding the delay a notable improvement could be made following measures of a general clemency nature, which could be adopted.

No significant disposition this.

3) - If it should be agreed that ~~the~~ personnel at military tribunals ~~could~~ may be increased without trouble, it is thought that in two years time at the most the service will be in complete order.

4) - The speed in carrying out trials does not depend only on military justice organisations, but also on general conditions. There is the efficiency of the police service in making enquiries, arrest and transit of the accused to be considered as well as the more or less safety and ease of communications.

5) - The Italian justice tradition is not inclined to see penal proceedings entrusted only to ~~technical~~ NOT judges. In the Assize Courts, military tribunals and other special courts or special work of non-technical nature has been up to now

NOT technicians.

vide 393 R.G.

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1) - The forthcoming return to peacetime military penal justice will greatly reduce the work of normal military tribunals concerning persons and offences and simplify the work.

2) - Regarding the delay a notable improvement could be made following measures of a general clemency nature, which could be adopted.

No significant deposit entirely this.

3) - If it should be agreed that ~~service~~ personnel at military tribunals ~~could~~ may be increased without trouble, it is thought that in two years time at the most the service will be in complete order.

4) - The speed in carrying out trials does not depend only on military justice organisations, but also on general conditions. There is the efficiency of the police service in making enquiries, arrest and transit of the accused to be considered as well as the more or less safety and ease of communications.

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5) - The Italian justice tradition is not inclined to see penal proceedings entrusted only to ~~technical~~ non judges, NOT technicians. In the Assize Courts, military tribunals and other special courts or special work of non-technical nature has been up to now always accompanied by that of technicians (civilian or military judges, public ministry magistrates, instructor judges)

Vide 3931/RG dra 19.11.45 folio (31).

6) - ~~The~~ Italian ~~justice~~ judicial tradition is not inclined to confuse ~~the loss~~ of discipline ~~in the repression of the offence~~ with offences of crime. The Corp Tribunals or "Court Martials" will have to concern themselves only with the punishment of ~~offences~~ crimes, leaving alone disciplinary matters.

Via Flaminia Vecchia

Roma, addì 8 novembre 1945

PROCURA GENERALE MILITARE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 3783 prot. S-G- risp.

81

ALLA COMMISSIONE ALLEATA

Sottocommissione per l'Esercito
(M.M.I.A.)

= ROMA =

STAMPERIA REALE DI ROMA

ALLEGATI N. due

A 2

OGGETTO: Organizzazione della Giustizia Militare.

—

Si trasmette a codesta Sottocommissione:

1°) Un cenno illustrativo delle proposte di questa Procura Generale per l'organizzazione della Giustizia militare nelle Forze Armate di transizione.

2°) Un primo schema di massima di norme per l'eventuale attuazione del suggerimento della M.M.I.A. relativo all'istituzione di "corti marziali".

Tanto le proposte per l'organizzazione della Giustizia militare quanto lo schema sulle corti marziali richiedono, a parere di questo Ufficio, successive delucidazioni, che potrebbero essere fornite in colloqui orali, se codesta Sottocommissione sarà dello stesso avviso.

2694

TRANSLATION
IN Time 1145
Date 9/11

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

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2694

TRANSLATION
IN Time 1145 Date 9/11
OUT Time 1600 Date 14/11

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

U. Borsari

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PROCU[illegible] GENERALE MILITARE DEL REGNO
presso il
TRIBUNALE SUPREMO MILITARE

ILLUSTRAZIONE DELLE PROPOSTE
PER LA ORGANIZZAZIONE DELLA GIUSTIZIA MILITARE
NELLE FORZE ARMATE DI TRANSIZIONE

---

1) UFFICI GIUDIZIARI MILITARI

A - a) Un Tribunale militare territoriale costituito presso ciascun Comando Militare Territoriale (per il Comando Militare Territoriale di Genova funziona il Tribunale militare costituito presso il Comando militare marittimo di La Spezia) -

b) Un Tribunale militare territoriale costituito presso il Comando di Dipartimento militare marittimo di Taranto, e avente giurisdizione sulle provincie di Taranto, Lecce e Brindisi -

c) Due Sezioni Autonome, di cui una a Cagliari, distaccata dal Tribunale di Roma, e una a Catania, distaccata dal Tribunale di Palermo (quest'ultima sezione, fino a quando le condizioni generali lo richiedano e non oltre la fine del 1947) -

Le circoscrizioni territoriali dovranno essere rivedute per renderle quanto più è possibile coincidenti con quelle dei Comandi Militari territoriali. Tale revisione è, sul momento, sconsigliabile, perchè il trasferimento di processi e di detenuti da una ad altra sede produrrebbe di nuovo quei gravissimi inconvenienti che si sono verificati di recente, in occasione di soppressione o di tramutamento di sede di alcuni tribunali territoriali.

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c) Due Sezioni Autonome, di cui una a Cagliari, distaccata dal Tribunale di Roma, e una a Catania, distaccata dal Tribunale di Palermo (quest'ultima sezione, fino a quando le condizioni generali lo richiedano e non oltre la fine del 1947) -

Le circoscrizioni territoriali dovranno essere rivedute per renderle quanto più è possibile coincidenti con quelle dei Comandi Militari territoriali. Tale revisione è, sul momento, sconsigliabile, perchè il trasferimento di processi e di detenuti da una ad altra sede produrrebbe di nuovo quei gravissimi inconvenienti che si sono verificati di recente, in occasione di soppressione o di tramutamento di sede di alcuni tribunali territoriali.

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Il Tribunale militare di Roma funzionerà su due sezioni; gli altri tribunali saranno costituiti in modo da potere, all'occorrenza, funzionare anch'essi su due sezioni, mediante la destinazione del giudice più anziano alle funzioni di presidente della seconda sezione.

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Nei Tribunali militari territoriali e nelle Sezioni autonome il collegio giudicante dovrebbe continuare ad essere composto di un presidente, di un giudice relatore e di tre giudici militari. Solo dopo eliminati i gravi procedimenti in corso presso i Tribunali militari e seguito degli avvenimenti svoltisi dopo l'8 settembre e dopo la normalizzazione della situazione, potrebbe essere studiata l'opportunità di ridurre a 3 i membri del collegio giudicante: il presidente, il giudice relatore ed un giudice militare.

d) Sulle Regie navi la giustizia penale militare è amministrata dai tribunali militari di bordo, che si costituiscono ogni qual_ volta si debba procedere per un reato di loro competenza.

e) Il suggerimento della M.M.I.A. relativo alla costituzione di "corti marziali" presso i Corpi, competenti a giudicare in via sommaria dei reati di più lieve entità, dovrebbe, in caso di favorevole accoglimento, essere tradotto in apposito provvedimento legislativo. Le norme per la costituzione ed il funzionamento di queste "corti marziali", che potrebbero essere denominate "Tribunali di Corpo" , potrebbero in parte essere analoghe a quelle vigenti per i tribunali militari di bordo e per i tribunali militari straordinari.

Poichè i Tribunali di Corpo , ove fossero istituiti secondo lo spirito del suggerimento, dovrebbero essere formati unicamente con Ufficiali d'arma, mentre un magistrato interverrebbe solo come consulente e potrebbe esser tratto di volta in volta dal Tribunale militare territoriale, le determinazioni che saranno adottate in proposito non avranno influenza, nè riguardo al numero ed alle sedi dei Tribunali

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situazione, potrebbe essere studiata l'opportunità di ridurre a 3 i membri del collegio giudicante: il presidente, il giudi_ ce relatore ed un giudice militare.

d) Sulle Regie navi la giustizia penale militare è amministrata dai tribunali militari di bordo, che si costituiscono ogni qual_ volta si debba procedere per un reato di loro competenza.

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Poichè i Tribunali di Corpo , ove fossero istituiti se_ condo lo spirito del suggerimento, dovrebbero essere formati unicamente con Ufficiali d'arma, mentre un magistrato interver_ rebbe solo come consulente e potrebbe esser tratto di volta in volta dal Tribunale militare territoriale, le determinazioni che saranno adottate in proposito non avranno influenza, nè riguardo al numero ed alle sedi dei Tribunali militari ordina_ ri, nè sulla consistenza degli organici proposti.

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B- Tribunale Supremo Militare con sede in Roma per la decisione

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dei ricorsi per annullamento avverso le sentenze dei Tribuna_
li militari.

Il Tribunale Supremo dovrebbe continuare a giudicare con l'intervento di 7 membri: il presidente, il consigliere relatore, 2 giudici militari, 3 consiglieri di cassazione.

II) COMPOSIZIONE ORGANICA DEGLI UFFICI DEI TRIBUNALI MILITARI

A - Collegio giudicante -

a) Tribunali militari territoriali:

- 1 presidente, avente grado di generale di brigata o grado corrispondente delle altre forze armate dello Stato;
- 4 giudici militari, di cui almeno 3 Ufficiali supe_riori. Di questi ultimi almeno uno colonnello o tenente colonnello. (Per il Tribunale di Roma 8 giudici militari, di cui almeno 5 ufficiali supe_riori. Di questi ultimi almeno due colonnelli o tenenti colonnelli).

Il giudice militare più elevato in grado o più anziano presiede la seconda sezione là ove è costituita permanentemen_te (Roma), o là ove le necessità di servizio ne consiglino la costituzione.

I giudici militari supplenti sono scelti tra quelli aventi altro incarico ed in forza presso altri Corpi o Re_parti.

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b) Sezioni Autonome:

- 1 presidente avente grado di colonnello o equiparato;
- 3 giudici militari dei quali almeno 2 ufficiali su_periori.

c) Tribunale Supremo:

- 1 presidente, avente grado non inferiore a generale

UFFICI DEI TRIBUNALI MILITARI

Declassified E.O. 12356 Section 3.3/NND No. 785020

A - Collegio giudicante -

a) Tribunali militari territoriali:

- 1 presidente, avente grado di generale di brigata o grado corrispondente delle altre forze armate dello Stato;
- 4 giudici militari, di cui almeno 3 Ufficiali superiori. Di questi ultimi almeno uno colonnello o tenente colonnello. (Per il Tribunale di Roma 8 giudici militari, di cui almeno 6 ufficiali superiori. Di questi ultimi almeno due colonnelli o tenenti colonnelli).

Il giudice militare più elevato in grado o più anziano presiede la seconda sezione là ove è costituita permanentemente (Roma), o là ove le necessità di servizio ne consiglino la costituzione.

I giudici militari supplenti sono scelti tra quelli aventi altro incarico ed in forza presso altri Corpi o Reparti.

2091

b) Sezioni Autonome:

- 1 presidente avente grado di colonnello o equiparato;
- 3 giudici militari dei quali almeno 2 ufficiali superiori.

c) Tribunale Supremo:

- 1 presidente, avente grado non inferiore a generale di Corpo d'armata o equiparato;
- 3 giudici militari (ufficiali generali di grado non superiore a generale di divisione o equiparato);
- 3 ufficiali addetti all'ufficio della Presidenza.

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B - Personale della Giustizia Militare -

a) Procura Militari presso i Tribunali militari territoriali:

- 1 procuratore militare
- 1 vice procuratore militare
- giudici relatori
- sostituti procuratori militari
- giudici istruttori
- collaboratori interni
- 1 cancelliere capo
- cancellieri

b) Procure Militari presso le Sezioni Autonome:

- 1 procuratore militare
- giudici relatori
- sostituti procuratori militari
- giudici istruttori
- collaboratori interni
- 1 cancelliere capo
- cancellieri

c) Procura Generale presso il Tribunale Supremo Militare:

- 1 procuratore generale militare
- consiglieri relatori (per il servizio del Tribunale Supremo
- sostituti procuratori generali militari
- cancellieri militari
- magistrati militari, cancellieri militari e collaboratori interni per i seguenti servizi: ufficio del procuratore generale (segreteria, studi e legislazione), ufficio vigilanza ed esecuzione sentenze, ufficio personale, ufficio grazie, ufficio tribunali soppressi, ufficio crimini di guerra

Per il periodo di due anni, nel numero indicato complessivamente nella tabella allegata. A mano a mano che le esigenze del servizio lo consentiranno ed in ogni modo entro il periodo di un biennio il personale sarà ridotto a non più di 190 unità, che, aggiunte a quelle dei collegi giudicanti, non supereranno complessivamente le 250.

2690

Per un primo periodo, che non dovrà superare un biennio, non si ravvisa opportuno suddividere, con specificazione delle rispettive funzioni, i magistrati ed i cancellieri militari, il numero dei quali viene indicato complessivamente per ciascun

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b) Procure Militari presso le Sezioni Autonome:
- 1 procuratore militare
- giudici relatori
- sostituti procuratori militari
- giudici istruttori
- collaboratori interni
- 1 cancelliere capo
- cancellieri

c) Procura Generale presso il Tribunale Supremo Militare:
- 1 procuratore generale militare
- consiglieri relatori (per il servizio del Tribunale Supremo)
- sostituti procuratori generali militari (per il servizio del Tribunale Supremo)
- cancellieri militari (per il servizio del Tribunale Supremo)
- magistrati militari, cancellieri militari e collaboratori interni per i seguenti servizi: ufficio del procuratore generale (segreteria, studi e legislazione), ufficio vigilanza ed esecuzione sentenze, ufficio personale, ufficio grazie, ufficio tribunali soppressi, ufficio crimini di guerra

Per il periodo di due anni, nel numero indicato complessivamente nella tabella allegata. A mano a mano che le esigenze del servizio lo consentiranno ed in ogni modo entro il periodo di un biennio il personale sarà ridotto a non più di 190 unità, che, aggiunte a quelle dei collegi giudicanti, non supereranno complessivamente le 250.

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Per un primo periodo, che non dovrà superare un biennio, non si ravvisa opportuno suddividere, con specificazione delle rispettive funzioni, i magistrati ed i cancellieri militari, il numero dei quali viene indicato complessivamente per ciascun ufficio giudiziario.

Inoltre, è da avvertire che, pur lasciando invariato il numero globale delle unità assegnate ai servizi della Giustizia Militare, è necessario che sia conservata la facoltà di aumentarle o diminuirle nelle singole sedi a seconda delle esigenze del ser_

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vizio. Notasi in proposito che è preferibile, per economia dell'Erario, il sistema dei trasferimenti a quello delle missioni per il quale il funzionario destinato altrove continua a rimanere in pianta nella vecchia sede.

Nel caso di istituzione dei Tribunali di Corpo, i magistrati militari consulenti sarebbero, come già si è detto, forniti, senza aumento di organico, dal Tribunale Militare istituito presso il Comando che ha facoltà di convocarlo.

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PROCURA GENERALE MILITARE DEL REGNO
presso il
TRIBUNALE SUPREMO MILITARE

TABELLA DEGLI ORGANICI DEI TRIBUNALI MILITARI

TRIBUNALI	ORGANICI TRANSITORI MASSIMI (fino al termine massimo del 31 dicembre 1947)		ORGANICI MASSIMI (da attuarsi non oltre il 31 dicembre 1947)	
	Collegi giudicanti (Presidente e giudici militari)	Personale dipendente dalla Procura Generale o dalle Procure Militari	Collegi giudicanti (Presidente e giudici militari)	Personale dipendente dalla Procura Generale o dalle Procure Militari
Trib.Supremo Milit.	7 (1)	54	7	40
Trib.Mil.Terr.Torino	5	12	4	12
" " " Milano	5	12	4	12
" " " Verona	5	12	4	12
" " " Udine	5	12	4	12
" " "La Spezia	5	12	4	12
" " " Bologna	5	12	4	12
" " " Firenze	5	12	4	12
" " " Roma	8	22	5	12
" " " Roma (Sez.Aut.Cagliari)	4	10	4	6
Trib.Mil.Terr.Bari	5	16	4	12
" " " Taranto	5	20	4	12
" " " Napoli	5	24	4	12
" " " Palermo	5	14	4	12
" " " Palermo (Sez.Aut.Catania)	4	10	--	--
	78	254	60	190
	78+1254		60 + 190	

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	(Presidente e giudici militari)	dalla Procura Generale o dalle Procure Militari	(Presidente e giudici militari)	dalla Procura Generale o dalle Procure Militari
Trib.Supremo Milit.	7 (1)	54	7	40
Trib.Mil.Terr.Torino	5	12	4	12
" " " Milano	5	12	4	12
" " " Verona	5	12	4	12
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" " "La Spezia	5	12	4	12
" " " Bologna	5	12	4	12
" " " Firenze	5	12	4	12
" " " Roma	8	22	5	12
" " " Roma (Sez.Aut.Cagliari)	4	10	4	6
Trib.Mil.Terr.Bari	5	16	4	12
" " " Taranto	5	20	4	12
" " " Napoli	5	24	4	12
" " " Palermo	5	14	4	12
" " " Palermo (Sez.Aut.Catania)	4	10	--	--
	78	254	60	190
	78 + 254		60 + 190	
Totali	332		250	
Eventuali esigenze	18		--	
Totali generali	350		250	

(1) 3 unità a disposizione della Presidenza.

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TRIBUNALI DI CORPO

1) - I Tribunali di Corpo sono competenti a giudicare i militari di grado non superiore a capitano, direttamente dipendenti dal comando di Unità presso il quale il tribunale è convocato, imputati di alcuno dei reati soggetti alla giurisdizione militare, indicati nello articolo seguente, che siano stati sorpresi in flagranza del reato o che abbiano confessato nel primo interrogatorio di averlo commesso.

La competenza del Tribunale di Corpo è limitata alla cognizione dei reati per i quali è convocato.

La convocazione del Tribunale di Corpo non può essere ordinata o, se ordinata, dev'essere revocata quando il reato sia stato commesso in concorso da più militari dipendenti da Comandi di Unità diversi, o da militari in concorso con estranei alla milizia, o quando si debba procedere per più reati commessi, dei quali alcuno non rientri nei limiti di competenza del Tribunale di Corpo.

2) - I Tribunali di Corpo sono competenti a conoscere dei reati seguenti, nelle ipotesi per le quali la legge stabilisce la pena della reclusione militare non superiore a tre anni:
- abbandono di posto e violazione della consegna;
- ubriachezza in servizio;
- forzata consegna;
- resistenza, minaccia o ingiuria a sentinella, vedetta o scolta;
- resistenza alla forza armata;
- allontanamento illecito e diserzione, se la durata dell'assenza non supera dieci giorni;

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mo interrogatorio di averlo commesso.

