

ACC

10000/142/20  
(VOL. II)

10000/142/20  
(VOL. II)

ALLIED MILITARY COURTS, GENERAL  
FEB., MAR. 1944

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REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

ART/gmf

ACC/4002/L

27 March 1944.

SUBJECT: Legal Instructions to FLO's.

TO : RLO Region 4.

1. In reply to your ref R4/IE/Reg/D/10 dated 23 March 44, submitting proposed instructions on local legislation, that portion dealing with Decrees issued by the appropriate Italian authority calls for modification.
2. Special machinery has been devised for the implementation of the Decrees of the Italian Government which it is decided shall be promulgated in occupied territory.
3. A directive explaining the procedure of promulgation is to be distributed shortly which will enable you to draft your instructions accordingly.

*See*

A. R. THACKRAH, Major  
for Chief Legal Officer.

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HEAD QUARTERS REGION 4  
ALLIED MILITARY GOVERNMENT  
APO 394

4002  
✓

~~15~~  
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TO : C.L.O. A.C.C.  
FROM : R.L.O. Reg. 4  
SUBJECT : Legal Instructions to P.L.O.s.  
REFERENCE : R4/LE/Reg/D/10  
DATE : 23 March 44.

1. Reference Legal Instructions No. 1 to L.O.s of this region, a copy of which was sent to you under cover of R4/LE/l. of 7 Feb.44. *attached*
2. It has become necessary to issue further Legal Instructions regarding amendments to the above, and it is proposed to incorporate a paragraph regarding Local Legislation.
3. Two copies of this proposed paragraph are sent herewith, one for your retention, the other for you to return, at your earliest convenience, approved, or with your comments thereon. As this paragraph appears to raise a question of policy, I should like to have your approval before incorporating it, and I should also be glad if you could confirm that it correctly sets out the procedure to be adopted in the case of legislation by Decree.

*H. L. Linn*

Colonel,  
R.L.O. Region 4.

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47. Local Legislation.

- (a) Provincial Legal Officers are responsible, where requested, for advising Provincial Commissioners with regard to proposed Provincial Orders, and for assisting with the drafting of such documents. Cases of difficulty or involving matters of policy should be referred to Regional H.Q. before the order is published.
- (b) Provincial Legal Officers will ensure that the R.L.O. is furnished with a copy of every Provincial Order published in his province, so that (a) a complete record can be maintained at Regional H.Q. of all Provincial Orders published, and (b) neighbouring provinces can be advised where it appears that the subject of the order may be of concern to them.
- (c) Without prejudice to the power of Provincial Commissioners to publish Provincial Orders, the attention of Legal officers is drawn to the advisability of proceeding, where practicable, by way of Decree issued by the appropriate Italian authority. Legal officers must be prepared to advise Provincial Commissioners with regard to this matter. The advantages of legislating by way of Italian Decree are:
  - (i) that the Decree is drawn up by the Italian authorities in their own language;
  - (ii) that the Decree becomes part of the Italian law, and can be enforced in the Italian courts;
  - (iii) that the Decree, being part of the Italian law does not lapse when the territory ceases to be occupied.

Before it can become valid in occupied territory a Decree must of course be approved and countersigned by or on behalf of the Military Governor. In the case of Decrees of local or provincial import, the appropriate officer to approve and countersign is the Provincial Commissioner.

- (d) The procedure to be adopted, if it is desired to publish a local Decree, is for the matter to be referred, through the R.L.O., to the C.L.O., A.C.C. . The latter will then arrange for the Decree to be drafted by the appropriate Italian Ministry, and the draft will be submitted to the Provincial Commissioner for signature 82

5. Para. 2 (b) - Legal Officers:

4002

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Extract  
from  
Reg 1's letter  
013 01/20  
dated  
14/3/44  
(original  
in file  
4102/1/2)

a. The legal offices at Agrigento, Caltanissetta, Enna, Mesina, Syracuse and Trapani have been closed and the officers in charge, namely Lt. Col. Hill, Col. Peyton, Lt. Christians, Major Gilsheenan, Capt. Davis and Lt. Col. Langford have either already left or are now on their way to fresh assignments.

b. All pending cases have been disposed of at Catania and Messina and Major Campbell and Capt. Withers have continued their work as Liaison Officers to the Courts of Appeal.

c. In Palermo province, Capt. Vecchiolla with the assistance of Lt. Ciliberti, has had to dispose of several complicated Superior Court cases, in which arrests had been made prior to 11 February by C.I.D. and Shore Patrol Units. It is anticipated that all outstanding cases in this province will be finally disposed of this week.

d. One case has been fixed for hearing at Mesina on 10 March, or will be tried either by the Regional Legal Officer or by Maj. Campbell with another officer. This case concerns a number of alleged thefts or misappropriations of A.S.S. property (cars, tires etc.) and investigations have been proceeding since last December. The case was originally fixed for 31 January but has been twice postponed at the request of the

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defending advocate who lives in Palermo.