La competenza del Tribunale di Corpo è limitata alla cognizione dei reati per i quali è convocato.

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2) - I Tribunali di Corpo sono competenti a conoscere dei reati seguenti, nelle ipotesi per le quali la legge stabilisce la pena della reclusione militare non superiore a tre anni:

- abbandono di posto e violazione della consegna;
- ubriachezza in servizio;
- forzata consegna;
- resistenza, minaccia o ingiuria a sentinella, vedetta o scolta;
- resistenza alla forza armata;
- allontanamento illecito e diserzione, se la durata dell'assenza non supera dieci giorni;
- distruzione o alienazione di effetti di vestiario o di equipaggiamento militare;
- disobbedienza;
- falso in foglio di licenza, di via o simili;

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- percosse;
- minaccie;
- furto in danno di altro militare.

3) - I Tribunali di Corpo possono essere convocati presso i comandi di reggimento o di altre unità corrispondenti al reggimento.

Entro ventiquattro ore dal primo interrogatorio il Comandante del Corpo trasmette al Comandante militare territoriale proposta di convocazione del Tribunale, accompagnata da un rapporto informativo sul fatto e sui precedenti del colpevole, dagli atti raccolti in sede di indagini.

Il Comandante del Corpo può adottare le misure precauzionali che ritenga del caso per impedire che il colpevole si sottragga al giudizio.

4) - Il Comandante militare territoriale, quando concorrano le condizioni indicate nell'art. 1 ed ove ne ravvisi l'opportunità e ritenga che all'imputato, in caso di condanna, possa essere inflitta la pena della reclusione in misura non superiore ad un anno, ordina, sentito l'avviso del Procuratore militare, la convocazione del Tribunale di Corpo presso la sede del Comando che ha inoltrata la proposta.

Il Tribunale deve essere convocato entro tre giorni dall'arrivo dell'ordine di convocazione.

5) - Il Tribunale di Corpo è composto del presidente e di due giudici, tratti dagli ufficiali appartenenti all'Unità.

Le funzioni di presidente sono esercitate dall'ufficiale più elevato in grado dopo il Comandante.

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Quando si procede a carico di ufficiali, il presidente ed i giudici debbono essere di grado superiore a quello dell'im

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proposta di convocazione del Tribunale, accompagnata da un rapporto informativo sul fatto e sui precedenti del colpevole, dagli atti raccolti in sede di indagini.

Il Comandante del Corpo può adottare le misure precauzionali che ritenga del caso per impedire che il colpevole si sottragga al giudizio.

4) - Il Comandante militare territoriale, quando concorrano le condizioni indicate nell'art. 1 ed ove ne ravvisi l'opportunità e ritenga che all'imputato, in caso di condanna, possa essere inflitta la pena della reclusione in misura non superiore ad un anno, ordina, sentito l'avviso del Procuratore militare, la convocazione del Tribunale di Corpo presso la sede del Comando che ha inoltrato la proposta.

Il Tribunale deve essere convocato entro tre giorni dall'arrivo dell'ordine di convocazione.

5) - Il Tribunale di Corpo è composto del presidente e di due giudici, tratti dagli ufficiali appartenenti all'Unità.

Le funzioni di presidente sono esercitate dall'ufficiale più elevato in grado dopo il Comandante.

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Quando si procede a carico di ufficiali, il presidente ed i giudici debbono essere di grado superiore a quello dell'imputato.

Non possono esercitare le funzioni di presidente e di giudice l'Ufficiale offeso o danneggiato dal reato e quello che ha fatto il rapporto.

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La lista dei componenti il tribunale è notificata all'imputato, il quale può ricusarne uno, ad eccezione del presidente, senza obbligo di addurre i motivi.

Il giudice ricusato è immediatamente sostituito da altro Ufficiale che abbia i requisiti richiesti, scelto dal presidente.

Le funzioni di pubblico ministero e di cancelliere sono esercitate da Ufficiali designati dal Comandante dell'Unità.

6) - Per il dibattimento, la sentenza ed il processo verbale di dibattimento si osservano, in quanto applicabili, le norme del capo secondo del titolo quinto del libro terzo del codice penale militare di pace e salve le disposizioni che seguono.

La difesa in udienza è assunta da un ufficiale dipendente dall'Unità, scelto dall'imputato ed, in mancanza, designato dal Comandante.

Il difensore deve avere grado inferiore a quello del presidente.

Il Tribunale di Corpo non può procedere in contumacia dell'imputato.

Quando nel corso del dibattimento si accerti la mancanza di alcuno dei requisiti richiesti dalla legge per la convocazione, il tribunale dichiara la propria incompetenza e trasmette gli atti al tribunale militare competente secondo le norme ordinarie.

Il Tribunale di Corpo deve dichiarare la propria incompetenza anche quando in seguito alle risultanze processuali, si accerti che si tratta di un reato diverso da quelli indicati nell'articolo 2.

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sono esercitate da Ufficiali designati dal Comandante del_
l'Unità.

6) - Per il dibattimento, la sentenza ed il processo verbale di dibattimento si osservano, in quanto applicabili, le norme del capo secondo del titolo quinto del libro terzo del codice penale militare di pace e salve le disposizioni che seguono.

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Il Tribunale di Corpo deve dichiarare la propria in_competenza anche quando in seguito alle risultanze processuali, si accerti che si tratta di un reato diverso da quelli indica_ti nell'articolo 2.

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7) - Convocato il Tribunale militare di Corpo, il presidente e i giudici prestano giuramento con la formula stabilita dalla legge relativa all'ordinamento giudiziario militare.

Il presidente interroga l'imputato sulle sue generali_tà e gli contesta il reato che forma oggetto della imputazione; indi la discussione procede nell'ordine e con le norme stabi

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Declassified E.O. 12356 Section 3.3/NND No. 785020

lite per ogni altro tribunale militare.

Chiuso il dibattimento, allontanato l'imputato e ritiratosi il pubblico ministero e il difensore, il Tribu_ nale delibera la sentenza. Redatta e sottoscritta questa, l'imputato è ricondotto davanti al Tribunale per udirne la lettura, che è fatta dal presidente.

8) - Un magistrato militare del Tribunale militare territoriale è designato dal Procuratore militare per prestare assistenza, quale consulente legale, ai Comandanti delle Unità ed ai Col_ legi giudicanti per quanto si riferisce alla convocazione ed al funzionamento dei tribunali di Corpo. Il consulente legale può assistere al giudizio, ma non partecipa alla discussione della sentenza in Camera di Consiglio.

9) - La sentenza del Tribunale di Corpo deve, entro tre giorni dalla pronunzia, essere trasmessa per la ratifica al Comandante del territorio che ha ordinata la convocazione del tribunale, unita_ mente a tutti gli atti del processo.

La sentenza, munita del visto di ratifica del Comandan_ dante, deve essere trasmessa per la esecuzione alla Procura Militare del Regno competente per territorio entro dieci gior_ ni dalla scadenza del termine indicato nel comma precedente.

Quando il Comandante decide di non ratificare la sen_ tenza del Tribunale di Corpo, la annulla e trasmette gli atti al Procuratore militare perchè proceda per i fatti, che for_ mano oggetto della sentenza, nei modi ordinari.

In tal caso il Procuratore militare dovrà senza indu_ gio prendere i provvedimenti di sua competenza circa la liber_ tà personale degli imputati.

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è designato dal Procuratore militare per prestare assistenza, quale consulente legale, ai Comandanti delle Unità ed ai Collegi giudicanti per quanto si riferisce alla convocazione ed al funzionamento dei tribunali di Corpo. Il consulente legale può assistere al giudizio, ma non partecipa alla discussione della sentenza in Camera di Consiglio.

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La sentenza, munita del visto di ratifica del Comandante, deve essere trasmessa per la esecuzione alla Procura Militare del Regno competente per territorio entro dieci giorni dalla scadenza del termine indicato nel comma precedente.

Quando il Comandante decide di non ratificare la sentenza del Tribunale di Corpo, la annulla e trasmette gli atti al Procuratore militare perchè proceda per i fatti, che formano oggetto della sentenza, nei modi ordinari.

In tal caso il Procuratore militare dovrà senza indugio prendere i provvedimenti di sua competenza circa la libertà personale degli imputati.

10) - Contro le sentenze dei Tribunali di Corpo ratificate dal Comandante militare territoriale non è ammesso ricorso per annullamento al Tribunale Supremo Militare, se non per motivi di incompetenza o di illeggittima costituzione del collegio giudicante.

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- PUNTI DA PRENDERE IN CONSIDERAZIONE PER VALUTARE SE NEL SUO INSIEME L'INNOVAZIONE POSSA CONSIDERARSI UTILE -

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1°) -Il prossimo ritorno alla giurisdizione penale militare di pace decongestionerà notevolmente i tribunali militari ordinari in relazione alle persone ed ai reati e semplificherà il loro lavoro.

2°) -Nei riguardi dell'arretrato un miglioramento notevole potrebbe verificarsi in seguito a misure di carattere generale di clemenza, che venissero adottate.

3°) -Se sarà consentito che il personale in servizio presso i Tribunali militari posso essere convenientemente aumentato, si ritiene che nel periodo di due anni al massimo il servizio sarà completamente regolarizzato.

4°) -La celerità nello svolgimento dei processi non dipende solamente dagli organi giudiziari militari, ma altresì dalle condizioni generali. Vi influiscono il grado di efficienza dei servizi di polizia per la ricerca, l'arresto e la traduzione degli imputati, il grado di sufficienza del sistema carcerario, nonchè la maggiore o minore sicurezza e facilità delle comunicazioni.

5°) -La tradizione giuridica italiana non è incline a vedere affidati i procedimenti penali unicamente a giudici tecnici. Nelle Corti d'Assise, nei Tribunali militari ed in altre magistrature speciali o straordinarie l'opera degli elementi non tecnici è stata sinora sempre accompagnata da quella dei tecnici (giudici civili

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vero.

2°) -Nei riguardi dell'arretrato un miglioramento notevole potrebbe verificarsi in seguito a misure di carattere generale di clemenza, che venissero adottate.

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5°) -La tradizione giuridica italiana non è incline a vedere affidati i procedimenti penali unicamente a giudici ~~tecnici~~ non tecnici. Nelle Corti d'Assise, nei Tribunali militari ed in altre magistrature speciali o straordinarie l'opera degli elementi non tecnici è stata sinora sempre accompagnata da quella dei tecnici (giudici civili o militari, magistrati del pubblico ministero, giudici istruttori).

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6°) - La tradizione giuridica italiana non è incline a confon_
dere nella repressione la mancanza disciplinare con il rea_
to. I Tribunali di Corpo d "corti marziali" dovrebbero
occuparsi solamente della punizione dei reati, lasciando
da parte la materia disciplinare.

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DRAFT 029

Subject: Reform of Italian Army Legal System.

Notes on interview Lt. Col. GILLMORE - Gen. BORSARI at War Ministry at 0900 hrs on 9 Oct. '45.

1. Lt. Col. GILLMORE stated that some means should be found to clear off the large backlog of cases at present awaiting trial by the Military Tribunals. The British or American Court Martial system, consisting of a military court with a legal adviser, was a possible solution, but the Italians were free to adopt any system they favoured provided it enabled a man to be brought to justice in a reason--able time. At present there are over I30,000 out--standing cases, and ~~in some places~~ they are still accumulating at the rate of I,000 a month.

2. General BORSARI, while admitting a need for reform, said in defence of the Military Tribunals that the system of IO Military Tribunals had always worked very well before the war, (Lt. Col. GILLMORE said he had heard a contrary view from a senior Italian officer) that the present accumulation was due to lack of commun--ication, prevalence of war crimes, absence of qualified legal personnel, etc. He did not favour the Anglo-Saxon system of ad hoc Courts Martial consisting of non-legal military personnel, which he said suited the Anglo-Saxon character, being similar to our system of J.Ps. The Italian legal system was always run exclus--ively by legally trained personnel and the Army would

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Tribunals. The British or American Court Martial system, consisting of a military court with a legal adviser, was a possible solution, but the Italians were free to adopt any system they favoured provided it enabled a man to be brought to justice in a reason--able time. At present there are over I30,000 out--standing cases, and ~~in some places~~ they are still accumulating at the rate of I,000 a month.

2. General BORSARI, while admitting a need for reform, said in defence of the Military Tribunals that the system of IO Military Tribunals had always worked very well before the war, (Lt. Col. GILLMORE said he had heard a contrary view from a senior Italian officer) that the present accumulation was due to lack of commun--ication, prevalence of war crimes, absence of qualified legal personnel, etc. He did not favour the Anglo-Saxon system of ad hoc Courts Martial consisting of non-legal military personnel, which he said suited the Anglo-Saxon character, being similar to our system of J.Ps. The Italian legal system was always run exclus--ively by legally trained personnel and the Army would only have confidence in them.

3. When reassured that we did not want to alter the Italian system of Military Tribunals to our own ideas, but only wished to form temporary courts to deal with the current emergency, he appeared to view the matter much more favourably. However, he raised the following points :-

(a) He objected to a court where a civilian sat

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as president assisted by military colleagues; this had been suggested long ago and objected to by the military.

(b) On the other hand, a wholly military court with a civilian adviser was foreign to Italian ways of thinking.

(c) The Government might, by an amnesty, clear off many cases that arose before the surrender, and many of the cases that swell the figures concerned deserters who cannot be traced. This was so even in the Combat Groups where a system of tribunals analog--ous to Courts Martial had been set up; and men who have deserted over 30 days come in any case under ~~civilian jurisdiction (i.e. Italian law Courts Martial could not try them).~~ civilian penal jurisdiction, with by the result that the Military Tribunals would find it harder to get hold of them.

(d) Again in several places, e.g. Turin, even to--day, the Military Tribunal system ~~was~~ is working well.

(e) Courts Martial were only suitable for trying current cases for whose trial they were formed. (Lt. Col. GILLMORE said in that case Courts Martial could deal with current work while the Military Tribunals caught up their backlog, after which Courts Martial would cease to exist).

(f) A further objection was that Courts Martial and Military Tribunals working together offer too great a contrast.

(g) When the state of Emergency (or War) was declar--ed over, a great many ~~cases of these military offences~~ offences now within the jurisdiction of the Military Tribunals would pass to civilian

Declassified E.O. 12356 Section 3.3/NND No. 785020

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(g) When the state of Emergency (or War) was declar-ed over, a great many ~~part of these military offences~~ offences now within the jurisdiction of the Military Tribunals would pass to civilian courts.

All the time he seemed primarily interested in defending the Italian system, but finally consented to work out some concrete proposals for dealing with the numerous cases falling between petty offences against discipline coming within a CO's powers and complicated or serious crimes suitable only for expert Military Tribunals. Some crimes would probably be passed to the category of acts of indiscipline, or the jurisdiction

/over

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of individual commanders might be increased. There was a law that applied in peace-time by which a sold--ier commiting a crime carrying a maximum penalty of one year, may if he elects, go to prison for 6 months on a summary trial by the public prosecutor, and some--thing like this could be made more use of.

4. He proposed :-

(a) to retain Military Tribunals as they are,

(b) to set up Courts Martial with a list of crimes triable and maximum penalties (these are given already in the code). The president to be probably one of the legal members of the Milit--ary Tribunals.

He would consult with the Ministers of Justice and the three services with a view to obtaining their agreement to the proposals and let MMIA have them in about I5 days. (The Air Force and Navy were concerned because the legal system throughout the Italian services is unified.)

5. Lt. Col. GILLMORE again emphasised that we did not wish to force our ideas on the Italians and they were quite free to decide what form the Tribunals should take, whom they should consist of and what powers they should have, and we were only anxious to help in any way we could.

6. As regards an amnesty, Lt. Col. GILLMORE said that Major General BROWNING suggested this should be announced on the occasion of the Italian Government taking over control of the Army. General BORSARI said

Declassified E.O. 12356 Section 3.3/NND No. 785020

triable and maximum penalties (these are given already in the code). The president to be probably one of the legal members of the Milit--ary Tribunals.

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6. As regards an amnesty, Lt. Col. GILLMORE said that Major General BROWNING suggested this should be announced on the occasion of the Italian Government taking over control of the Army. General BORSARI said he had no voice in this matter, which was the concern of the Council of Ministers, especially the Ministers of Justice and the three Services.

JACP/ecc.

Declassified E.O. 12356 Section 3.3/NND No. 785020

0230

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TRANSLATION

FROM: PROCURA GENERALE MILITARE
TO: A.C. M.M.I.A. Rome

Ref. P-G N.3235
Rome Oct. 3/45

SUBJECT: Italian Military Legal Procedure

This Office has taken in consideration the memo[illegible] forwarded with letter A/025 dated Sept.28/1945 in regard to forming Italian Court Martial.

We agree that in the first place it is necessary to discuss the general features of the project and also to examine the possibility and opportunity of approving them.

Awaiting your kind telephone call, stating place, date and hour of meeting.

(SGD) Military Attorney General
(U. Borsari)

C.S.

Capt. Paciai
Tuesday
Suggest ~~Monday~~ 9 Oct at any time convenient to them.
AHG.
6/10

DAAG 2

2678

BU this file at 0900 hrs Tuesday 9/10. I would like Major [illegible] Police to attend this meeting with me.
AHG
6/10

Declassified E.O. 12356 Section 3.3/NND No. 785020

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(SGD) Military Attorney General
(U. Borsari)

C.S.

Can Parisi
Suggest ~~Monday~~ Tuesday 9 oct at any time convenient to them.
AFHQ.
6/10

DAAG 2

BU this file at 0900 hrs Tuesday 9/10. I would like Maj ~~Hodge~~ Pierce to attend this meeting with me.
AFHQ
6/10

2678

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Translated Pl-6124
O25 3/10 12

Roma, addì 3 ottobre 1945

PROCURA GENERALE MILITARE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 3235 prot. P.G. risp.

STAMPERIA REALE DI ROMA

RISERVATA

ALLEGATI N.

OGGETTO: Ordinamento giudiziario militare italiano.

A

ALLA COMMISSIONE ALLEATA

Sottocommissione Esercito (M.M.I.A.)

= ROMA =

Questo Ufficio ha preso in esame il memoriale trasmesso con lettera A/025 del 28 settembre 1945 sull'istituzione di corti marziali italiane.

Si concorda che occorre anzitutto una discussione di carattere generale, per chiarire le linee generali del progetto, nonchè per esaminare la possibilità e l'utilità di darvi corso.

Si rimane in attesa, pertanto, di una cortese comunicazione telefonica sul luogo, il giorno a l'ora dell'incontro.

2671

TRANSLATION

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785080

STAMPERIA REALE DI ROMA

ALLEGATI N. ____

OGGETTO: Ordinamento giudiziario militare italiano.

—

ALLA COMMISSIONE ALLEATA
Sottocommissione Esercito (M.M.I.A.)

= ROMA =

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Si concorda che occorre anzitutto una discussione di carattere generale, per chiarire le linee generali del progetto, nonchè per esaminare la possibilità e l'utilità di darvi corso.

Si rimane in attesa, pertanto, di una cortese comunicazione telefonica sul luogo, il giorno a l'ora 2617 l'incontro.

TRANSLATION
Time 1345
Date 5/10
Time 1630
5/10

IL PROCURATORE GENERALE MILITARE
(U. Borsari)

U. Borsari

Indicare sempre nella risposta la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

CONFIDENTIAL

(26)

Subject : Italian Judicial System.

Legal Forces Sub Comm.AC.
(M.M.I.A.) R O M E

A /023

28 Sep.'45.

To : H.E. GEN FERRARIS, PROCURATORE MILITARE GENERALE.

1. Attached are some proposals for the establishment of Military Courts Martial, the object being to relieve Military Tribunals of much of their work and ensure that military offenders are brought to justice speedily.

2. It would be appreciated if you would study these proposals and be prepared to discuss them in general terms, at some time convenient to yourself during the course of the next few days.

It is felt that our discussions in the first instance should be in general terms with a view to finding out whether the principle of establishing such courts is acceptable to the Italian Military Authorities, what difficulties are likely to arise, and how much legislative reform will be required before such courts can operate.

1446.

Major General,
for M.M.I.A.

MEC/cr

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2. (c) (Cont'd)

The Procuratore Militare (Public Prosecutor) to be represented by an officer of a non legal branch of the army. The officer to be nominated by the Commanding Officer of the accused subject to approval by the Convening Officer.

The accused to be assisted in his defence by an officer of a non legal branch of the army. The accused having the right to select the officer subject to the exigencies of the service. Where the accused offers no preference, an officer to be detailed by the Commanding Officer of the accused. The accused not to be represented by counsel.

(d) PROCEDURE.

On commission of a crime the Commanding Officer will investigate the case and having heard the evidence may, where he thinks there is no case, to answer, dismiss it. Where he considers there is a case to answer he may deal with it summarily or apply for trial by Court Martial, or trial by TRIBUNALE MILITARE. If he decides to apply for a trial by Court Martial or TRIBUNALE MILI-TARE he will have the evidence recorded in writing in the presence of the accused and forward the proceedings to the Territorial Commander with an application for a Court Martial to be convened, or an examination to be made by an examining magistrate with a view to trial by TRIBUNALE MILITARE. The Territorial Commander will either direct the Commanding Officer to deal summarily, or convene a Court Martial or order investigation by an examining magistrate with a view to trial by T. MILITARE.

The proceedings of a trial by Court Martial, to be conducted in accordance with existing Italian rules of procedure. A time limit to be fixed within which military cases must be brought to trial. The accused to have no rights of appeal either on questions of fact or law.

(e) CONFIRMING AUTHORITY.

The confirming authority in all Courts Martial to be the officer who convened the court.

Upon receipt of proceedings which require to be confirmed the CONFIRMING authority may:-

i. direct the Court to reassemble and revise their finding and sentence or both. Only one revision to be allowed. or

ii. refuse confirmation either wholly or in part and take legal advice. or

iii. confirm the finding and sentence of the Court. With regard to sentences passed by Courts Martial the CONFIRMING AUTHORITY to have powers of

a. Mitigation
b. Remission

2675

Declassified E.O. 12356 Section 3.3/NND No. 785020

the case and having heard the evidence may, where he thinks there is no case, to answer, dismiss it. Where he considers there is a case to answer he may deal with it summarily or apply for trial by Court Martial, or trial by TRIBUNALE MILITARE. If he decides to apply for a trial by Court Martial or TRIBUNALE MILI-TARE he will have the evidence recorded in writing in the presence of the accused and forward the proceedings to the Territorial Commander with an application for a Court Martial to be convened, or an examination to be made by an examining magistrate with a view to trial by TRIBUNALE MILITARE. The Territorial Commander will either direct the Commanding Officer to deal summarily, or convene a Court Martial or order investigation by an examining magistrate with a view to trial by T. MILITARE.

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ii. refuse confirmation either wholly or in part and take legal advice. or

2673

iii. confirm the finding and sentence of the Court. With regard to sentences passed by Courts Martial the CONFIRMING AUTHORITY to have powers of

a. Mitigation
b. Remission
c. Commutation
d. Variation
e. Suspension of the execution of a sentence
f. Suspension of the operation or commencement of a sentence.

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Declassified E.O. 12356 Section 3.3/NND No. 785020

CONFIDENTIAL

(25)

Land Forces Sub Comm.AC.
(M.M.I.A.) R O M E

A /023

28 Sep.'45.

Subject : Italian Judical System.

To : H.E. GEN BORSARI, PROCURATORE MILITARE GENERALE.

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It is felt that our discussions in the first instance should be in general terms with a view to finding out whether the principle of establishing such courts is acceptable to the Italian Military Authorities, what difficulties are likely to arise, and how much legislative reform will be required before such courts can operate.

A.H.Gillmore Lt-Col

Major General,
for M.M.I.A.

AHG/ew

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MEMORANDUM.

Appendix 'A' to A/023
dated 28 Sep.'45.

ITALIAN JUDICIAL SYSTEM.

(a) The object of these proposals is the establishment of a form of Court Martial which will relieve the Military Tribunals of much of their work in connection with Military offenders charged with certain specified crimes, and at the same time ensure that Military offenders are brought to justice without delay

(b) The powers of Commanding Officers as they exist appear adequate and no alteration need be made except to give Commanding Officers the right to apply for a Court Martial to be convened to try cases which they consider too serious to be dealt with summarily.

The Military Tribunals should continue to function in the case of serious and complicated cases and all cases involving other than military personnel. The TRIBUNALE SUPREMO should continue to handle appeals.

(c) The method of convening Courts, the constitution of Courts and rules as to confirmation of finding and sentence to be as simple as possible. Procedures as affecting the conduct of the trial, rules of evidence, securing of witnesses, and the rights of accused to legal representation and appeal, to follow as nearly as possible existing ITALIAN Military legal Procedure.

(d) Courts Martial to sit at or near Territorial H.Q. or other place if more convenient. This will facilitate the accommodation of witnesses and the accused under proper escort. Make for easy access to the Convening Authority or Legal advise should it be required.

2. PROPOSALS.

(a) CONVENING AND CONFIRMING AUTHORITY.

The authority to convene a Court Martial and confirm the findings and sentence of such courts to be granted to all Territorial Commanders be name, with powers of delegation to an officer performing the duties of Territorial Commander in their absence, and all General Officers in command of troops.

(b) JURISDICTION OF COURTS MARTIAL.

Courts Martial to have general jurisdiction to try members of the Land Forces and followers including those holding commissioned rank up to and including the rank of Capt. A list showing the category of cases falling within the jurisdiction of Courts Martial to be prepared. The most serious offences i.e. murder, manslaughter, treason and rape to be excluded, but the less serious offences, defined in Italy as crimes, and offences in connection with call up and AWOL, to be included. The maximum sentence for any offence to be defined, but no minimum limit to be imposed.

2673

(c) CONSTITUTION OF COURTS MARTIAL.

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2675

(c) CONSTITUTION OF COURTS MARTIAL.

A Court Martial to be composed of a PRESIDENT and two MEMBERS all officers of non legal branches of the service. The PRESIDENT to be named by the Convening Officers and to hold the rank of Lt.Col. or above, one member to hold the rank of Captain or above and one to hold the rank of Lieutenant or above. In the case of the trial of an officer no member of the Court to hold rank lower than that held by the accused.

to sit as advisers [illegible] int a GIUDICE RELATORE (Legal Judge) [illegible] procedure,

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2. (c) (Cont'd)

The Procuratore Militare (Public Prosecutor) to be represented by an officer of a non legal branch of the army. The officer to be nominated by the Commanding Officer of the accused subject to approval by the Convening Officer.

The accused to be assisted in his defence by an officer of a non legal branch of the army. The accused having the right to select the officer subject to the exigencies of the service. Where the accused offers no preference, an officer to be detailed by the Commanding Officer of the accused. The accused not to be represented by counsel.

(d) PROCEDURE.

On commission of a crime the Commanding Officer will investigate the case and having heard the evidence may, where he thinks there is no case, to answer, dismiss it. Where he considers there is a case to answer he may deal with it summarily or apply for trial by Court Martial, or trial by TRIBUNALE MILITARE. If he decides to apply for a trial by Court Martial or TRIBUNALE MILI-TARE he will have the evidence recorded in writing in the presence of the accused and forward the proceedings to the Territorial Commander with an application for a Court Martial to be convened, or an examination to be made by an examining magistrate with a view to trial by TRIBUNALE MILITARE. The Territorial Commander will either direct the Commanding Officer to deal summarily, or convene a Court Martial or order investigation by an examining magistrate with a view to trial by T. MILITARE.

The proceedings of a trial by Court Martial, to be conducted in accordance with existing Italian rules of procedure. A time limit to be fixed within which military cases must be brought to trial. The accused to have no rights of appeal either on questions of fact or law.

(e) CONFIRMING AUTHORITY.

The confirming authority in all Courts Martial to be the officer who convened the court.

Upon receipt of proceedings which require to be confirmed the CONFIRMING authority may:-

i. direct the Court to reassemble and revise their finding and sentence or both. Only one revision to be allowed or

ii. refuse confirmation either wholly or in part and take legal advice. or

iii. confirm the finding and sentence of the Court. With regard to sentences passed by Courts Martial the CONFIRMING AUTHORITY to have powers of

a. Mitigation
b. Remission

2672

Declassified E.O. 12356 Section 3.3/NND No. 785020

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2672

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iii. confirm the finding and sentence of the Court. With regard to sentences passed by Courts Martial the CONFIRMING AUTHORITY to have powers of

a. Mitigation
b. Remission
c. Commutation
d. Variation
e. Suspension of the execution of a sentence
f. Suspension of the operation or commencement of a sentence.

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051

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4086/9/L. /rlp. 4 September 1945.

SUBJECT : Italian Army judicial system.

TO : Land Forces S/C (MMIA).

(Ref: Conversation Col. Pidsley - Lt. Col. Hannaford).

1. This matter has been taken up with Gen. Borsari, Procuratore Militare who although acknowledging the necessity of improving the existing system ventured the following remarks:

a. The fact that Military Tribunals have been unable to cope with the present situation was mainly due to the fact that military judicial personnel instead of being increased in order to tackle its new and numerous commitments had been seriously cut down.

b. The right for an Italian citizen to be tried by established military courts during the period of his military service is a constitutional right and it is not believed that ~~as~~ the ~~present~~ government would wish to deprive him of it at the present juncture.

c. That the proposed division of the courts in Army, Navy and Air Force Tribunals would not relieve the position, as in any case the law would have to be the same for everyone and the only result would be to multiply the number of courts, and consequently of judicial personnel, by three.

2. There is no doubt that the reform of the Italian Army judicial system will take some time even if the PGM was in complete agreement with your suggestions. It does not appear possible to proceed with such reform until the constitutional bodies of the country are reestablished and start functioning normally. In the meantime it is understood that some temporary "stop-gap" provisions will be proposed by the PGM and put into force at once if you sanction them.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Adviser.

201.1

23

CONFIDENTIAL.

SUBJECT : Italian Army Judicial System.

LAND FORCES SUB COM. A.C.
(M.M.I.A.) ROME.
A 025
30 Aug. 45

TO : A.C. (For Legal Sub Commissioner)

(Ref: Conversation Col. Pidsley - Lt.Col. Mumford)

1. The Italian Army, which has been cooperating with the Allies since Sept 1943 has been handicapped by an inadequate judicial and penal organisation. This has had an adverse effect on discipline and morale which is going from bad to worse now that the war is over.

2. The Italian Army is about to be reorganised and returned to the control of the Italian Government, will be a comparatively small one, and will therefore have to be of the highest quality. It is therefore essential to have a thoroughly efficient method of dealing with acts of indiscipline and crime.

3. The present system comprises :-

(a) summary awards by commanding officers for acts of indiscipline.

(b) trial by permanent and static Military Tribunals for "crimes".

4. The powers of commanding officers seem to be fairly adequate, if properly used and in any case, any inadequacy in this matter is probably capable of being made good within the framework of existing law.

5. The Military Tribunals, on the other hand seem to be quite incapable of coping with the situation. It takes months to bring a man to justice on even the simplest charges, prisons are all overflowing with men awaiting trial, thousands, although denounced, cannot even be arrested because of the waiting list. Even when sentences are awarded they are generally inadequately carried out.

2674

6. It would be comparatively simple to improve matters if the Military Tribunals served only the Army, instead of all three services and certain civilians as well. For this reason it seems that the question should be considered by the Italian Govt in consulting with the Legal Sub-Commission, A.C. from the general legal points of view, and particulary in regard to the following proposals.

7. From the army point of view, there appear to be three alternatives:-

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2670

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7. From the army point of view, there appear to be three alternatives:-

(a) to try to improve the present Military Tribunal machinery and make it work,

(b) to abolish the Military Tribunals and replace them by Courts Martial or some other ad hoc courts.

(c) to retain the Tribunals for complicated cases or those involving other than Army personnel or property, and to institute ad hoc courts (martial) for the trial of army personnel accused of certain specified forms of crime.

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8. The institution of ad hoc courts within the army would be a comparatively easy matter and would involve only

(a) Education of Officers in Military Law

(b) Provision of a nucleus of legal officers as "judge advocates" to advise and assist members of courts and those responsible for the preparation and confirmation of cases.

It would ensure the prompt, and economical handling of the majority of criminal charges and tend to improve the quality of officers by bringing them into closer contact with their men.

9. These proposals are now being studied by the Italian "Procuratore Militare Generale" who realises that something must be done and appears to view the idea not unfavourably. The Italian Army authorities are also studying the matter.

10. It would be appreciated if A.C. would study and comment on this question from the overall point of view, and the effect of any proposed changes on the extra-army functions of the Military Tribunals.

S P Archibald
Major General
M.M.I.A.

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maf.

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(22)

Colonel W. PIDSLEY, DSO, MC.,
Land Forces Sub-Comm A.C.,
(M.M.I.A.) R O M E

A 023

10 Aug. '45.

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(19)

Dear

Thanks so much for your letter JAG/Leg/62 of 3 Aug. So sorry to hear you have had that unpleas--ant sandfly fever and hope you have thrown off all its ill effects.

I entirely agree with your suggestions and will now set about getting answers to your two quest--ions. This may take some time in present circumstances so I don't expect I shall be troubling you for a while.

Yours

(Signed) W.P.

Colonel Lord RUSSELL of Liverpool, C.B.E.,
Deputy Judge Advocate General,
Allied Force Headquarters.

26f

Declassified E.O. 12356 Section 3.3/NND No. 785020

(21)

Subject: Military Tribunal - FRIULI Combat Group.

Land Forces Sub-Comm A.C.,
(M.M.I.A.) R O M E

A 023

10 Aug. '45.

To : Ministry of War.

The following extract from a report on a visit to FRIULI Combat Group is forwarded to you for consideration. Please inform this HQ of your views on this matter as soon as possible.

" In Friuli Combat Group there are several untried cases dating back to the time when the Group was at SAN GIORGIO eight months ago; some of the accused have since died, others did well in the line, and it is felt that the charges against them should be dropped.

It is considered that the commander of a Combat Group should be granted the authority to cancel outstanding charges against a soldier in cases where the man has done well and distinguished himself and the charge has been out-standing a long time."

(PH)

S.P. ARCHER, Major.
for Major General,
M.M.I.A. 2667

SPA/ecc

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(20)

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(M.M.I.A.) R O M E

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Colonel Lord RUSSELL of Liverpool, C.B.E.,
Deputy Judge Advocate General,
Allied Force Headquarters.

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(19)

Baseball 234/5

Tel: ~~Freedom 172~~

Office of the:

Deputy Judge Advocate General
ALLIED FORCE HEADQUARTERS

JAG/Leg/62

3 Aug 45

Dear Pidsley,

I am afraid that I have been rather delayed in considering the problem which you set me.

SPK

I have been trying to get information from the French Justice Militaire about their system of military law and procedure and have had great difficulty as there is only one representative in this country and he appears to be totally incompetent.

Furthermore, I have been in hospital with sandfly fever and since then have been so over-worked, and without Gunning owing to our recent war criminal trial, that I have been able to give the matter very little attention.

I am now, however, in a position to say that before I can make any comprehensive general recommendations two major decisions of policy will have to be made. They are as follows :-

1. Is the jurisdiction of an Italian Military Tribunal over persons to remain as at present, namely, over the Army, Navy, Air Force, Caraoiniere and Metropolitani and civilians (when the offence is against Italian or Allied Military property)?

If it is, any reorganisation of the system in relation to the Army becomes more complex and I would not be competent to advise on my own, nor presumably is it a matter which would concern your ~~Co~~mission alone.

I would recommend that the Army should have a legal system of its own with jurisdiction over all members of the Land Forces and followers.

In this connection a further question will have to be decided, namely, whether the jurisdiction of military tribunals shall be paramount in war time and concurrent with the civil jurisdiction (in respect of civil offences, in time of peace.