- e. No further cases will be undertaken without prior reference to A.C.C. H.Q. in accordance with instructions contained in Directive 283/42/CA dated 5th March 1944. Extracts from this Directive have been sent to Legal Liaison Officers with covering letter dated 11 March and specimen forms for record purposes and copies are enclosed for your information.

For Lt. Col. HANCOCK:

H. M. DICKE,  
Squadron Leader  
Regional Legal Officer

jd

2 incls.

ALLIED CONTROL COMMISSION  
SICILY REGION HQ.

APO 394

File: RLL 013.01/HD

11 March 1944

SUBJECT: Trial of Cases in unoccupied territory.

TO : Legal Liaison Officers Catania, Messina, Palermo (thru P.C.).

1. The attached extract from A.C.C. Headquarters Directive of 5th March 1944 contains provisions for the holding of Allied Military Courts in unoccupied territories in certain circumstances and subject to certain restrictions. Such Courts will be convened by specific order of H.Q. A.C.C. and will try only cases of a serious nature and as would have been brought before a General Military Court during the occupation. A Court will normally consist of not fewer than three officers with a member of the Department of Special Prosecutions to make the prosecution.

2. If any case of this nature should occur in your district, it will be your duty to ensure that the facts are promptly investigated and a full and complete statement is supplied to this H.Q. As all charges will be framed by H.Q. A.C.C. under the Italian Codes, the accuracy of this statement is most important.

3. It will be observed that the class of case which will be tried by an Allied Military Court is strictly limited and only those cases which clearly come within para. 2 of the attached Directive should be referred to this Headquarters. All other charges must be referred through the Italian authorities in accordance with Italian law and dealt with by the local Courts according to their own procedure.

4. In order that a check may be kept on the speed with which cases affecting Allied Military personnel and property are brought to trial, the handling of them by the Courts and the sentences imposed, you are directed to work out with the Italian Legal authorities and the Police in your district a scheme which will enable you to keep accurate and up-to-date record of all cases of this type pending before the local Courts. Copies of two Forms and a letter of instruction are prepared for use in the Catania Court of Appeal district are

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2. If any case of this nature should occur in your district, it will be your duty to ensure that the facts are promptly investigated and a full and complete statement is supplied to this H.Q. As all charges will be framed by H.Q. A.C.C. under the Italian Codes, the accuracy of this statement is most important.

3. It will be observed that the class of case which will be tried by an Allied Military Court is strictly limited and only those cases which clearly come within para. 2 of the attached Directive should be referred to this Headquarters. All other charges must be preferred through the Italian authorities in accordance with Italian law and dealt with by the local Courts according to their own procedure.

4. In order that a check may be kept on the speed with which cases affecting Allied Military personnel and property are brought to trial, the handling of them by the Courts and the sentences imposed, you are directed to work out with the Italian Legal authorities and the Police in your district a scheme which will enable you to keep an accurate and up-to-date record of all cases of this type pending before the local Courts. Copies of two Forms and a letter of instruction prepared for use in the Catania Court of Appeal district are enclosed, and it is suggested that these be adopted universally throughout the island. Particulars of cases in which the military are interested should be rendered direct to you by the Units concerned so that a cross-check can be maintained.

5. As these cases are now being handled by the Italian Courts in accordance with their own procedure, their rules apply and no objection can be raised to the proper grant of provisional liberty pending trial or to the imposition of a sentence which is within the limits prescribed by the Italian penal code, whether such sentence appears too heavy or too light according to Anglo-American standards. In instances, however, the Italian magistrate has a discretion as to granting provisional liberty and as to the amount of the sentence towards within the limits laid down by law. The Italian authorities in your district should be asked to advise their dependent magistrates that in cases affecting Allied Military personnel and property, a

... be taken of the offense as being an by-  
... hindrance to the war effort and that where the aggregate  
... discretion, he should exercised it in the direction of severity  
rather than of leniency.

6. In particular, thefts of military stores and equipment are  
to be regarded as a form of sabotage and a threat to Allied Military  
security. In all cases of this type, where the offense is proved,  
the Italian Courts should be asked to impose the maximum penalty ap-  
plicable and to give full publicity to the sentence. Action should  
also be taken by you to ensure that such cases are brought to trial  
with the least possible delay, and that all the evidence necessary  
to secure a conviction is obtained from any military personnel con-  
cerned.

7. You are requested to keep this Headquarters regularly informed  
of us to the working of the proposed scheme and the general progress  
of all cases which affect Allied Military personnel, property or sec-  
urity.

*H.M. Dickie S/A*  
H. M. DICKIE,  
Squadron Leader R.A.F.,  
Regional Legal Officer.

jd

Distribution:

- Copies to Provincial Commissioners
  - Agrianto
  - Caltanissetta
  - Enna
  - Ragusa
  - Syracuse
  - Trepani
- Sycros 6

In all cases which affect Allied military personnel, property or security.