2. Are standing tribunals considered preferable to ad hoc tribunals (as in the British system) ? If so, should they have territorial jurisdiction only ? In this connection it is observed that there is a steadily rising number of arrears.

2665

Though territorial tribunals are apparently not the sole

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2665

Though territorial tribunals are apparently not the sole cause of these arrears and may not even be the main cause, there is no doubt that this limited jurisdiction may give rise to bottle-necks if crime or arrests of deserters are more prevalent in some parts of Italy than in others.

If therefore, standing tribunals are to be preferred to ad hoc tribunals I recommend that they should have general, not territorial, jurisdiction.

(22)

Del

/I do not know .....

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I do not know whether it is possible for you to get any decision on these two points, but I feel it would be a waste of your time and mine if I were, without such decisions being made, to make any further suggestions.

Yours sincerely

Russell D'Kimpool

Colonel W. Fidsley, DSO., MC.,
Land Forces Sub Commission,
Allied Commission (AMLA),
ROME.

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Tel: Freedom 172 Office of the:

Volume 18 Deputy Judge Advocate General
ALLIED FORCE HEADQUARTERS

Dear Ridley,

I heard from Gunning on my return from Leave Rest yr wanted someone to help re-write the Italian Military Code. If yr really want someone to undertake this I will be pleased to do it myself if you will let me know. I think that it should conform more to the French Military Code (which is excellent) than to our own, particularly as both French &

IPH

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Civil criminal Law division Division from the Code Napoleon.
I will first study the French Code and form an opinion of its suitability but before starting to amend or reconstruct the Italian "Penal Act" I should be glad if you would let someone to brief me as to any specific points which you think should receive attention so that I may have some guide as to the form the code should take. I know that at present the power of Looking into cases in arrest for long periods without investigation as such need overhauling.

Yours Sincerely,
Russell Thompson.

(18)

Colonel W. FIDSLEY, DSO, MC.,
Land Forces Sub-Comm. A.C.,
(M.M.I.A.) R O M E

A 023

21 June, '45.

Dear

Thank you very much for taking such interest in my preliminary exploration of the reorganisation of the Italian Military Legal Code. I am more than delighted to know that you are prepared at any rate to give us the benefit of your advice; how far that is to lead us is yet to be determined.

The whole question is in a very early stage at present, and how deeply we are going to be committed we shall not know until the peace conditions and the future of Italy are more definite, but it looks as though we shall have to begin considering the question now, because it seems impossible to get any further with the reorganisation of the Army without making a big adjustment of the Legal and Penal Systems, which at present pertain. They are both hopelessly inadeq-
-uate, and we have been trying to patch up the machine but it just does not work. I am convinced that nothing short of a complete overhaul will be any good, but I have not yet got the Works Manager's permission to do this.

If we are to do this in a big way, we ought to regularise the position of a Legal Adviser. If we are only to tinker with it then perhaps the help of you and your staff, in addition to their other duties, might be sufficient. In any case the Italians are anxious for all the help they can get and co-operate with us to an amaz-
-ing and almost pathetic extent.

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2663

Again many thanks.

Yours WP

Colonel Lord Russell of Liverpool, C.B.E. D.J.A.G., AFHQ

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D R A F T

(17)

ITALIAN MILITARY LEGAL PROCEDURE

A. JURISDICTION

(1) All military personnel charged with having committed a crime (as apart from breaches of discipline) fall within the jurisdiction of an Italian Military Tribunal. Tribunal procedure is summarized in paragraph 3 hereunder. The categories of cases falling within the jurisdiction of Military Tribunals are the following:

(a) Failure to answer the call-up and AWOL cases.

(b) Offenses by civilians to Italian or Allied military property.

(c) Crimes committed by Military, Naval and Air Force personnel as well as Carabinieri and Metropolitani personnel.

(2) Military personnel are tried by the Military Tribunal within whose geographical jurisdiction the crime was committed ~~was~~ with the exception of deserters who are tried by the Military Tribunal within whose geographical jurisdiction they were arrested.

(3) A Company, Battalion, or Regimental Commander has no jurisdiction over personnel performing unlawful acts defined as crimes, only over those that entail lack of discipline.

(4) A Divisional Commander has authority to quash a case (but not try it) before it comes to trial. He has no other jurisdiction. 2662

Military personnel may be judged by civil courts following relinquishment of jurisdiction by the interested Military Tribunal. In practice this is only done when the convicted person commits a crime while

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Military personnel may be judged by civil courts following relinquishment of jurisdiction by the interested Military Tribunal. In practice this is only done when the convicted person commits a crime while on leave or not in uniform and it is considered that the crime can be regarded as having been committed by him in a civilian capacity.

B. COURTS

I. Territorial Military Tribunals.
- In liberated Italy there are 11 Military Tribunals. There is, in addition, one Tribunale Supremo to which all cases may be appealed on points of law.

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The personnel of each Military Tribunal comprises:

(a) A President, who is a General, appointed by Marshal MESSE.

(b) 3 judges, all officers of non-legal branches of the service, who are appointed for an indefinite period on a full time basis who constitute what is known as the College of Judges.

(c) 1 Procuratore Militare (Public Prosecutor).

(d) 1 Guidice Relatore (Legal Judge).

(e) 1 Giudice Instruattore (Examining Magistrate).

(f) 1 or 2 Cancellieri (Secretaries or stenographers - Army officers).

It appears that all the above are included in the 250 ceiling determined for Military Tribunals. The total pre-war legal personnel consisted of about 50 Magistrates and 50 judges

A Tribunale Militare may be subdivided into several sections, each section constituting a separate court authorized to hear and try cases without distinction, the purpose being to hear several cases contemporaneously in an attempt to keep abreast of the cases on the calendar. The President of each Tribunale Militare is authorized to select the President of each section within the Tribunale without reference to General MESSE. It is understood that Tribunale Militari who have constituted sections are BARI, NAPLES and ROME.

2661

Analysing Appendix "B" to General BOSSARI's report it will be found that the personnel listed under Magistrates and under the College of Judges is far in excess in most cases to that required for either the

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2661

Analysing Appendix "B" to General BOSSARI's report it will be found that the personnel listed under Magistrates and under the College of Judges is far in excess in most cases to that required for either the sole Tribunale Militare or one containing a section. The greatest discrepancies will be found in BARI, NAPLES, ROME and TARANTO. The latter for example, has only one court functioning, yet sufficient Magistrates and judges for 4 courts.

It should be noted, however, that the Magistrates have duties in addition to Court duties as will be pointed out in Paragraph 3 below.

The composition of the Appeal Court (Tribunale Supremo) is similar to that of the Tribunale Militare except that the President and non-legal judges are higher ranking officers.

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II - Divisional Military Courts:

A Decree, published 7 April, effective 8 February, is now in effect which authorizes Divisional Military Courts with the Italian Combat Groups. These are called Tribunali Militari di Guerra and are constituted in the same manner as the existing territorial Tribunali Militari, except that there will only be one non-legal judge instead of three, and the President will be a Colonel. Jurisidction will be limited to personnel of the Group or Groups as determined by the order establishing them. The immediate plan creates a Tribunale Militare di Guerra with the Fruili Combat Group with jurisdiction over the Fruili and Cremona Combat Groups and one with the Folgore Combat Group with jurisdiction over the Folgore and Legnano Combat Groups. There will be no appeal from the ~~divisions~~ decisions of the Tribunale Militare di Guerra.

C. PROCEDURE

On commission of a crime, the fact is at once reported to the Military Tribunal which then takes the case over and reports the details to the CCRR to execute arrest.

The Examining Magistrate calls and examines the accused and witnesses in the presence of the Procuratore Militare. The evidence is recorded.

During the above procedure the accused cannot in law be represented, but in fact his representative is allowed to be present.

After the examining Magistrate has taken the evidence he can, if he thinks there is no case to answer, dismiss it. He may also suspend it indefinitely in which case it automatically lapses after 5 years if no action is taken. If the Examining Magistrate believes the case should go

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After the examining Magistrate has taken the evidence he can, if he thinks there is no case to answer, dismiss it. He may also suspend it indefinitely in which case it automatically lapses after 5 years if no action is taken. If the Examining Magistrate believes the case should go to trial, information is passed on to the President of the Court who sets a date for the trial. The Court is composed as stated in Paragraph 2 (above). The accused is present during the trial and represented by counsel. Witnesses are again heard during the trial but testimony given may be read if they are unable to be present. There is no cross-examination, all

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questions are asked by the President and at his discretion. Questions asked by either side are addressed to the President who refers them to the party on the stand.

The Court pronounces the verdict and awards sentence. Sentences are apparently often hard. Desertion (Absence over 24 hours) involves a minimum sentence of 5 years, but this may be reduced if the accused had a good excuse for his absence and returned voluntarily to his unit.

The accused or the Prosecutor may appeal to the Tribunale Supremo on questions of law, but not on questions of fact. If the Appeal is upheld, a new trial is ordered.

The above procedure is used for trying officers, NCO's and ORs. In cases where the accused is an officer the rank of the judges and President of the Court must be higher than that of the accused officer.

D. SITUATION OF UNTRIED CASES

The number of untried cases at 31 Dec 1944 was 75,000 for absence (including failure to answer the call-up) and 12,500 other cases, and it is understood that this number is still rising.

General BERUTTI estimated that 1,000 to 1,500 of the accused in the above cases had been arrested and were awaiting trial. Carabinieri were apparently not being encouraged to arrest offenders owing to the prisons being full. A few accused are arrested and released pending trial. Bail is not asked for.

Many prisoners (convicted or awaiting trial) are said to be held in prison as the records of their cases or charges have been lost by bombing or otherwise. They are apparently held indefinitely until the records are

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Many prisoners (convicted or awaiting trial) are said to be held in prison as the records of their cases or charges have been lost by bombing or otherwise. They are apparently held indefinitely until the records are found or new records compiled.

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There is no time limit within which military cases have to be brought to trial after arrest or charges made against the accused.

E. RIGHTS OF ARRESTED PERSONNEL

Arrested military personnel have the right to communicate with the

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Procuratore Militare Generale (General BORSARI) if they have not been brought to trial within three months.

Any prisoner, whether serving sentence or awaiting trial, may write to the Procuratore Militare Generale at any time for any reason.

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MILITARY LAW

RECOMMENDATIONS

1. HABEUS CORPUS ACT.

It is recommended that A Habeus Corpus Act be introduced. No man to be imprisoned for more than a specified time for any offence without being tried, one month being suggested provided the system of detention outlined in paragraph 6 is approved.

2. TRIBUNAL PERSONNEL.

Non-legal judges should be selected from those officers under command of the Territorial or Division HQ and ordered to serve in addition to their other duties. A system of rotation worked out so as not to tie up any one group of officers for too long a period of time. Recommend each rotation period ~~cover~~ a maximum of two months. This would release 78 officers as per Appendix 'B' to Gen BOSSARI's report.

The established ceiling of 250 for Military Tribunals would therefore consist solely of officers of the judicial branch of the Army, employed in duties that by law require legal personnel.

3. SENTENCES.

Wherever possible, sentences should be made short and be served in Detention Barracks to run on Allied lines.

4. AMNESTY.

An amnesty is recommended along the following lines :-

I. The amnesty to apply to all persons, except those who deserted in the face of the present enemy, whether :-

(a) Serving sentence,

(b) In prison awaiting trial

(c) Not apprehended

II. Categories 1(a) and 1(b) above to be released provided that they sign a prepared statement stating that they agree to join the Army, serve in whatever

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too long a period of time. Recommend each rotation period ~~over~~ cover a maximum of two months. This would release 78 officers as per Appendix 'B' to Gen BESARI's report.

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(c) Not apprehended

II. Categories 1(a) and 1(b) above to be released provided that they sign a prepared statement stating that they agree to join the Army, serve in whatever capacity is deemed necessary for an indefinite period of time. If a man refuses to sign such a statement he will not be released.

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III. The amnesty will apply to only those men falling within category 1(c) who present themselves to the nearest CC.RR. station, sign a statement similar to the one described in II above and, if deemed necessary, are to be sent to a camp immediately, or hold themselves ready to join.

IV All men falling within categories 1(a),(b) and (c) above of those classes that have been discharged are to be set free unconditionally, except those who

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deserted in face of the present enemy.

V. It is recommended also that the amnesty include those prisoners either awaiting trial or serving sentence who have committed minor infractions, punishment for which does not exceed 6 months imprisonment. The conditions set forth in B II and B IV apply in this case.

The following is an alternate plan for an Amnesty :-

Desertion and Failure to Answer the Call-up.

An amnesty is recommended along the following lines :-

I. To apply to all persons, except those who have deserted in the face of the present enemy.

II. To apply to all, irrespective of whether they are at liberty, apprehended and in prison awaiting trial, or tried and sentenced.

III. To contain a proviso that all amnestied persons who are in the age groups now called up shall hold themselves in readiness to answer a summons to join or rejoin the army. In case of failure to join or rejoin when called upon, the Amnesty to be cancelled and such persons to be tried and sentenced as if there had been no amnesty. It is realized that unless very carefully worded, such an amnesty may cause some discontent amongst those who have stayed in or been called to the Army and have borne the heat and burden of the day, but it is considered that this could be obviated with careful drafting of the amnesty and that the advantages obtained by clearing the gaols and turning the 75,000 criminals into honest men outweigh any disadvantages.

IV. (As V in typed recommendation)

5. SUMMARY JURISDICTION. 2656

It is recommended that Battalion and Regimental Commanders be given powers of summary trial for absence without official leave and minor infractions in which the maximum established penalty will not exceed 6 months. The sentence to be served

Declassified E.O. 12356 Section 3.3/NND No. 785020

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5. SUMMARY JURISDICTION.

2656

It is recommended that Battalion and Regimental Commanders be given powers of summary trial for absence without official leave and minor infractions in which the maximum established penalty will not exceed 6 months. The sentence to be served in Detention Barracks. Conviction and sentence to require confirmation by the Divisional Commander, but there should be no appeal, and no legal representation of the offender.

In order that increased disciplinary power may be granted unit commanders, it will be necessary to alter the present law and establish procedure and power of summary jurisdiction over cases that fall within the category of a crime (not now permitted by law).

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b. DETENTION METHODS.

While the legal procedure is under consideration, it is well to recognize that present detention facilities and system are not adequate nor do they offer an opportunity for rehabilitation. The two factors, legal procedure and detention methods, are so closely related that it would prove opportune at this time to consider and recommend the establishing of several Detention Training Centers organized, from the standpoint of discipline and routine, along Allied lines.

Two separate groups of Detention Training Centers organized on Allied lines, are recommended for the following purposes :-

(a) For detaining personnel awaiting trial. These centers should be built near the seat of the Military Tribunal, so that legal procedure may be expeditiously handled. All cases must be tried and terminated within one month from the time of arrest.

NMIA policy authorizes military rations for this period of time. It would be necessary to authorize the creation of new and special military guard units for duties at these centers.

(b) For detaining personnel serving sentence whether as a result of Military Tribunal sentence or Summary Trial. These centers should accept only personnel sentenced to not over six months detention. The rigorous discipline and hard work executed by prisoners at the Detention Training Centers will be a deterrant to all once the word gets around. Therefore, Military Tribunals and Unit Commanders should be encouraged to sentence military personnel to not over six months confinement.

Prisoners will be on civilian rations at these Centers, but it should be agreed to establish military guard units for the same purpose as stated in (a) above, and also authorize the issue of required clothing and casermaggi equipment for the prisoners.

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Prisoners will be on civilian rations at these Centers, but it should be agreed to establish military guard units for the same purpose as stated in (a) above, and also authorize the issue of required clothing and casermaggi equipment for the prisoners.

Prisoners sentenced to longer terms will be placed in civilian jails.

SUMMARY.

It appears that the above recommendations under ~~AII and AIII (1)-(2)~~ paragraphs 4, 2 and 6 could be put into force at a very early date, as also could any amnesty, but that the alteration of the laws required to implement the remaining proposals will require considerable changes in law and procedure which will need very careful legal drafting and will probably take a long time to implement even if the Italian authorities accept the changes willingly.

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SUMMARY (CONTD)

In view of the present state of the war in Europe, it is therefore proposed that recommendation in ~~12 and III (1)-(2)~~ paragraphs 4 2 and 6 and the Amnesty be pressed forward immediately.

The Amnesty, in particular, could be prepared so as to be declared on some special occasion (end of the War or entry into Berlin) as this alone would largely clear the decks and enable the courts to concentrate their energies on current cases.

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(16)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

SECRET
URGENT
25 May 1945

AC/-192/1/L

A 2615

SUBJECT: Venezia Giulia

TO : See distribution

1. It has been decided that the procedure of implementation of Italian decrees will not be adopted in Venezia Giulia. The law to be administered there will be :-

(a) Italian law as existing at 8 September 1943 less any provisions (e.g. Fascist doctrines) which are excluded from operation in the territory; and

(b) AMG Regional Orders.

2. It should be pointed out that Venezia Giulia will be administered as an autonomous area and not as dependent from any central organisation in Rome or elsewhere.

3. It follows from this policy that a considerable number of Regional Orders will have to be issued to cover matters which in other AMG territory are regulated by Italian decrees. Examples are: payment of wages, agricultural regulations, blocking of commercial products, transportation.

4. Will you please notify this sub-commission by 29 May 1945 without fail :-

(a) What points should be covered by Regional Orders to be issued in Venezia Giulia;

(b) Whether the Orders to be issued on these points should consist of a redraft of the existing Italian decrees modified as necessary for the purpose of an AMG order or whether an entirely new policy should be adopted. In this case please indicate the policy.

SPA

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

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MMIA
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A. 1°
A. 2°
A. 3°

S E C R E T

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ALLIED COMMISSION
(EC 394)
LEGAL SUB-COMMISSION

Army 4c

AC/4104/L.

18 April 1945

SUBJECT : Index of Italian decrees.

TO : See distribution list.

A 023 I U A 4

Branch

1. Enclosed herewith is an index of selected decrees passed by the Italian Government during the period From 8 Sep 1943 to 1 Mar 1945.

2. Only such decrees are listed in the index as are considered of practical interest for the work of the legal officers.

3. It is recommended that the index be kept up to date by each individual holder.

4. NO additional copies are available.

Removed & to be kept by DAAG.(2) NP

W. P. BEERENS,
Colonel,
Deputy Chief Legal Advisor.

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Public Safety Sub-Commission
Public Works and Utilities Sub-Commission
Shipping Sub-Commission
Transportation Sub-Commission
A.F.H.Q., G-5, Legal Adviser
C.C.C., M.E.F., Civil Affairs Branch, for Chief Legal Advisor
AC. Liaison Officer - Catania
" " " - Palermo
" " " - Bari.
Provincial Commissioner Naples
Senior Legal Officer Naples

Declassified E.O. 12356 Section 3.3/NND No. 785020

A

(14)

A.023

2.4

SUBJECT: Explosion - Bari Docks 9 Apr 45 CONFIDENTIAL

3505 A

NR

Reference this H.Q. letter 3505 A dated 14 Apr.

1. A.F.H.Q. have now ruled that unit courts of enquiry will be necessary where personnel have been killed, injured or reported missing. Paragraph 13 of the above-mentioned letter will, therefore, be amended accordingly.

2. Where personnel have been killed, injured or reported as missing, units will list these personnel separately and attach the lists to the proceedings of the court of enquiry as appendices A, B and C respectively. Lists will show number, rank, name, initials and unit of personnel concerned.

3. The courts of enquiry will be convened to enquire into the circumstances of -

(a) the death of personnel listed at appendix "A".

(b) how personnel listed at appendix "B" became injured.

(c) how personnel listed at appendix "C" came to be reported missing.

4. Formal evidence should be given to the effect that at about 1200 hours on 9 Apr 45 an explosion occurred on an American ship in Bari Docks. Evidence should then be given to establish -

(a) that personnel listed at appendix "A" were working on the Docks, were killed and their bodies have been identified and buried.

(b) that personnel listed at Appendix "B" were working in the vicinity at the time of the explosion and sustained injuries due to the explosion.

(c) that personnel listed at appendix "C" were working near the scene of the explosion, that they have been missing since that time, and that efforts at identification of bodies have proved unsuccessful.

5. It is emphasised that unit courts of enquiry will not investigate the cause of the explosion. The proceedings required only for casualty procedure at G.H.Q. 2nd Echelon.

2651

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6. The courts will not express any opinion.

7. The opinion of the C.O. will normally be that the personnel concerned were on duty and not to blame".

8. Three copies of the proceedings of the courts of enquiry are required at this H.Q.

(Over

NHA 9211/2

Declassified E.O. 12356 Section 3.3/NND No. 785020

A/023 B

PROCEDURE FOR DISCIPLINARY ACTION AGAINST ITALIAN OFFICERS AS PER ATTACHED CHART.

Notizia del Fatto - Information of Commission of fact

When it has been established that a particular officer has committed a wrongful act, the following will be done :-

Accertamenti Disciplinari - Disciplinary Investigation by the unit (Regt'l) Comdr is made for the purpose of establishing the facts of the case, the extent of the wrong committed and the disposition to be made of the case. This may result in :-

1. Esito negativo - Negative report in which case the matter is dropped.

2. Punizione disiplinare - Disciplinary punishment, given by his commanding officer.

3. Inchiesta formale - Formal investigation conducted by either.

   (a) Ministry of War.

   (b) CG Army Corps

   (c) CG Territorial HQ

This may eventually result into one of the following courses being taken :-

(a) Esito negativo - Negative report whereby the case is dropped.

(b) Punizione disciplinare - Disciplinary punishment

(c) Provvedimento di Stato - State (Government actionresulting in partial loss of pay or subsistance allowance, being degraded, placed back on promotion list, etc.

(d) Denounced to the Guidicial Authorities for Court Martial.

4. Denuncia all'Autorita' Giudiziaria - Denounced to the Judicial Authorities This action inevitably causes a Court Martial disposing the case in one of the following ways :-

(a) Assoluzione Totale - Total acquittal

(b) Assoluzione Dubitativa - Doubtful acquittal This situation may arise in cases where the act is not, or at the time it was committed, did not constitute a crime, but it nevertheless reflects unfavorably upon the officer's character and is therefore to be noted.

(c) Condanna - Sentence

The results of Court Martial proceedings are forwarded

Declassified E.O. 12356 Section 3.3/NND No. 785020

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(c) Condanna - Sentence

The results of Court Martials proceedings are forwarded for formal investigation (inchiesta formale) so that the case may be reviewed to determine absolute accuracy reference points of law and fact.

Declassified E.O. 12356 Section 3.3/NND No. 785020

A

(14)

A.023

2[illegible]4

SUBJECT: Explosion - Bari Docks 9 Apr 45 CONFIDENTIAL

NR

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2651

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2. Where personnel have been killed, injured or reported as missing, units will list these personnel separately and attach the lists to the proceedings of the court of enquiry as appendices A, B and C respectively. Lists will show number, rank, name, initials and unit of personnel concerned.

3. The courts of enquiry will be convened to enquire into the circumstances of -

(a) the death of personnel listed at appendix "A".

(b) how personnel listed at appendix "B" became injured.

(c) how personnel listed at appendix "C" came to be reported missing.

4. Formal evidence should be given to the effect that at about 1200 hours on 9 Apr 45 an explosion occurred on an American ship in Bari Docks. Evidence should then be given to establish -

(a) that personnel listed at appendix "A" were working on the Docks, were killed and their bodies have been identified and buried.

(b) that personnel listed at Appendix "B" were working in the vicinity at the time of the explosion and sustained injuries due to the explosion.

(c) that personnel listed at appendix "C" were working near the scene of the explosion, that they have been missing since that time, and that efforts at identification of bodies have proved unsuccessful.

5. It is emphasised that unit courts of enquiry will not investigate the cause of the explosion. The proceedings are required only for casualty procedure at G.H.Q. 2nd Echelon. 2651

6. The courts will not express any opinion.

7. The opinion of the C.O. will normally be that the personnel concerned "were on duty and not to blame".

8. Three copies of the proceedings of the courts of enquiry are required at this H.Q.

(Over

NA 17-23/2

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9. A.F.B 117 (Report of Injuries) will be attached to each Appendix "B" in respect of each injured individual.

10. Proceedings of courts of enquiry will be forwarded to reach this H.Q. by 25 Apr 45 at the latest.

C.M.F.
18 Apr 45
WEJC/LR

Lt-Col.,
A.A.& Q.M.G., 5th Area.

DISTRIBUTION: List A
List B

Copy to: G.H.Q. 2nd Echelon
5 District

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A/023 B

PROCEDURE FOR DISCIPLINARY ACTION AGAINST ITALIAN OFFICERS AS PER ATTACHED CHART.

Notizia del Fatto - Information of Commission of fact

When it has been established that a particular officer has committed a wrongful act, the following will be done :-

Accertamenti Disciplinari - Disciplinary Investigation by the unit (Regt'l) Comdr is made for the purpose of establishing the facts of the case, the extent of the wrong committed and the disposition to be made of the case. This may result in :-

1. Esito negativo - Negative report in which case the matter is dropped.

2. Punizione disiplinare - Disciplinary punishment, given by his commanding officer.

3. Inchiesta formale - Formal investigation conducted by either.

   (a) Ministry of War.

   (b) CG Army Corps

   (c) CG Territorial HQ

This may eventually result into one of the following courses being taken :-

(a) Esito negativo - Negative report whereby the case is dropped.

(b) Punizione disciplinare - Disciplinary punishment

(c) Provvedimento di Stato - State (Government actionresulting in partial loss of pay or subsistance allowance, being degraded, placed back on promotion list, etc.

(d) Denounced to the Guidicial Authorities for Court Martial.

4. Denuncia all'Autorita' Giudiziaria - Denounced to the Judicial Authorities This action inevitably causes a Court Martial disposing the case in one of the following ways :-

(a) Assoluzione Totale - Total acquittal

(b) Assoluzione Bubitativa - Doubtful acquittal This situation may arise in cases where the act is not, or at the time it was committed, did not constitute a crime, but it nevertheless reflects unfavorably upon the officer's character and is therefore to be noted.

(c) Condanna - Sentence

The results of Court Martials proceedings are forwarded

Declassified E.O. 12356 Section 3.3/NND No. 785020

commanding officer.

3. Inchiesta formale - Formal investigation conducted by either.

(a) Ministry of War.

(b) CG Army Corps

(c) CG Territorial HQ

This may eventually result into one of the following courses being taken :-

(a) Esito negativo - Negative report whereby the case is dropped.

(b) Punizione disciplinare - Disciplinary punishment

(c) Provvedimento di Stato - State (Government actionresulting in partial loss of pay or subsistance allowance, being degraded, placed back on promotion list, etc.

(d) Denounced to the Guidicial Authorities for Court Martial.

4. Denuncia all'Autorita' Giudiziarie - Denounced to the Judicial Authorities This action inevitably causes a Court Martial disposing the case in one of the following ways :-

(a) Assoluzione Totale - Total acquittal

(b) Assoluzione Dubitativa - Doubtful acquittal This situation may arise in cases where the act is not, or at the time it was committed, did not constitute a crime, but it nevertheless reflects unfavorably upon the officer's character and is therefore to be noted.

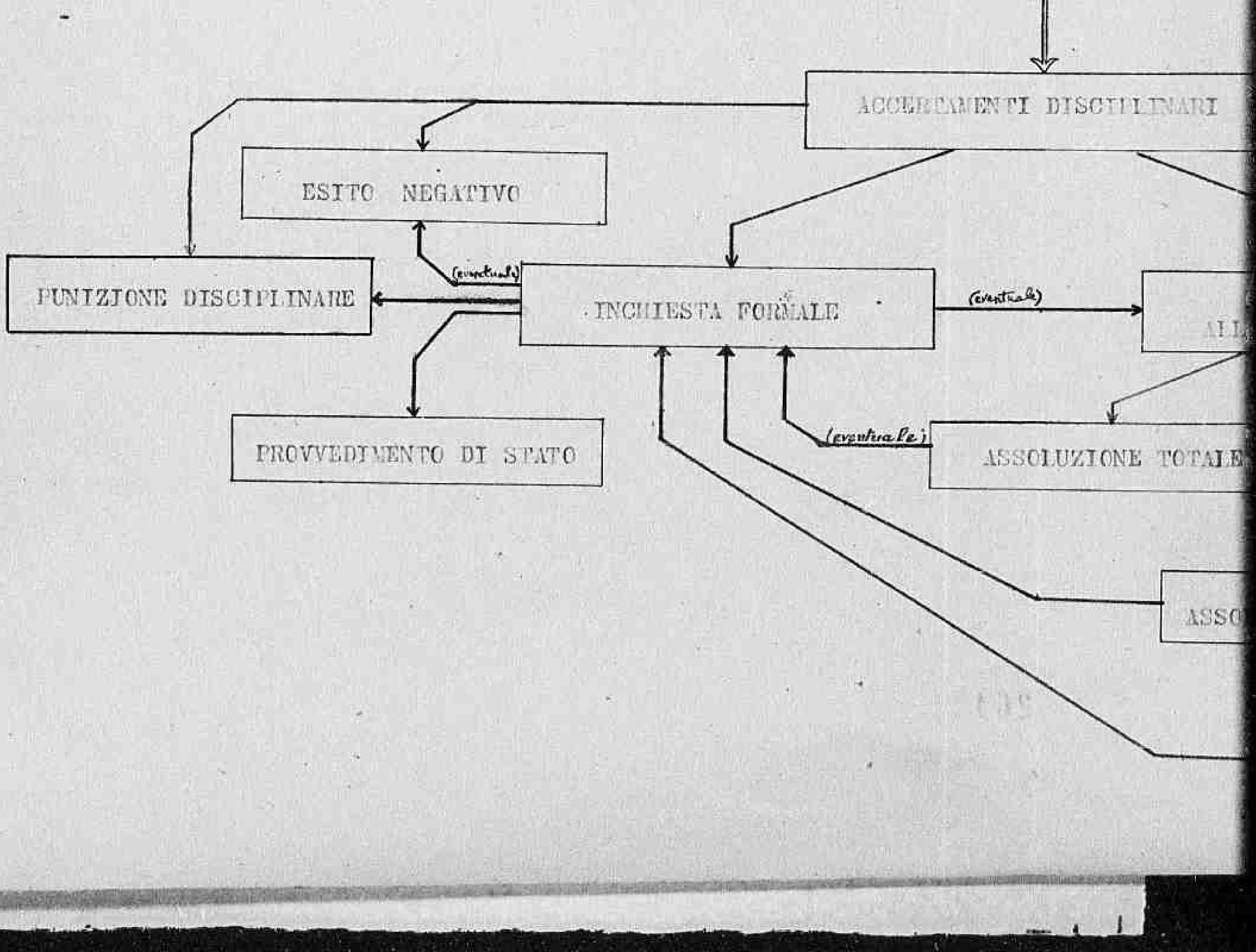
(c) Condanna - Sentence

The results of Court Martials proceedings are forwarded for formal investigation (inchiesta formale) so that the case may be reviewed to determine absolute accuracy reference points of law and fact.

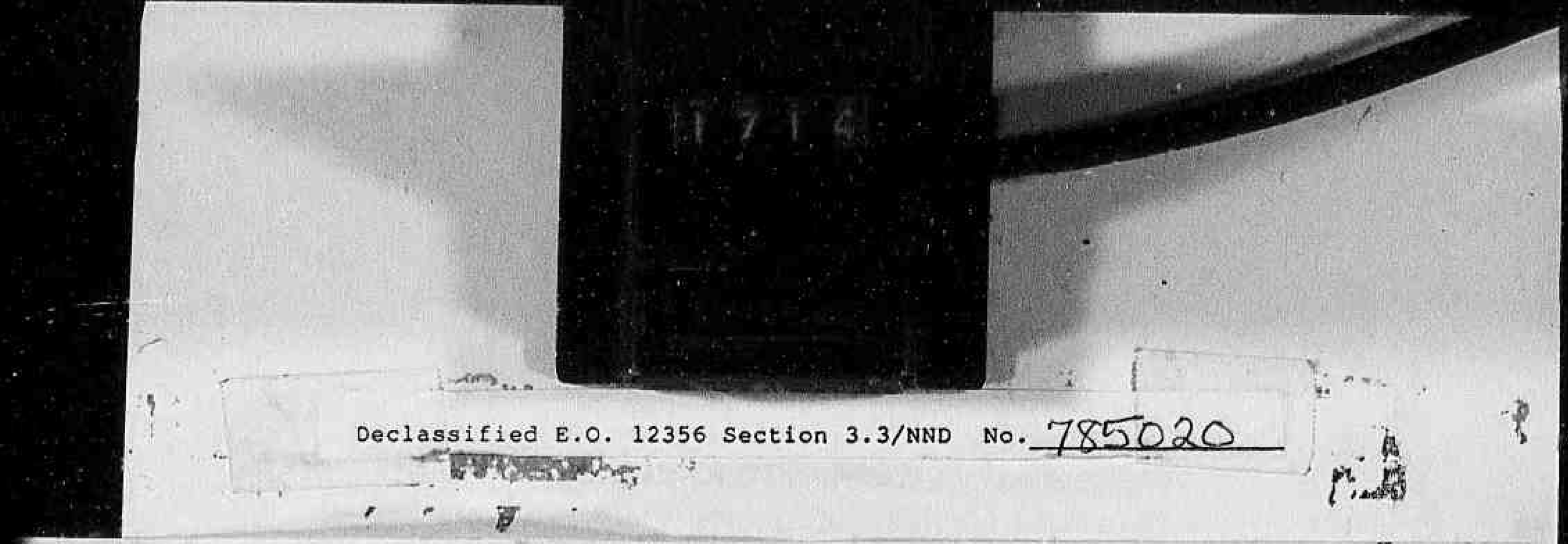
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A 07

A 'A' file #12

Ref G2(A) log

4/5 Apr para 9

file A2

A3 is see 7/4

APO

TRANSLATION

UMBERTO DI SAVOIA
PRINCE OF PIEDMONT
LT. GENERAL OF THE REALM

By VIRTUE of the Authority in Us invested;
IN VIEW OF Law No. 369 of May 9th 1940 regarding the status of Officers of the Army, and subsequent amendments;
IN VIEW OF Law No. 370 of May 9th 1940, on promotion of Officers of the Army, and subsequent amendments;
IN VIEW OF MY Decree-Law No. 151 of June 25th 1944;
CONSIDERED the decision of the Council of Ministers;
ON THE PROPOSAL OF Minister of War, in agreement with the Ministers for Finance, Treasury, Navy, Air Force and Occupied Italy;

WE HAVE SANCTIONED AND promulgate THE FOLLOWING:

Art. 1

Patriots who, in command of "Volontari della Liberfà", have been in action against the nazi-fascists, may be granted the mil rank corresponding to the size of the unit they have commanded in such actions.

Art. 2

The recognition of rank referred to in the preceding Article in respect of patriots who are not Regular Army Officers or Senior NCOs, can be extended up to the rank of Lt Col or its equivalent and will be granted by the Minister of each Armed Force, on the advice of a suitable Commission appointed by him.

Art. 3

Regular Army Officers and Senior NCOs will retain their original rank and appointments and any recognition of higher rank will be made in accordance with the regulations in force for promotions in the field.

Recognition of a rank higher than that held in their original units is granted to Officers and Senior NC Os of the reserve, only as a temporary measure.

The recognition of rank will also only be temporary in the case of Junior NCOs and ORs or patricts who do not belong to the Armed Forces of the State.

Art. 4

Patriots who have commandéd formations of the "Volontari della Liberta" will be inscribed in a "provisional patriot roll" which will include :

- Officers and Senior NCOs, of the reserve, who have been granted temporarily a rank higher than that which they held in their Army units;
- Officers and Senior NCOs - of the res - who retain the same rank

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Art. 1

Patriots who, in command of "Volontari della Liberta", have been in action against the nazi-fascists, may be granted the mil rank corresponding to the size of the unit they have commanded in such actions.

Art. 2

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Recognition of a rank higher than that held in their original units is granted to Officers and Senior NC Os of the reserve, only as a temporary measure.