*H.M. Dickie S/L*  
H. M. DICKIE,  
Squadron Leader R.A.F., VR  
Regional Legal Officer.

jd

Distribution:

- Copies to Provincial Commissioners
  - Agriente
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  - Enna
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  - Syracuse
  - Trepani
- Series 8

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
AFC 394

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Regional Control & Military Government Section

Ref: 283/42/CA

5th March 1944

SUBJECT: Allied Military Courts in Unoccupied Territory.

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

1. On the handing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offenses against the Allied Forces created by Proclamations and Orders will no longer exist as such.

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

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

4. All such courts will be convened only by order of H.Q., and as appears from the decree will punish offenders in accordance with the Italian Codes, but will follow their own procedure.

5. (These paragraphs deal with Rules of Procedure, Appeals etc. and are not material)

10. The above Directive does not apply in any area which has

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

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

4. All such courts will be convened only by order of H.Q., A.C.C. and as appears from the decree will punish offenders in accordance with the Italian Codes, but will follow their own procedure. **78**

5.--3. (These paragraphs deal with Rules of Procedure, Appeals etc. and are not material)

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

/S/ M. S. Lush  
/T/ M. S. LUSH,  
Brigadier,  
Executive Commission

Appendix "A" to 283/42/CA  
dated 5th March 1944

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

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

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

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COMMISSIONE ALLEATA DI CONTROLLO

ISTRUZIONI PER COMPILARE I RAPPORTI SETTIMANALI DEI RISULTATI DELLE CAUSE

1. La Commissione Alleata di Controllo richiede talune informazioni in merito alle cause per reati contro il patrimonio delle Forze Alleate (per esempio: furti di benzina, di corrispondenza ecc., ricettazione di sigarette ecc.) e per reati contro la persona in pregiudizio di militari, funzionari ed agenti Alleati.

2. Pertanto ai Procuratori del Re sono richiesti due rapporti dei risultati settimanali. Detti rapporti saranno compilati sui mod. A e B alligati.

Il Mod. A serve a dimostrare il numero totale delle denunce presentate settimanalmente dalla Polizia all'Autorità Giudiziaria Italiana per essere trattate.

Il Mod. B serve a dimostrare il numero totale delle cause trattate e decise.

Detti rapporti settimanali aiuteranno il Commissario Alleato di Controllo a rilevare lo svolgimento delle cause, le sentenze di assoluzione e le condanne.

Si fa presente che nei rapporti dei risultati settimanali dovranno essere incluse soltanto le cause per i reati specificati sopra al n.1.

3.a) I chiesti rapporti dovranno essere compilati per sette giorni e comprenderanno le notizie di una intera settimana, cominciando dal lunedì e avendo termine la domenica seguente.

b) Mentre le difficoltà della comunicazione rapida è realizzata ogni sforzo deve essere fatto per inoltrare rapidamente detti rapporti settimanali, si chiede ai Procuratori del Re di dare disposizioni agli Uffici dipendenti perchè si attengano scrupolosamente a quanto sopra richiesto ad evitare ritardi.

(a)

ALL'UFFICIALE PROVINCIALE LEGALE: COMMISSIONE DI CONTROLLO ALLEATA -  
DAL PROCURATORE DEL RE DI

Certifico che il seguente è un elenco completo delle denunce presentate alle corte nella mia giurisdizione dal giorno \_\_\_\_\_ al giorno \_\_\_\_\_ 1944.

N. COGNOME	NOME	PATERNITA	DATA DI ARRESTO	IMPUTAZIONE Con particolari ari brevi (X)	TRIBUNALE o PREFETTURA	RESERVATO SOLAMENTE alla Commissione di Controllo Alleate Data della SENTENZA Udienza

(X) NOTA: Questa colonna deve spiegare brevemente i particolari dell'accusa, ad esempio: natura e quantità della proprietà alleata coinvolta.





4002/1  
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Major Campbell 178

TO : H. Q. A.C.C.  
FROM : H.Q. Region 5 A.M.C.  
SUBJECT : General Courts.  
REF : R5/511/16.  
DATE : 1 April 1944.

See  
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Further to this H.Q. letter of 20 March herewith the names of four non-legal officers from this Region submitted for service on General Courts: -

Major Joseph D. Scholts  
Captain V. A. Willoughby  
Captain Harry S. Rolland  
Captain Clarke Painter

*W. B. Robinson*

W. B. ROBINSON  
Lt. Colonel  
R. L. C.

TO CLO FY ACC  
FROM HQ Region 5 A.M.G.  
SUBJECT General Military Courts  
REF R5/511/16  
DATE 20 March 1944

4002/L

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158/4002

1 In reply to your ACC/4002/L of 14 March 1944, the following names are submitted of officers for a General Court in Region 5

Lt. Col.	W.E. Behrens
Major	Alexander R Troxell
Major	W H Levit
Major	Boyd Carpenter
Capt	A P Mc Nulty

2 RLO has not yet had any experience of the work of Capt. F C Bader or Lieut. W T Boons (who has not yet reported from Region 2) but these officers could probably be safely added to the list.

*For Regional Commission witness*

W.E. BEHRENS  
Lt. Col.  
R.L.C.

*To Major Campbell*

*Speak the place what this*

*left tel message for Col Behrens to bring names of 4 non-legal officers to court on Monday 31 Mar 44*

CONFIDENTIAL

HEADQUARTERS  
ALLIED CENTRAL COMMISSION  
R.C. & A.S. Section  
ADD 394

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O O P Y  
712

Ref/125/10/CA.

25 March 1944.

SUBJECT : Powers and Rights of Allied Forces and Allied Military Government in Unoccupied Italy.

To : See Distribution Below.

1. HQ. A.S.S. (Admin. Section) C.S.O. has issued an order in relation to all Military Formations including the situation in general terms and substantially as stated in memo. no. 23 Jan and 31 Jan already in your possession.

2. The following extracts are quoted for your information:

(a) Although there will be officers of the Allied Central Commission in unoccupied Italy they will be there to advise and control the Italian Government and not as supervisors. One of the most important functions of the Regional and Provincial Commands of the Commission will be liaison between Allied Military Formations in the area and the Italian administrative officials. All but the most routine dealings between the Italian administration and the Allied Military authorities may be conducted through the Commission. When the Italian Government is already represented on a control board or committee, the Military may, of course, deal directly with that organization without the intervention of the Commission.

(b) Restitution.

The Allied Forces have retained the power and right to requisition private and public property and services in unoccupied Italy - this right must be exercised sparingly and only for reasons of genuine military necessity. This right will be exercised through the Italian authority. If, for example, a building is needed by the military it should be requisitioned through the Italian authority. When the building is situated, with the assistance of the provincial Governor of the Commission, the usual facilities of requisitioning used in occupied territory should be strictly followed in unoccupied Italy. The property of disarmed foreign soldiers must not be seized without giving a receipt and then only in cases of absolute military necessity.

(c) Allied Military Courts.

(a) Although there will be sections of the Allied Control Commission in unoccupied Italy they will be there to advise and control the Italian Government and not to govern. One of the most important functions of the Regional and Provincial Offices of the Commission will be liaison between Allied military formations in the area and the Italian administrative officials. All but the most routine dealings between the Italian administration and the Allied military authorities must be conducted through the Commission. When the Italian Government is directly represented on a central board or committee, the military, of course, deal directly with that organization without the intervention of the Commission.

(b) Regulation.

The Allied forces have retained the power and right to regulate public and public property and services in unoccupied Italy - this right must be exercised sparingly and only for reasons of genuine military necessity. This right will be exercised through the Italian authorities. If, for example, a building is needed by the military it should be requisitioned through the aid of the town where the building is situated, with the assistance of the Provincial Officer of the Commission. The usual facilities of requisitioning used in occupied territory should be strictly followed in unoccupied Italy. The property of disarmed fascist soldiers must not be seized without giving a receipt and then only if required for reasons of military necessity.

(c) Allied Military Courts.

In the Proclamation of the Military Covenant issued to the effect in unoccupied Italy, all crimes shall normally be tried under Italian law and in Italian courts. The Allied Forces, however, have reserved to themselves the right to hold Allied Military Courts in unoccupied Italy for the trial of civilians who commit acts seriously hostile to the Allied Forces and in violation of the agreements with the Italian Royal Government.

The reservation of this right is not intended to encourage the trial of civilian offenders by Allied courts but only to deal with the most serious offences against Allied personnel or property which cannot be properly dealt with by the Italian Courts. If such an offence has been committed the military authorities should give a full statement of the facts to the local representative of the Commission with the request that an Allied Military Court be convened to hear the charges. It will be the responsibility of the Commission to frame the charges and assist the court.

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Consent of the Commander of the force to try such offenders should be referred to the Allied force the power to arrest persons who are believed to have committed such offenses. High ranking Italian officials and officers of the Italian armed forces should, however, only be arrested in collaboration with the appropriate Italian official (e.g. the Prefect or the Commanding Officer of the officer concerned). In all cases of arrest the agreement of the local officer of the killed central command will be obtained beforehand, except in an emergency, when he should be informed immediately after the arrest.

(c) The right is reserved by the Commander-in-Chief to declare specific areas in unoccupied Italy to be Military Zones. Should the situation in any case become such as to require the strict measures that such zones should accordingly be applied, after consulting the Regional Commissioner, it may happen that the local Italian authorities may not be able to justify the need of Allied troops for patrolling civil infractions. In such a case it may be the local commander will point out that the killing of civilian subjects and destruction is a matter for the Italian authorities and he will require such assistance unless he is of the opinion that it is necessary for the protection of Allied military interests. Before rendering such assistance the local commander will have to be satisfied that the assistance is necessary for the protection of Allied military interests. If the commander is satisfied that the assistance is necessary for the protection of Allied military interests, he will forward the necessary orders to the local commander who will conduct the local officer of the Commission before giving assistance.

(d) Prisoners of War and Civilian Internees.