The recognition of rank will also only be temporary in the case of Junior NCOs and CRs or patriots who do not belong to the Armed Forces of the State.

Art. 4

Patriots who have commandéd formations of the "Volontari della Liberta" will be inscribed in a "provisional patriot roll" which will include :

- Officers and Senior NCOs, of the reserve, who have been granted temporarily a rank higher than that which they held in their Army units;
- Officers and Senior NCOs - of the res - who retain the same rank which they held in their original units;
- Junior NCOs and CRs, or patriots not belonging to any of the Armed Forces of the State, who have obtained recognition of rank on a temporary basis. These will be allotted to the Infantry and Branches of the Infantry.

Continued on page 2.

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Art 5.

At the end of the war, when the Armed Forces are re-organized, the possibility will be given to the patriots under Art. 3, sub-paras 2 and 3, of :

- having the temporary rank definitely confirmed and being transferred to the reserve with that rank
- being transferred with a rank to be determined to the roll of Officers and Senior NCOs. of the regular Army.

Art. 6

A Decree of the Lt General of the Realm will be passed on the proposal of the Minister for War, in agreement with the Ministers for Finance, Treasury, Navy, Air and Occupied Italy, for the procedure to be adopted for the application of the present Decree.

Art. 7

Thes Decree will come into force on the day following that of its publication in the Official Gazette of the Realm.

Declassified E.O. 12356 Section 3.3/NND No. 785020

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RELAZIONE AL CONSIGLIO DEI MINISTRI

OGGETTO: Schema di D.L.L. concernente il riconoscimento dei gradi ricoperti dai patrioti.

Nella riunione del 18 gennaio u.s. il Consiglio dei Ministri ha deliberato di riconoscere ai patrioti i gradi da essi ricoperti al comando di reparti operanti contro i nazi-fascisti.

In relazione a ciò è stato predisposto l'unito schema di decreto legislativo.

In particolare:

- il riconoscimento - limitato fino al grado di tenente colonnello del R.esercito o grado corrispondente delle altre forze armate - sarà effettuato, tenendo conto dell'entità del reparto comandato, dal Ministro competente per ciascuna forza armata, sentito il parere di apposita commissione da lui nominata (articoli 1 e 2);

- viene prevista la costituzione di un ruolo transitorio patrioti, nel quale sono iscritti anche i patrioti provenienti dai militari di truppa e dai civili (art.4);

- gli ufficiali in servizio permanente ed i sottufficiali in carriera continuativa, anzichè essere iscritti in detto ruolo transitorio, rientrano nei rispettivi ruoli di provenienza con i gradi che vi ricoprivano. L'eventuale riconoscimento di gradi superiori si effettuerà in base alle disposizioni in vigore per le promozioni per merito di guerra. Tale riconoscimento è definitivo.

Invece, per gli ufficiali ed i sottufficiali delle categorie in congedo, per i graduati e militari di truppa, e per i patrioti non appartenenti alle forze armate dello Stato, l'eventuale riconoscimento dei gradi da parte della commissione di cui sopra si effettuerà solo a titolo temporaneo. La conferma definitiva, nonchè il trasferimento nei ruoli della forza in congedo, avrà luogo alla fine della guerra (art.3).

E' prevista, infine, la possibilità di trasferire nei ruoli del servizio effettivo, all'atto della riorganizzazione delle forze armate alla fine dell'attuale conflitto, con grado da determinare, gli ufficiali e i sottufficiali iscritti nel "ruolo transitorio patrioti" (art.5).

2641

Declassified E.O. 12356 Section 3.3/NND No. 785020

legislativo.

In particolare:

- il riconoscimento - limitato fino al grado di tenente colonnello del R.esercito o grado corrispondente delle altre forze armate - sarà effettuato, tenendo conto dell'entità del reparto comandato, dal Ministro competente per ciascuna forza armata, sentito il parere di apposita commissione da lui nominata (articoli 1 e 2);

- viene prevista la costituzione di un ruolo transitorio patrioti, nel quale sono iscritti anche i patrioti provenienti dai militari di truppa e dai civili (art.4);

- gli ufficiali in servizio permanente ed i sottufficiali in carriera continuativa, anzichè essere iscritti in detto ruolo transitorio, rientrano nei rispettivi ruoli di provenienza con i gradi che vi ricoprivano. L'eventuale riconoscimento di gradi superiori si effettuerà in base alle disposizioni in vigore per le promozioni per merito di guerra. Tale riconoscimento è definitivo.

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2645

Declassified E.O. 12356 Section 3.3/NND No. 785020

UMBERTO DI SAVOIA
PRINCIPE DI PIEMONTE
LUOGOTENENTE GENERALE DEL REGNO

^ ^ ^ ^ ^ ^ ^

IN VIRTU' dell'autorità a Noi delegata;

VISTA la legge 9 maggio 1940, n.369, sullo stato degli ufficiali del R.esercito, e successive modificazioni;

VISTA la legge 9 maggio 1940, n.370, sull'avanzamento degli ufficiali del R.esercito, e successive modificazioni;

VISTO il decreto-legge Luogotenenziale 25 giugno 1944, n.151;

VISTA la deliberazione del Consiglio dei Ministri;

SULLA PROPOSTA del Ministro per la Guerra, di concerto coi Ministri per le Finanze, per il Tesoro, per la Marina, per l'Aeronautica e per l'Italia Occupata;

ABBIAMO SANZIONATO E PROMULGHIAMO QUANTO SEGUE :

Art. 1

Ai patrioti che, al comando di formazioni di "Volontari della libertà", hanno preso parte ad azioni di combattimento contro i nazifascisti, possono essere riconosciuti gradi militari corrispondenti all'entità del reparto che essi hanno comandato in tali azioni.

Art. 2

Il riconoscimento dei gradi di cui all'articolo precedente nei confronti dei patrioti non appartenenti alle categorie degli ufficiali in servizio permanente e dei sottufficiali in carriera continuativa, può essere esteso fino al grado di tenente colonnello o corrispondente, e verrà effettuato dal Ministro competente di ciascuna forza armata, sentito il parere di apposita commissione ministeriale da lui nominata.

Art. 3

Declassified E.O. 12356 Section 3.3/NND No. 785020

ciali del R.esercito, e successive modificazioni;

VISTO il decreto-legge Luogotenenziale 25 giugno 1944, n.151;

VISTA la deliberazione del Consiglio dei Ministri;

SULLA PROPOSTA del Ministro per la Guerra, di concerto coi Ministri per le Finanze, per il Tesoro, per la Marina, per l'Aeronautica e per l'Italia Occupata;

ABBIAMO SANZIONATO E PROMULGHIAMO QUANTO SEGUE :

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Art. 2

Il riconoscimento dei gradi di cui all'articolo precedente nei confronti dei patrioti non appartenenti alla categoria degli ufficiali in servizio permanente e dei sottufficiali in carriera continuativa, può essere esteso fino al grado di tenente colonnello o corrispondente, e verrà effettuato dal Ministro competente di ciascuna forza armata, sentito il parere di apposita commissione ministeriale da lui nominata.

Art. 3

L'ufficiale in servizio permanente e il sottufficiale in carriera continuative rimangono nei rispettivi ruoli con il grado che vi ricoprivano; l'eventuale riconoscimento di gradi superiori avverrà con la procedura stabilita dalle disposizioni vigenti per le promozioni per merito di guerra.

Il riconoscimento di grado superiore a quello rivestito nelle forze armate di provenienza nei confronti degli ufficiali e dei sottufficiali - appartenenti alla categorie del congedo - è effettuato a titolo temporaneo.

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A titolo temporaneo viene effettuato altresì il riconoscimento di grado ai patrioti che siano graduati e militari di truppa oppure non appartengano alle forze armate dello Stato.

Art. 4

I patrioti che hanno comandato formazioni di "Volontari della libertà" vengono iscritti in un "ruolo trasitorio patrioti", comprendente:

- gli ufficiali ed i sottufficiali delle categorie in congedo, ai quali sono stati concessi - a titolo temporaneo - gradi superiori a quello che rivestivano nelle forze armate di provenienza;
- gli ufficiali ed i sottufficiali delle categorie in congedo che conservano lo stesso grado rivestito nelle forze armate di provenienza;
- i graduati e militari di truppa, oppure i patrioti non appartenenti alle forze armate dello Stato, che abbiano ottenuto a titolo temporaneo il riconoscimento di gradi. Essi vengono assegnati all'arma di fanteria e sue specialità.

Art. 5

All'atto della riorganizzazione delle forze armate, al termine della guerra, sarà prevista, per il personale di cui al 2° e 3° comma dello articolo 3, la possibilità:

- di conferma definitiva del grado riconosciuto a titolo temporaneo ed il trasferimento con tale grado nei ruoli della forza in congedo;
- di trasferimento, con grado da determinare, nei ruoli degli ufficiali in servizio permanente o dei sottufficiali in carriera continuativa.

Art. 6

Con decreto Luogotenenziale, su proposta del Ministro per la Guerra, d'intesa con quelli per le Finanze, per il Tesoro, per la Marina, per l'Aeronautica e per l'Italia Occupata saranno emanate le norme occorrenti per l'attuazione del presente decreto.

Art. 7

2644

Il presente decreto entra in vigore il giorno successivo a quello della sua pubblicazione nella Gazzetta Ufficiale del Regno.

Declassified E.O. 12356 Section 3.3/NND No. 785020

- gli ufficiali ed i sottufficiali delle categorie in congedo, ai quali sono stati concessi - a titolo temporaneo - gradi superiori a quello che rivestivano nelle forze armate di provenienza;

- gli ufficiali ed i sottufficiali delle categorie in congedo che conservano lo stesso grado rivestito nelle forze armate di provenienza;

- i graduati e militari di truppa, oppure i patrioti non appartenenti alle forze armate dello Stato, che abbiano ottenuto a titolo temporaneo il riconoscimento di gradi. Essi vengono assegnati all'arma di fanteria e sue specialità.

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All'atto della riorganizzazione delle forze armate, al termine della guerra, sarà prevista, per il personale di cui al 2° e 3° comma dello articolo 3, la possibilità:

- di conferma definitiva del grado riconosciuto a titolo temporaneo ed il trasferimento con tale grado nei ruoli della forza in congedo;

- di trasferimento, con grado da determinare, nei ruoli degli ufficiali in servizio permanente o dei sottufficiali in carriera continuativa.

Art. 6

Con decreto Luogotenenziale, su proposta del Ministro per la Guerra, d'intesa con quelli per le Finanze, per il Tesoro, per la Marina, per l'Aeronautica e per l'Italia Occupata saranno emanate le norme occorrenti per l'attuazione del presente decreto.

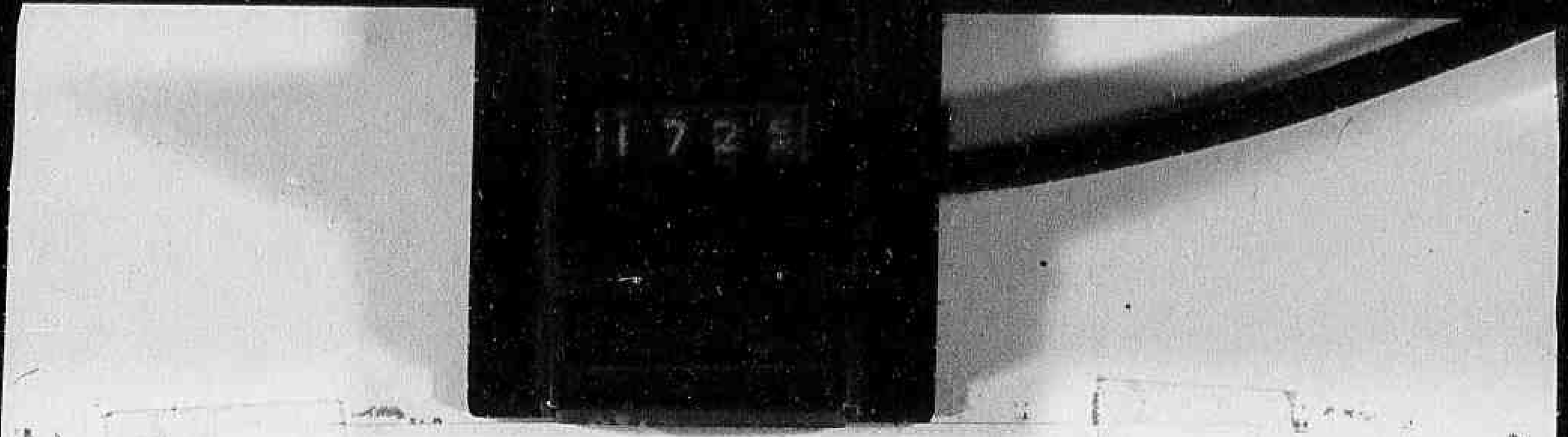
Art. 7 2614

Il presente decreto entra in vigore il giorno successivo a quello della sua pubblicazione nella Gazzetta Ufficiale del Regno.

Ordiniamo, a chiunque spetti, di osservare il presente decreto e di farlo osservare come legge dello Stato.

Dato a.....

Declassified E.O. 12356 Section 3.3/NND No. 785030



Declassified E.O. 12356 Section 3.3/NND No. 785020

Commissions for patriots

1. Commissioned and non-commissioned ranks may be granted based on age of units commanded and in action

2. Ranks up to Lt Col may be granted for personnel NOT belonging to regular off'rs in new class.

3. Regular off'rs + NCOs will have their former ranks - promotions to be based on precedence for promotions in the fol, and to be of a temporary nature.

4. All commissioned and non-commissioned ranks granted in this way will be carried as a "temporary patriot rank",

5. Certain categories will have the option of continuing with the new ranks as regular off'rs after the war

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A/023(11)

Subject: Military Law

Land Forces Sub Comm. A.C.
(M. M. I. A.) ROME
A/033 (Now A/023)

22 Mar 45.

PROCURA GENERALE MILITARE
Via Acquasparda 2, Rome

1. Reference your Memorandum dated 15 February 1945 on the Organization - Operation of Military Justice in Liberated Italy, Appendix "C", the following further information is required as soon as possible

Under Cases Pending at 31 December 1944 it is desired to divide the categories further as follows:-

(A) In the case of Absence from Service, separate figures are required for (1) Desertion (2) Failure to answer the Call-up and (3) any other cases of Absence; and in each of these cases figures should be given showing the numbers at present in custody and of those at liberty.

(B) In the case of other offences, separate figures are required for offences by (1) Military personnel and (2) Civilians. Similarly, it should be shown in these offences whether the accused are now in custody or at liberty.

2. If similar information is available for Cases Pending at 31 January and 28 February 1945, please include this with the above figures.

3. In the case of those now in custody awaiting trial, please specify the numbers who have been in custody for (a) less than 3 months (b) between 3 and 6 months and (c) over 6 months.

W. P. Dudley 26/3/45
Major General,
M. M. I. A.

/wk

Copy to A3 Section

All Correspondence Before
This Page, has been transferred
from File A/033 "Italian Military
Tribunals."

Declassified E.O. 12356 Section 3.3/NND No. 785020

from File A/033 "Italian Military Tribunals."

2611

Transferred 13th June/45.

Declassified E.O. 12356 Section 3.3/NND No. 785020

Declassified E.O. 12356 Section 3.3/NND No. 785020

10

Subject: Re-opening of Military Tribunals in Northern Italy.

LAND FORCES SUB COM A.C.,
(M.M.I.A.) H O M E

A033

18 May 45.

To : Ministry of War.

9

Reference your letter III35/I/I of I4 May, 45.

1. Your request to establish military tribunals at TORINO, MILANO, BOLOGNA and VERONA is hereby approved, with the understanding that the military tribunal at VERONA is to be only temporarily established at said city, for the purpose of organisation, pending its transfer to UDINE at such time as it will be deemed opportune.

2. For the reasons stated in paragraph one of your letter, it is recommended that the military tribunals in question be established at the very earliest possible time.

W. Pidsley - Colonel
for Major General,
M.M.I.A.

2611

ECC.

Declassified E.O. 12356 Section 3.3/NND No. 785020

Translation

Ref.d°. 11125/1/1 AFHQ/A/033 From. M of W
Date. 14 May 45 to M M I B.

9

Reopening of Military tribunals in Northern Italy

Following the liberation of Northern Italy, one of the first arrangements to be made for the gradual return to normal of the judical administration is to reopen the Milit tribunals of TORINO - MILANO - VERONA - BOLOGNA.

The TURIN tribunal, will preside over the provinces of Piemont and Liguria, MILAN over LOMBARDY and that of VERONA which will eventualy be transfered to UDINE, over the Provincas of VENETO - TRENTINO - and VENEZIA GIULIA

We therefore beg MMIA to let us know their point of view on the matter so that we may adopt measures accordingly.

LOMBARDY

R Mansfield
O.K.

Udine tribunal may stand befo in Verona.

WP
14.5.45

See folio 10

Declassified E.O. 12356 Section 3.3/NND No. 785020

TO/oc .

Ministero della Guerra

GABINETTO

Roma, 14 MAG. 1945

Prot. 111/351 Sez. /I/1 Allegati

AIDA LAND FORCES SUB COMMISSION A.C.(MMIA)
ROMA

Risposta al f. del Div. Sez. N.

OGGETTO ripresa di funzionamento dei tribunali militari nell'Italia Settentrionale.

In seguito alla liberazione dell'Italia Settentrionale, uno dei primi provvedimenti da adottare per il graduale ritorno alla normalità nell'amministrazione della giustizia, appare la ripresa di furzionamento dei tribunali militari territoriali di guerra di Torino, Milano, Verona e Bologna.

Il tribunale di Torino avrebbe giurisdizione sulle provincie del Piemonte e della Liguria, quello di Milano sulle provincie della Lombardia, quello di Bologna sull'Emilia, e quello di Verona-opportunamente trasferito ad Udine-sulle provincie del Veneto, del Trentino e della Venezia Giulia.

Si prega, pertanto, codesta Sottocommissione di voler far conoscere il proprio pensiero al riguardo affinchè questo Ministero possa adottare i conseguenti provvedimenti.

d'ordine
CAPO DI GABINETTO

2638

Declassified E.O. 12356 Section 3.3/NND No. 785020

DRAFT

8

ITALIAN MILITARY LEGAL PROCEDURE

A. JURISDICTION

(1) All military personnel charged with having committed a crime (as apart from breaches of discipline) fall within the jurisdiction of an Italian Military Tribunal. Tribunal procedure is summarized in paragraph 3 hereunder. The categories of cases falling within the jurisdiction of Military Tribunals are the following:

(a) Failure to answer the call-up and AWOL cases.

(b) Offenses by civilians to Italian or Allied military property.

(c) Crimes committed by Military, Naval and Air Force personnel as well as Carabinieri and Metropolitani personnel.

(2) Military personnel are tried by the Military Tribunal within whose geographical jurisdiction the crime was committed ~~and~~ with the exception of deserters who are tried by the Military Tribunal within whose geographical jurisdiction they were arrested.

(3) A Company, Battalion, or Regimental Commander has no jurisdiction over personnel performing unlawful acts defined as crimes, only over those that entail lack of discipline.

(4) A Divisional Commander has authority to quash a case (but not try it) before it comes to trial. He has no other jurisdiction.

Military personnel may be judged by civil courts following relinquishment of jurisdiction by the interested Military Tribunal. In practice this is only done when the convicted person commits a crime while

property.

(c) Crimes committed by Military, Naval and Air Force personnel as well as Carabinieri and Metropolitani personnel.

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(4) A Divisional Commander has authority to quash a case (but not try it) before it comes to trial. He has no other jurisdiction.

Military personnel may be judged by civil courts following relinquishment of jurisdiction by the interested Military Tribunal. In practice this is only done when the convicted person commits a crime while on leave or not in uniform and it is considered that the crime can be regarded as having been committed by him in a civilian capacity.

2637

B. COURTS

I. Territorial Military Tribunals.

- ~~In liberated Italy there are~~ 11 Military Tribunals. There is, in addition, one Tribunale Supremo to which all cases may be appealed on points of law.

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The personnel of each Military Tribunal comprises:

(a) A President, who is a General, appointed by Marshal MESSE.

(b) 3 judges, all officers of non-legal branches of the service, who are appointed for an indefinite period on a full time basis who constitute what is known as the College of Judges.

(c) 1 Procuratore Militare (Public Prosecutor).

(d) 1 Guidice Relatore (Legal Judge).

(e) 1 Giudice Instruttore (Examining Magistrate).

(f) 1 or 2 Cancellieri (Secretaries or stenographers - Army officers).

It appears that all the above are included in the 250 ceiling determined for Military Tribunals. The total pre-war legal personnel consisted of about 50 Magistrates and 50 judges

A Tribunale Militare may be subdivided into several sections, each section constituting a separate court authorized to hear and try cases without distinction, the purpose being to hear several cases contemporaneously in an attempt to keep abreast of the cases on the calendar. The President of each Tribunale Militare is authorized to select the President of each section within the Tribunale without reference to General MESSE. It is understood that Tribunali Militari who have constituted sections are BARI, NAPLES and ROME.

2630

Analysing Appendix "B" to General BOSSARI's report it will be found that the personnel listed under Magistrates and under the College of Judges is far in excess in most cases ~~to~~ of that required for either the

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(d) 1 Giudice Relatore (Judge-Rapporteur).

(e) 1 Giudice Instruttore (Examining Magistrate).

(f) 1 or 2 Cancellieri (Secretaries or stenographers - Army officers).

It appears that all the above are included in the 250 ceiling determined for Military Tribunals. The total pre-war legal personnel consisted of about 50 Magistrates and 50 judges

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2630

Analysing Appendix "B" to General BOSSARI's report it will be found that the personnel listed under Magistrates and under the College of Judges is far in excess in most cases of that required for either the sole Tribunale Militare or one containing a section. The greatest discrepancies will be found in BARI, NAPLES, ROME and TARANTO. The latter for example, has only one court functioning, yet sufficient Magistrates and judges for 4 courts.

It should be noted, however, that the Magistrates have duties in addition to Court duties as will be pointed out in Paragraph 3 below.

The composition of the Appeal Court (Tribunale Supremo) is similar to that of the Tribunale Militare except that the President and non-legal judges are higher ranking officers.

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II - Divisional Military Courts:

A Decree, published 7 April, effective 8 February, is now in effect which authorizes Divisional Military Courts with the Italian Combat Groups. These are called Tribunali Militari di Guerra and are constituted in the same manner as the existing territorial Tribunali Militari, except that there will only be one non-legal judge instead of three, and the President will be a Colonel. Jurisidction will be limited to personnel of the Group or Groups as determined by the order establishing them. The immediate plan creates a Tribunale Militare di Guerra with the Friuli Combat Group with jurisdiction over the Friuli and Cremona Combat Groups and one with the Folgore Combat Group with jurisdiction over the Folgore and Legnano Combat Groups. There will be no appeal from the ~~divisions~~ decision of the Tribunale Militare di Guerra.

C. PROCEDURE

On commission of a crime, the fact is at once reported to the Military Tribunal which then takes the case over and reports the details to the CCRR to execute arrest.

The Examining Magistrate calls and examines the accused and witnesses in the presence of the Procuratore Militare. The evidence is recorded.

During the above procedure the accused cannot in law be represented, but in fact his representative is allowed to be present.

After the examining Magistrate has taken the evidence he can, if he thinks there is no case to answer, dismiss it. He may also suspend it indefinitely in which case it automatically lapses after 5 years if no

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After the examining Magistrate has taken the evidence he can, if he thinks there is no case to answer, dismiss it. He may also suspend it indefinitely in which case it automatically lapses after 5 years if no action is taken. If the Examining Magistrate believes the case should go to trial, information is passed on to the President of the Court who sets a date for the trial. The Court is composed as stated in Paragraph 2 (above). The accused is present during the trial and represented by counsel. Witnesses are again heard during the trial but testimony given may be read if they are unable to be present. There is no cross-examination, all

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questions are asked by the President and at his discretion. Questions asked by either side are addressed to the President who refers them to the party on the stand.

The Court pronounces the verdict and awards sentence. Sentences are apparently often hard. Desertion (Absence over 24 hours) involves a minimum sentence of 5 years, but this may be reduced if the accused had a good excuse for his absence and returned voluntarily to his unit.

The accused or the Prosecutor may appeal to the Tribunale Supremo on questions of law, but not on questions of fact. If the Appeal is upheld, a new trial is ordered.

The above procedure is used for trying officers, NCO's and ORs. In cases where the accused is an officer the rank of the judges and President of the Court must be higher than that of the accused officer.

D. SITUATION OF UNTRIED CASES

The number of untried cases at 31 Dec 1944 was 75,000 for absence (including failure to answer the call-up) and 12,500 other cases, and it is understood that this number is still rising.

General BERUTTI estimated that 1,000 to 1,500 of the accused in the above cases had been arrested and were awaiting trial. Carabinieri were apparently not being encouraged to arrest offenders owing to the prisons being full. A few accused are arrested and released pending trial. Bail is not asked for.

4034

Many prisoners (convicted or awaiting trial) are said to be held in prison as the records of their cases or charges have been lost by bombing or otherwise. They are apparently held indefinitely until the records are found or new records compiled.

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2034

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There is no time limit within which military cases have to be brought to trial after arrest or charges made against the accused.

E. RIGHTS OF ARRESTED PERSONNEL

Arrested military personnel have the right to communicate with the

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Procuratore Militare Generale (General BORSARI) if they have not been brought to trial within three months.

Any prisoner, whether serving sentence or awaiting trial, may write to the Procuratore Militare Generale at any time for any reason.

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Personnel on duty as at Feb. 14... 1945. Tabella B.
Personale in servizio al 14 febbraio 1945.

TRIBUNALI Courts		Officers on duty with Ufficiali in servizio presso le Procure (compresi i relatori) Attorneys (including judges relators)		Ufficiali dei collegi giudicanti. Officers of the college of judges	NOTE Remarks
SUPREMO	Magistr. magistrates	7			
	Cancell. Secretaries	3	13	3	
	Collab. Assistant	3			
BARI	Magistr.	16			
	Cancell.	7	25	13	
	Collab.	2			
CATANIA	Magistr.	5			
	Cancell.	4	9	2	1
CATANZARO	Magistr.	10			
	Cancell.	7	17	4	1
LECCE	Magistr.	7			
	Cancell.	7	20	3	1
	Collab.	6			
MACERATA	Magistr.	4			
	Cancell.	2	6	4	1
NAPOLI	Magistr.	12			
	Cancell.	8	21	14	2
	Collab.	1			
ORISTANO	Magistr.	6			
	Cancell.	7	13	5	1
PALERMO	Magistr.	7			
	Cancell.	7	16	2	1
	Collab.	2			
ROMA	Magistr.	10			
	Cancell.	7	17	10	2
SASSARI	Magistr.	4			
	Cancell.	5	9	4	1
TARANTO	Magistr.	10			
	Cancell.	10	22		

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	Collab.	2			
CATANIA	Magistr. Cancell.	5 4	9	2	
CATANZARO	Magistr. Cancell.	10 7	17	4	
LECCE	Magistr. Cancell. Collab.	7 7 6	20	3	
MACERATA	Magistr. Cancell.	4 2	6	4	
NAPOLI	Magistr. Cancell. Collab.	12 8 1	21	14	
ORISTANO	Magistr. Cancell.	6 7	13	5	
PALERMO	Magistr. Cancell. Collab.	7 7 2	16	2	
ROMA	Magistr. Cancell.	10 7	17	10	
SASSARI	Magistr. Cancell.	4 5	9	4	
TARANTO	Magistr. Cancell. Collab.	10 10 2	22	14	
			188	73	

Appendix B

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MILITARY LAW

RECOMMENDATIONS

1. HABEUS CORPUS ACT.

It is recommended that A Habeus Corpus Act be introduced. No man to be imprisoned for more than a specified time for any offence without being tried, one month being suggested provided the system of detention outlined in paragraph 6 is approved.

2. TRIBUNAL PERSONNEL.

Non-legal judges should be selected from those officers under command of the Territorial or Division HQ and ordered to serve in addition to their other duties. A system of rotation worked out so as not to tie up any one group of officers for too long a period of time. Recommend each rotation period cover a maximum of two months. This would release 78 officers as per Appendix 'B' to Gen BORSARI's report.

The established ceiling of 250 for Military Tribunals would therefore consist solely of officers of the judicial branch of the Army, employed in duties that by law require legal personnel.

3. SENTENCES.

Wherever possible, sentences should be made short and be served in Detention Barracks to run on Allied lines.

4. AMNESTY.

An amnesty is recommended along the following lines :-

I. The amnesty to apply to all persons, except those who deserted in the face of the present enemy, whether :-

(a) Serving sentence,

(b) In prison awaiting trial

(c) Not apprehended

263½

II. Categories 1(a) and 1(b) above to be released provided that they sign a prepared statement stating that they agree to join the Army, serve in whatever

too long a period of time. Recommend each rotation period ~~over~~ cover a maximum of two months. This would release 78 officers as per Appendix 'B' to Gen BORSARI's report.

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2631

II. Categories 1(a) and 1(b) above to be released provided that they sign a prepared statement stating that they agree to join the Army, serve in whatever capacity is deemed necessary for an indefinite period of time. If a man refuses to sign such a statement he will not be released.

III. The amnesty will apply to only those men falling within category 1(c) who present themselves to the nearest CC.RR. station, sign a statement similar to the one described in II above and, if deemed necessary, are to be sent to a camp immediately, or hold themselves ready to join.

IV All men falling within categories 1(a),(b) and (c) above of those classes that have been discharged are to be set free unconditionally, except those who

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deserted in face of the present enemy.

V. It is recommended also that the amnesty include those prisoners either awaiting trial or serving sentence who have committed minor infractions, punishment for which does not exceed 6 months imprisonment. The conditions set forth in B II and B IV apply in this case.

The following is an alternate plan for an Amnesty :-

Desertion and Failure to Answer the Call-up.

An amnesty is recommended along the following lines :-

I. To apply to all persons, except those who have deserted in the face of the present enemy.

II. To apply to all, irrespective of whether they are at liberty, apprehended and in prison awaiting trial, or tried and sentenced.

III. To contain a proviso that all amnestied persons who are in the age groups now called up shall hold themselves in readiness to answer a summons to join or rejoin the army. In case of failure to join or rejoin when called upon, the Amnesty to be cancelled and such persons to be tried and sentenced as if there had been no amnesty. It is realized that unless very carefully worded, such an amnesty may cause some discontent amongst those who have stayed in or been called to the Army and have borne the heat and burden of the day, but it is considered that this could be obviated with careful drafting of the amnesty and that the advantages obtained by clearing the gaols and turning the 75,000 criminals into honest men outweigh any disadvantages.

IV. (As V in typed recommendation) ~630

5. SUMMARY JURISIDICTION.

It is recommended that Battalion and Regimental Commanders be given powers of summary trial for absence without official leave and minor infractions in which the maximum established penalty will not exceed 6 months. The sentence to be served

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IV. (As V in typed recommendation)

-830-

5. SUMMARY JURISIDICTION.

It is recommended that Battalion and Regimental Commanders be given powers of summary trial for absence without official leave and minor infractions in which the maximum established penalty will not exceed 6 months. The sentence to be served in Detention Barracks. Conviction and sentence to require confirmation by the Divisional Commander, but there should be no appeal, and no legal representation of the offender.

In order that increased disciplinary power may be granted unit commanders, it will be necessary to alter the present law and establish procedure and power of summary jurisdiction over cases that fall within the category of a crime (not now permitted by law).

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b. DETENTION METHODS.

While the legal procedure is under consideration, it is well to recognize that present detention facilities and systems are not adequate nor do they offer an opportunity for rehabilitation. The two factors, legal procedure and detention methods, are so closely related that it would prove opportune at this time to consider and recommend the establishing of several Detention Training Centers organized, from the standpoint of discipline and routine, along Allied lines.

Two separate groups of Detention Training Centers organized on Allied lines, are recommended for the following purposes :-

(a) For detaining personnel awaiting trial. These centers should be built near the seat of the Military Tribunal, so that legal procedure may be expeditiously handled. All cases must be tried and terminated within one month from the time of arrest.

MMIA policy authorizes military rations for this period of time. It would be necessary to authorize the creation of new and special military guard units for duties at these centers.

(b) For detaining personnel serving sentence whether as a result of Military Tribunal sentence or Summary Trial. These centers should accept only personnel sentenced to not over six months detention. The rigorous discipline and hard work executed by prisoners at the Detention Training Centers will be a deterrant to all once the word gets around. Therefore, Military Tribunals and Unit Commanders should be encouraged to sentence military personnel to not over six months confinement.

2625

Prisoners will be on civilian rations at these Centers, but it should be agreed to establish military guard units for the same purpose as stated in (a) above, and also authorise the issue of required clothing and casermaggio equipment for the prisoners.

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2623

Prisoners will be on civilian rations at these Centers, but it should be agreed to establish military guard units for the same purpose as stated in (a) above, and also authorize the issue of required clothing and casermaggio equipment for the prisoners.

Prisoners sentenced to longer terms will be placed in civilian jails.

SUMMARY.

It appears that the above recommendations under ~~AI and AII (1)-(2)~~ paragraphs 1, 2 and 6 could be put into force at a very early date, as also could any amnesty, but that the alteration of the laws required to implement the remaining proposals will require considerable changes in law and procedure which will need very careful legal drafting and will probably take a long time to implement even if the Italian authorities accept the changes willingly.

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SUMMARY (CONTD)

In view of the present state of the war in Europe, it is therefore proposed that recommendation in ~~AI and III (1)-(2)~~ paragraph 1, 2 and 6 and the Amnesty be pressed forward immediately.

The Amnesty, in particular, could be prepared so as to be declared on some special occasion (end of the War or entry into Berlin) as this alone would largely clear the decks and enable the courts to concentrate their energies on current cases.

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Translation

From : Military Attorney General — Ref. : 1300
To : MMIA — Date : 27 April 45
Subject : Return on cases pending at the Military Tribunals on March 31, 1945.

With reference to letter A/033 dated March 22, and to letter A/033 dated April 9, 1945, we enclose a list containing all of the information requested by MMIA.

The information refers to the return on cases as of March 31.

In the meantime, this Attorney General has received MMIA's letter A/033 dated April 10, 1945, which requested a monthly report on the activities of the individual Military Tribunals.

A copy of said letter was sent by the Ministry of War to whom it was addressed.

Please let us know if the enclosed information is sufficient or if other information is required; furthermore, please inform us as to whether or not the return on cases pending at the various Military Tribunals is to be sent monthly.

The Military Attorney General

(U. Borsari)

Cpl. VDC

92

Roma, addì 22 Aprile 194 5

PROCURA GENERALE MILITARE

DEL RE IMPERATORE REGNO

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 1300 prot. P. G. risp.

STAMPERIA REALE DI ROMA

ALLEGATI N. uno

A

A.

Letter + Headings for transl

OGGETTO : Situazione procedimenti pendenti presso i Tribunali Militari del 31 Marzo 1945.

COMMISSIONE ALLEATA

SOTTOCOMMISSIONE PER L'ESERCITO

(M.I.A.)

R O M A

e, per conoscenza:

AL MINISTERO DELLA GUERRA -Gabinetto -

(rif.f.109530/I/1 del 23-4-1945)

118.1.8

R O M A

Con rif.ai fogli A./033 del 22 Marzo ed A/033 del 9 Aprile 1945, si trasmette l'unito specchio, dal quale risultano tutti i dati richiesti da codesta Commissione.

I dati si riferiscono alla situazione dei procedimenti al 31 Marzo u.s. 2626

E' pervenuta intanto a questa Procura Generale, altra nota di codesta sottocommissione, distinta col N.A/033 del 10 Aprile 1945, con la quale viene richiesto un rapporto mensile sulla attività dei singoli Tribunali Militari.

Indicare sempre nella risposta, la data e i numeri della presente.