The Allied forces may continue to hold or detain the Italian Government to hold in custody military or civil prisoners of war in unoccupied Italy. If the Allied forces are to assist any person for security or other reasons that arrest should be carried out in collaboration with the local available military in any particular case it is thought that a request to the Italian Police to assist in such a case will be made. In addition, any Italian subject, including the member of the Commission, who is arrested or who is arrested by the Allied or Italian authorities. It is to be noted that the member will be returned to the local authority. However, such persons will be returned to 374 P. O. Camp.

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(e) Prisoners in Italian Courts.

No member of the Allied Forces may be processed or arrested in Italy in Italy.

the best available...  
Matters in a matter for the Italian...  
such as... unless by in of the opinion that it is...  
protection of Allied...  
the local...  
of the Commission...

(a) Protection of our own civilian interests.

The Allied... to hold or require the Italian...  
to hold in military or civil...  
in the Allied...  
by other...  
operation with Italian...  
brought that a request to the Italian...  
be...  
the Commission...  
the matter will be...  
be retained in JFA P. 1. Camp.

(5) Process in Italian courts.

No matter of the Allied... may be prosecuted by... in the courts.

(6) The... with the Italian... the rights of the Allied... of the Allied... rights in... ment to Italian Government.

The... that...  
in... by the Allied...  
all... through the... of the...  
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- 3 -

It is further notified that where immediate action is taken with the previous reference to the Allied Control Commission for emergency matters, the appropriate officer of the Commission will be informed as soon as possible.

It will thus be appreciated that the Commission is seeking to obtain the fullest co-operation between military command and the Allied Control Commission. It should be your constant endeavor to cooperate.

WILLIAM B. STERNE  
Colonel,  
Deputy Executive  
Commissioner.

DISSEMINATION:

All Regional Comanding Officers.  
SAC's 5th and 7th Divisions.  
Washington Field Office.



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*file*

24 MAR 1944

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

173

Ref/283/65/CA.

23 March 1944

SUBJECT: Allied Court in Unoccupied Territory.

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

1. Reference your letter <sup>↑</sup> ACC/1002/L 20 March 1944.
2. The request contained in second par. has been complied with.

*for*  
*Norman E. Fiske*  
 for  
 NORMAN E. FISKE  
 Colonel  
 Deputy Executive  
 Commissioner

HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

CRU/gmf

(172)  
20 March 1944.


ACC/4002/L

SUBJECT: Allied Courts in Unoccupied Territory.

TO : Executive Commissioner, ACC.

Ref my ACC/4002/L dated 17 March (erroneously headed Allied Courts - Occupied Territory) RLO Region 3 also reports non-receipt of Directive 203,42/01 dated 5 March.

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

  
E. B. UPJOHN, Colonel  
Chief Legal Officer.

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4002

5/11/44  
PH

Subject:- Proclamation regarding enemy agents.

H.Q. ALLIED FORCES IN ITALY

CONFIDENTIAL.

AAI/12.60/4/1 (1b).

19 Mar 44.

A.C.C. (Oco), P.O.D., ITALY.

1. Your letter dated 15 Mar 44 on the above subject is acknowledged, and your co-operation in this matter is much appreciated.
2. As it may be necessary in future trials of enemy agents for the prosecution to refer to the announcement in question having been broadcast by radio, would you kindly send a letter to this H.Q. and to the Chief Legal Officer, A.C.C., certifying the exact wording of the announcement and the dates and times at which it was broadcast.

W. J. Gibson Lt-Col  
Brigadier,  
E.C.S.(I).

Copy to:- Chief Legal Officer, A.C.C.

HEADQUARTERS  
ALLIED COMING COMMISSION  
H.C. & H.C. Section  
APO 394

*Recd*  
170

Ref/283/63/CA.

20 March 1944.

SUBJECT: Allied Courts in Occupied Territory.

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

1. Reference your letter ACS/4002/A of 17 March 44.
2. The request contained in para.2 of the above reference has been complied with.

*W. B. Wisker*  
Colonel  
Deputy Executive  
Commissioner.

4002

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HEADQUARTERS  
ALLIED MILITARY GOVERNMENT  
APO 394

TO : CLO, Legal Sub-Commission, A.C.C.  
FROM : RLO, Region 4.  
SUBJECT : General Military Courts.  
REF. : R4/LE/Reg/A/5.  
DATE : 18 March 1944.

*E. R. King*

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1. Reference your ACG/4002/L of 14 March 44, it is not proposed at present to nominate officers for a General Court within this Region, unless it is specially desired that I should do so. Until Region 4 becomes responsible for administering some territory I see no point in constituting a Court, since the personnel nominated may no longer be available by the time the Court is required to assemble.
2. I propose, however, to submit to RLO, Region 3, the names of suitable officers of Region 4, who will be available for the time being for serving on General Courts in and around Naples.

*H. L. Linn*

Colonel,  
R.L.O. Region 4.

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HEADQUARTERS  
ALLIED MILITARY GOVERNMENT  
APO 394

165

TO : Chief Legal Officer, H.Q., A.C.G. (through S.L.O., A.M.G., 5th Army ).

FROM : Col. H.G. Willmer.

SUBJECT : Closed Trial.

REFERENCE : R4/LE/Reg/J/6.

DATE : 10 March 1944.

*J. Will.*

*3/12/44*

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1. Reference letter ACC/4002/L dated 10 Feb. 44.
2. I have to report that the trial of Ricci, Renato, was held in camera on the 6th, 7th, 8th, 9th, and 10th March, 1944, at Santa Maria C.V., before a General Military Court.
3. The trial was held in camera on the application of the prosecuting officer, at the request, I understand, of the Intelligence Branch, H.Q., 5th Army.
4. The grounds of the application were : -
  - (a) that the evidence to be given would disclose Allied knowledge of German H.Q.;
  - (b) that the evidence would disclose the identity of Allied Intelligence personnel;
  - (c) that the evidence would disclose Allied Intelligence methods.
5. Having heard the evidence I consider that it was in fact necessary to conduct the case in camera.

*H.G. Willmer*  
Colonel,  
President, General Military  
Court.

65

40070

164

HEADQUARTERS  
REGION 3, ALLIED CONTROL COMMISSION  
LEGAL DIVISION  
APO 394 U.S. Army

JWC/em

17 March 1944

To : Legal Subcommittee, A.C.C.

Subject : Allied Courts in Unoccupied Territory.

148

1. Reference your ACC/4002/L, 7 March 1944,  
subject as above.

2. Neither this office nor the Headquarters  
have a copy of Directive on a/m subject 283/42/CA,  
5 March 1944.

147

Will you send me a copy.

*John W. Chapman*

JOHN W. CHAPMAN  
Lt. Col. J.A.G.D.  
Regional Legal Officer.

||

Su,

Please also see files

159-160-161

85

5

NEAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Sub-Commission  
APO 394

163

16 March 1944

ACC/4002/1

SUBJECT : Allied Military Court Trials .  
TO : Public Relations Officer .

1. It does not appear that the position of this Sub-Commission on the question of publicity of Allied Military Court trials is clear to you .

2. This Sub-Commission does not permit the photography or recording by mechanical means the proceedings in such trials, but it does regard as most helpful its publicity in local papers of the results of such trials, particularly where the offense is of the type that every effort is being made to stop such as black market, theft or wrongful possession of property of Allied Military Forces etc ...

GERALD P. URUCHIN  
Colonel,  
Chief Legal Officer . 81

19



REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APC 394

*Copy for  
File 4002*

17 March 1944.

AC/4002/1

SUBJECT: Judicial Forms.

TO : PLC (thru EC) Region 3.

1. When I visited the Tribunal yesterday I noticed that the old Summary Court record book was being used. I mentioned to Lt. Correa that in the interests of simplicity many Summary Court Judges preferred the new form and at his request I am sending you some specimen copies of the new form.
2. If you decide to have more of these printed, I suggest that the thin columns should be made still thinner, leaving more space for "Synopsis of Trial and Remarks".
3. The officer using the new form should state briefly what the case is about under the heading "Synopsis of Trial and Remarks". Thus, in a case of theft the judge might note: "Six stolen blankets were found concealed in a hole under floor of house occupied by accused. Accused alleges son, aged 16, found them and put them there because he was afraid of being accused of theft". These remarks may run to several lines if necessary. Quantities and amounts should always be specified and so should previous convictions (if any) or other special circumstances. . . If this form is used, a form 8 is not necessary.
4. A new legal manual which it is hoped to issue shortly has a section dealing with judicial records but you might like to adopt this new form forthwith.

G. POLLOCK  
Colonel  
Chief Judicial Officer.

2. If you decide to have more of these printed, I suggest that the this column should be made still thinner, leaving more space for "Synopsis of Trial and Remarks".

3. The officer using the new form should state briefly what the case is about under the heading "Synopsis of Trial and Remarks". Thus, in a case of theft the judge might note: "Six stolen blankets were found concealed in a hole under floor of house occupied by accused. Accused alleges son, aged 16, found them and put them there because he was afraid of being accused of theft". These remarks may run to several lines if necessary. Quantities and amounts should always be specified and so should previous convictions (if any) or other special circumstances. If this form is used, a form 8 is not necessary.

4. A new legal manual which it is hoped to issue shortly has a section dealing with judicial records but you might like to adopt this new form forthwith.

G. POLLOCK  
Colonel

Chief Judicial Officer.

83

D

F

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

/enr

160

17 March 1944

ACC/4002/L

SUBJECT: Allied Courts in Occupied Territory.

TO : HLO (thru EC) Region 4. 159

Ref RI/LE/Reg/A/1 we have asked the Executive Commissioner to supply as requested copies of Directive on the a/m subject (ref 283/42/OA dated 5 March 44.

MARCO J. GROSSMAN, Major  
for Chief Legal Officer.