Declassified E.O. 12356 Section 3.3/NND No. 785020

ALLEGATI N. uno

OGGETTO : Situazione procedimenti pendenti presso i Tribunali Militari del 31 Marzo 1945.

COMMISSIONE ALLEATA
SOTTOCOMMISSIONE PER L'ESERCITO
(M.I.A.)

ROMA

e,per conoscenza:

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La nota predetta è stata trasmessa in copia dal tramite Ministero della Guerra, cui è diretta.

Si prega far conoscere se codesta Commissione ritiene sufficienti i dati che si trasmettono o se ha bisogno di altre notizie; e comunicare inoltre se la situazione dei procedimenti

./.

Indicare sempre nella risposta, la data e i numeri della presente.

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pendenti presso i vari Tribunali Militari dovrà essere inviata mensilmente.

IL PROCURATORE GENERALE MILITARE
(U.Borsari)

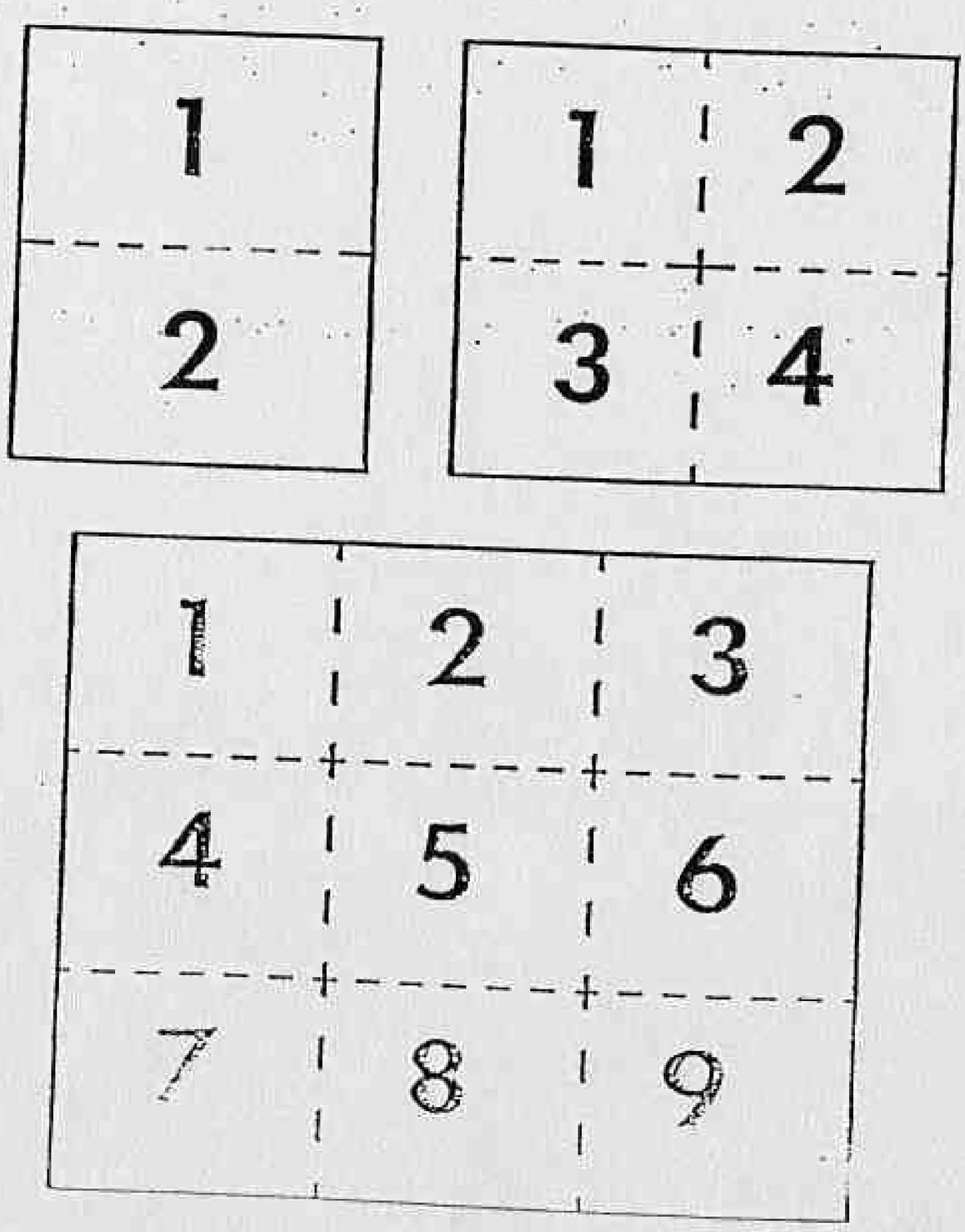
U. Borsari

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Declassified E.O. 12356 Section 3.3/NND No. 785020

MAPS AND CHARTS TOO LARGE TO FILM
ON ONE EXPOSURE ARE FILMED CLOCKWISE
BEGINNING IN THE UPPER LEFT CORNER,
LEFT TO RIGHT, AND TOP TO BOTTOM.

SEE DIAGRAMS BELOW.



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Return on cases pending on M

Situazione dei procedimenti pendenti al 31 M

TRIBUNALI	Procedimenti per reati di assenza dal servizio — Diserzione — Nº dei procedimenti.	Nº. Imp. det.	Nº. Imp. liberi	Totale Imputati	Mancanza alla chiamata — Nº. dei Proc.	Nº. Imp. det.	Nº. Imp. liberi	Totale Imp.	Procedimenti — A carico di militari — Nº. dei Proc.	Nº. Imp. detenuti	Nº. Imp. liberi	To
BARI	I7630	I9	I7973	I7992	50	=	50	50	2546	38	2940	
CATANIA	I0I0	48	I004	I052	=	=	=	=	I65	27	I8I	
CATANZARO	I4004	43	I4272	I43I5	I23	=	I23	I23	759	I4	I059	
LECCE	II63I	46	I2034	I2080	8	=	8	8	579	35	I735	
LACERATA	5I49	II9	5068	5I87	=	=	=	=	370	I35	477	
APOLI	29930	854	29845	29930	223	=	223	223	I799	I84	I6I5	
RISTANO	I394	64	2I30	2I94	5	=	5	5	I383	82	2072	2
ALERMO	2330	3	283I	2834	I43	=	I43	I43	525	25	I056	I
MA	7793	267	7607	7874	=	=	=	=	2680	252	2II5	2
SSARI	2I3	27	256	283	=	=	=	=	I60	I34	329	
ANTO	75I2	I04	9I67	927I	22	=	22	22	420	37	594	

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...ese pende... on March 31, 1945 at the various Military Tribunals

...edimenti pendenti al 31 Marzo 1945 presso i vari Tribunali Militari.

...rvizio		Procedimenti per altri reati							Situazione detenuti complessiva			
...a chiamata		A carico di militari				A carico di Civili			Detenuti da meno di tre mesi	Detenuti da più di tre mesi	Detenuti da più di sei mesi	TOTALE dei detenuti
N°. Imp. liberi	Totale Imp.	N°. dei Proc.	N°. Imp. detenuti	N°. Imp. liberi	Totale Imp.	N°. dei Proc.	N°. Imp. detenuti	N°. Imp. liberi	Totale Imp.				
50	50	2546	38	2940	2978	224	II5	302	4I7	II8	39	I5	I72
=	=	I65	27	I8I	208	383	498	96I	I459	494	3I	=	573
I23	I23	759	I4	I059	I074	386	55	880	735	57	=	55	II2
8	8	579	35	I735	I770	92	23	273	296	33	40	3I	I04
=	=	370	I35	477	6I2	I04	2I	I56	I77	I2I	I24	30	275
223	223	I799	I84	I6I5	I799	I00	24	76	I00	I94	99	=	293
5	5	I383	82	2072	2I54	342	5I	I675	I726	83	64	50	I97
I43	I43	525	25	I056	I08I	73	462	302	764	299	I05	86	490
=	=	2680	252	2II5	2367	332	I66	68I	847	4I5	242	26	685
=	=	I60	I34	329	363	5I	39	I69	208	69	2I	I0	I00
22	22	420	37	594	63I	I3I	66	487	553	I85	I7	5	207



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BARI	I7630	I9	I7973	I7992	50	=	50	50	2546	38	2940	
CATANIA	I0I0	48	I004	I052	=	=	=	=	I65	27	I8I	
CATANZARO	I4004	43	I4272	I43I5	I23	=	I23	I23	759	I4	I059	I
LECCE	II63I	46	I2034	I2080	8	=	8	8	579	35	I735	I
ACERATA	5I49	II9	5068	5I87	=	=	=	=	370	I35	477	
APOLI	29930	854	29845	29930	223	=	223	223	I799	I84	I6I5	I
RISTANO	I394	64	2I30	2I94	5	=	5	5	I383	82	2072	2I
ALERMO	2330	3	283I	2834	I43	=	I43	I43	525	25	I056	I
OMA	7793	267	7607	7874	=	=	=	=	2680	252	2II5	23
SSARI	2I3	27	256	283	=	=	=	=	I60	I34	329	3
ANTO	75I2	I04	9I67	927I	22	=	22	22	420	37	594	6
TOTALI	98596	825	I02I87	I030I2	574	=	574	574	II386	863	I4I73	I50



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50	50	2546	38	2940	2978	224	115	302	417	118	39	15	172
=	=	165	27	181	208	383	498	961	1459	494	31	=	573
123	123	759	14	1059	1074	386	55	880	735	57	=	55	112
8	8	579	35	1735	1770	92	23	273	296	33	40	31	104
=	=	370	135	477	612	104	21	156	177	121	124	30	275
223	223	1799	184	1615	1799	100	24	76	100	194	99	=	293
5	5	1383	82	2072	2154	342	51	1675	1726	83	64	50	197
143	143	525	25	1056	1081	73	462	302	764	299	105	86	490
=	=	2680	252	2115	2367	332	166	681	847	415	242	26	685
=	=	160	34	329	363	51	39	169	208	69	21	10	100
22	22	420	37	594	631	131	66	487	553	185	17	5	207
574	1574	11386	863	14173	15037	2218	1520	5962	7482	2068	782	308	3208

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From: Military Tribunal
To: MMIA

Translation
ref 1145 P.G.
17 April 1945

A033 19/4

Subject: Report on para-penal procedures pending at Mil. Tribunals as on March 31st. 1945

With ref. to letter A/033 dated April 9th 1945, we inform you that this Military Tribunal have asked, by signal, ~~from~~ the Military Tribunals under command to send data requested to give MMIA information needed on penal procedure pending at Military Tribunals.-

BORSARI

(Carlotti)

Declassified E.O. 12356 Section 3.3/NND No. 785020

PROCURA GENERALE MILITARE DEL REGIO DEL REGIO IMPERATORE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 1145 S-9 A Rgt. Roma, li 17 aprile 1945

Risposta a nota del N. 17/IV Alleg.

STAMPERIA REALE DI ROMA

Oggetto: Situazione procedimenti pendenti presso i Tribunali militari al 31 marzo 1945.

ALLA COMMISSIONE ALLEATA
Sotto Commissione per l'Esercito M.M.I.N.
ROMA

A 17/4

Con rif.al f.A/033 del 9 aprile 1945, si comunica che questa Procura Generale Militare ha richiesto telegraficamente ai Procuratori Militari dipendenti i dati necessari per poter fornire a codesta Commissione le informazioni richiesto sui procedimenti pendenti presso i Tribunali militari.

IL PROCURATORE GENERALE MILITARE

(U. Borsari)

U. Borsari

Trasmesso R. 18/4 2623

Declassified E.O. 12356 Section 3.3/NND No. 785020

4

Subject: Monthly report of Military Tribunal activities.

Land Forces Sub Comm. A.C.
(M.M.I.A.)
R O M E.
A/033.

10April, 45.

Ministry of War.

It is requested that MMIA be furnished with a monthly report of the activity of each Military Tribunal showing:

(a)the number and type of cases pending at the beginning of the month.

(b)the disposition made of the cases handled, segregated as per the same types shown in (a) above.

(c)the number and typesof cases outstanding at the close of the month.

The first report submitted to be for the month of March.

Major General.
(M.M.I.A.)

/prh.

2622

Declassified E.O. 12356 Section 3.3/NND No. 785020

Subject: **Italian Military Law.**

Land Forces Sub Comm.A.C.
(M.M.I.A.)
R O M E.
A/033.

9 April,45.

PROCURA GENERALE MILITARE Del REGNO.

Ref: your No 1024 PG. of 4th,April,45.

As Italian Military law does not provide during war time for any absence other than desertion and failure to answer the call up, that is the extent of the breakdown required of you for the report to be submitted to this H.Q.

The Statement "any other cases of absence" was made to include any eventuality not known to us because of our limited knowledge of Italian military law.

Having cleared this point, I hope you will shortly be in position to furnish the report requested as the matter is to be considered urgent.

Major General
M.M.I.A.

/prh

2621
Lee Folio 5

Declassified E.O. 12356 Section 3.3/NND No. 785020

REGNO

PROCURA GENERALE MILITARE DEL RE IMPERATORE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 1024 Prot. G Roma, li 4 aprile 1945

Risposta a nota del N. Allg.

STAMPERIA REALE DI ROMA

Oggetto: Organizzazione e funzionamento della giustizia militare nell'Italia liberata.

ALLA COMMISSIONE ALLEATA
Sotto Commissione per l'Esercito
M.M.I.P. = ROMA =

Con riferimento al promemoria A/033 del 22 marzo 1945, pervenuto il 30 marzo u.s., si comunica che questo Ufficio richiederà alle dipendenti Procure Militari i dati necessari per fornire a codesta Commissione le notizie richieste.

Al fine di indicare con esattezza ai Procuratori militari le varie categorie, alle quali occorrerà distinguere il numero dei procedimenti pendenti per reati di assenza dal servizio, si prega voler chiarire cosa debba

2625

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1765

Declassified E.O. 12356 Section 3.3/NND No. 785020

Translation. A033 2

From;I.G.M.R. Ref; 102[illegible]6-G
To ;MMIA. 4/4/45.
Subject;Organisetion and functioning Italian Justice in lib rated Italy.

Ref, to memo A/033 dated 22/3/45, received on the 30/3/45, we inform you that this office will request from the dependant Mil, Attorries, the neccessery data, to furnish the MMIA with the information requested.

In order to indicete exactly to the Mil, Attornies, the various cattagories and classes, required for proceedure against pending offences of absence without leave, we beg to clarify what is meant by "Other cases of absence" (No 3, of para A) This is neccessary because the Italian Mil, penal law, does not in war time provide for dealing with offences of absenc without leave, any differently from desertion, orfailure to report for servic -e.

(U.Borsari)

GD.

Declassified E.O. 12356 Section 3.3/NND No. 785020

A 65 (2)

REGNO

PROCURA GENERALE MILITARE DEL RE IMPERATORE

PRESSO IL

TRIBUNALE SUPREMO MILITARE

N. 1024 Prot. Q

Risposta a nota del

Roma, li 4 aprile 1945

N. Alleg.

STAMPERIA REALE DI ROMA

Oggetto: Organizzazione e funzionamento della giustizia militare nell'Italia liberata.

Organizzato a Firenze

ALLA COMMISSIONE ALLEATA
Sotto Commissione per l'Esercito
M.M.I.A.

= ROMA =

Con riferimento al promemoria A/033 del 22 marzo 1945, pervenuto il 30 marzo u.s., si comunica che questo Ufficio richiederà alle dipendenti Procure Militari i dati necessari per fornire a codesta Commissione le notizie richieste.

Al fine di indicare con esattezza ai Procuratori militari le varie categorie, alle quali occorrerà distinguere il numero dei procedimenti pendenti per reati di assenza dal servizio, si prega voler chiarire cosa debba

2625

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Declassified E.O. 12356 Section 3.3/NND No. 785020

intendersi per altri casi di assenza (n.3 del paragrafo a), dato che la legge penale militare italiana non prevede per il tempo di guerra reati di assenza dal servizio diversi da quelli di diserzione e di mancanza alla chiamata.

IL PROCURATORE GENERALE MILITARE

(U. Borsari)

Declassified E.O. 12356 Section 3.3/NND No. 785020

Translation. A033

From;F.G.M.K.
To ;MMIA.
Ref; 102-10-G
4/4/45.
Subject;Organisation and functioning Italian justice in liberated Italy.

Ref, to memo A/033 dated 22/3/45, received on the 30/3/45, we inform you that this office will request from the dependent Mil, Attorries, the neccessery data, to furnish the MMIA with the information requested.

In order to indicate exactly to the Mil, Attornies, the various cattagories and classes, required for proceedure against pending offences of absence without leave, we beg to clarify what is meant by "Other cases of absence" (No 3, of para A) This is neccessary because the Italian Mil, penal law, does not in war time provide for dealing with offences of absence without leave, any differently from desertion, orfailure to report for service.

GD.

(U.Borsari)

Declassified E.O. 12356 Section 3.3/NND No. 785020

Subject: Military Law

Italian Military Tribunals

Land Forces Sub Comm. A.C.
(M. M. I. A.) ROME
A/033

22 Mar 45.

PROCURA GENERALE MILITARE
Via Acquasparta 2, Rome

1. Reference your Memorandum dated 15 February 1945 on the Organization - Operation of Military Justice in Liberated Italy, Appendix "C", the following further information is required as soon as possible

Under Cases Pending at 31 December 1944 it is desired to divide the categories further as follows:-

(A) In the case of Absence from Service, separate figures are required for (1) Desertion (2) Failure to answer the Call-up and (3) any other cases of Absence; and in each of these cases figures should be given showing the numbers at present in custody and of those at liberty.

(B) In the case of other offences, separate figures are required for offences by (1) Military personnel and (2) Civilians. Similarly, it should be shown in these offences whether the accused are now in custody or at liberty.

2. If similar information is available for Cases Pending at 31 January and 28 February 1945, please include this with the above figures.

3. In the case of those now in custody awaiting trial, please specify the numbers who have been in custody for (a) less than 3 months (b) between 3 and 6 months and (c) over 6 months.

W. Pidsley. Colonel.
for Major General,
M. M. I. A.

/mk

Copy to A3 Section

See folio 2619

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