51

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

161  
/sd

ACC/1402/L

17 March 1944.

SUBJECT: Allied Courts in Occupied Territory.

TO : Executive Commissioner, ACC.

1. RLO Region 4 advises that copy of Directive on a/m subject (ref 263/42/CA dated 5 March 44) has not been received.
2. May we request that copies thereof be supplied to RLO and RC Headquarters.

MARK J. CROSSMAN, Major  
for Chief Legal Officer

82

4002  
V

BF/4002  
May. *Wimmer*

Legal Sub Comm.  
(Dear)  
159

HEADQUARTERS REGION 4  
ALLIED MILITARY GOVERNMENT  
APO 394

579

TO : S.I.S., A.T.C.  
FROM : R.L.O., Region 4  
SUBJECT: Allied Courts in Occupied Territory.  
REF : R4/Lc/Reg/a/1  
DATE : 13 March 1944

148

1. Reference your letter of 7 March 1944 AGO/4002/1 mentioning Directives on the above subject of 3 March 1944 (293/42/DA) and an error in Appendix A thereof.
2. No such Directive can be traced as having reached this Headquarters.
3. Could copies thereof please be furnished both for this Division, and for the Central HQ. files?

147

*H. Wimmer*

Colonel,  
S.I.S. Reg. 4.

54, We have no spare copies. May the request be directed to R.L.O. HQ. files?

*Wimmer*  
Capt.

File Comm  
Suppl copy  
to Reg 10

60

5

158  
/enf

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

ACC/4002/L

14 March 1944.

SUBJECT: General Military Courts.

TO : RLOs (thru RCOs) Regions 3, 4 & 5.

1. Because of the difficulties in securing prompt communications, it is believed desirable for a General Court to be set up in each Region which may continue to try any cases brought before it until dissolved.

2. You are requested to send to the Legal Subcommittee the names of at least five competent officers of your Region whose names should be included in such an order. It is proposed that the President of the Court so named shall have the power to appoint additional officers if need arise for that.



G. R. UPJOHN  
Colonel  
Chief Legal Officer.

59

57

3

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Sub-Commission  
APO 394

RHM/pa

157

13 March 1944

Ref : AGC/4002/L

SUBJECT : Trial of civilians .

TO : Hq. 5 District .

156

1. Reference your 191/A, dated 8 March 1944 .

2. The R.L.C., Region III has already been advised that when deemed necessary Town Majors and other Allied Officers may sit as Allied Summary Courts . Obviously before they start their work they will have to become acquainted with the procedure etc..

3

58

RICHARD H. WILSON,  
Lt. Col., C.A.C.,  
Commanding General, APO 394

4002

SUBJECT:- Trial of civilians.

156

HQ ACPM Adm Ech

3 District  
Tel Ext 18  
191 A  
8 Mar 44

Rear HQ ACC (Legal Sub Commission)  
A 57 Area

103

Ref this HQ letter of even number dated 13 Feb 44

Will you please state if any decision has yet been arrived at, whether Town Majors and other officers may be appointed to preside over summary military courts.

HNE/EJP

*[Handwritten Signature]*  
Maj Gen  
Comd

3



*Alleged Military Courts*  
*4002*  
*file*

*Legal Sub. Court (M.A.)*  
Ref: C.P./LEGAL/18.

9th. March, 1944.

SUBJECT: Communication to Italian Authorities of Decisions of Military Courts.

*1566B*

TO: S.I.C. A.M.G. H.Q.s, 8th. Army Main.  
FROM: P.S.I.C. Campobasso Province.

Attached is a translation of a communication received from the Procuratore del Re of Campobasso.

The question raised is of general importance, and is forwarded to you for consideration. The Procuratore del Re has been informed that this is NOT a matter that can be dealt with on a provincial basis.

It would appear that in the case of serious crimes dealt with by A.M.G. courts it would be unfortunate that an Italian who is subsequently tried by Italian Courts should be able to conceal his previous offence. On the other hand it is considered by this H.Q.s that it is wrong that an Italian should be endowed with a criminal record vis-a-vis his own authorities merely by reason of such offences as being out after curfew or going ten kilometers without a permit. Such offences do not, from the civil point of view, involve any real criminality.

A possible compromise between these points of view would be to communicate officially to the Italian legal authorities, all convictions by General or Superior A.M.G. courts, but not by Summary courts.

*J.A. B...*  
Major.  
Scots Guards.  
Provincial Senior Legal Officer.  
Campobasso Province.

J.A.E-C./N.J.M.

*1st Sub. 20/3/44*

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A possible compromise between these points of view would be to communicate officially to the Italian legal authorities, all convictions by General or Superior A.M.G. courts, but not by Summary courts.

*J.A. Bypel-lyte*

Major,  
Scots Guards,  
Provincial Senior Legal Officer,  
Campobasso Province.

J.A.B-C./N.J.M.

1st Ind. 20/3/44

To: C.L.O. HQ ACC Legal but **57**  
1. Forwarded for consideration & reply. **38**

2. My reaction is - no.

*Edwin J. Mercer*

EDWIN J. MERCER, Maj. Grd.  
SENIOR LEGAL OFFICER, A.M.G. 8th ARMY

*also  
see within  
Indep. file*

Major Hammarford

*Our agenda for next discuss -  
with Hammarford - Parity for chief  
regions we can't compromise  
Summary Ct decisions*

PROCURA DEL RE DI CAMPOBASSO.

SUBJECT: SENTENCES INFLICTED BY THE JUDGES OF THE A.M.C.

Campobasso; 26-2-1944.

1560

TO THE LEGAL OFFICE OF THE A. M. G.  
CAMPOBASSO.

I am taking the liberty of bringing your Office to examine the advisability of giving official communications to this R. Procura of all sentence and pronouncements issued by the Allied Military Tribunals against Italian citizens, containing exact indications and complete generalities of all the offenders, the offences for which they are tried, the dates of the sentence and the substance of the same.

Such communications seem necessary when one considers that Marshal Badoglio, Chief of the Italian Government, in a recent proclamation, published in occasion of the delivery to the Italian administration, of the territories of the Kingdom, liberated by the Allied Troops, sanctioned the principle that in those territories all sentences pronounced by the competent Bodies of the Allied Government had full authority and recognition.

But, aside from such considerations of a general character, an official knowledge of such sentences is also necessary, for the following considerations:

- a) The Italian Code of Penal Procedure, (art. 603 and 604), provides that sentences be entered in the Judiciary Office, especially when they are of a grave or defamatory character, such as robbery, swindling, violence and resistance to the authorities, etc.-The reason is that Italian judges, in passing a sentence in case of perpetration of subsequent crimes by the same person, may take into account the criminal capacity of the delinquent. (art. 133, par. 2, Sec. 1, Penal Code).

b) In case of sequestration of articles which are to be returned to the

Badoglio, Chief of the Italian Government, in a recent Proclamation, published in occasion of the delivery to the Italian administration, of the territories of the Kingdom, liberated by the Allied Troops, sanctioned the principle that in those territories all sentences pronounced by the competent Bodies of the Allied Government had full authority and recognition.

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a) The Italian Code of Penal Procedure, (art. 603 and 604), provides that sentences be entered in the Judiciary Office, especially when they are of a grave or defamatory character, such as robbery, swindling, violence and resistance to the authorities, etc. - The reason is that Italian judges, in passing a sentence in case of perpetration of subsequent crimes by the same person, may take into account the criminal capacity of the delinquent. (art. 133, par. 2, Sec. 1, Penal Code).

b) In case of sequestration of articles which are to be returned to the "ammassi" a special account may be kept of the articles restored to the "ammassi" and of the money representing the goods, which is to be restored to the Public Treasury. In case the goods sequestered are to be returned to the Magazines of Monopolies, (salt, tobacco etc.) orders may be made for the conferment to the proper warehouse, so that the goods may follow the proper destination.

c). In case the crime affects third parties, these may obtain restitution or compensation for the damages suffered bringing action in Italian civil courts. (Art. 185 Penal Code and Art. 27 and 28 Code of Civil Procedure).

d). Finally, when the territory of this judicial circumscription will be transferred to the Italian administration, the judicial status of all prisoners being known, they could be dealt with accordingly.

THE PROCURATORE DEL RE  
ALFONSO LONARDO.

SUBJECT: Jurisdiction of Summary  
Courts.

*Legal (x)*  
Rear AMG Eighth Army.

Ref: OA/13, 2A **155**  
5 Mar 44.

C.L.O.,  
Rear HQ, A.C.C.,  
Legal Sub-Commission.

4002

1. Original official construction of subject was published by Lt.Col. Wm. Chandler as C.L.O. A.M.G., to the effect that sentence of imprisonment plus alternative sentence of imprisonment in default of payment of fine could not exceed one year.
2. This construction was not approved by Lt.Col. Rowe, then C.L.O. 15 Army Group, who instructed undersigned to disregard same and to allow alternative sentence of imprisonment in addition to one year to be imposed in default of payment of fine.
3. It appears from decisions on review that the present construction by your office is in accord with that expressed in para. 1.
4. Such construction is hereby adopted by undersigned and Summary Court officers will be instructed accordingly.

*Edwin J. Mercer*

EDWIN J. MERCER,  
Major ORO,  
Senior Legal Officer,  
AMG Eighth Army.

20

148

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394.

GRU/gaf

ACC/4002/L

7 March 1944.

SUBJECT: Allied Courts in Unoccupied territory.

TO : Regional Commissioners, Regions 1, 2, 3 & 6.

147

Ref Directive on the s/m subject (ref 253/42/CA dated 5 March 44) will you please note that the Decree extracted in App. A appears to make it obligatory on the Allied Forces to try the type of case therein mentioned. An amending decree is being passed to put this error right. It was never the intention of the Allied Forces to do more than take the power to try these cases and it is the settled policy of the Chief Commissioner only to use this power in the most serious cases. All other cases will be referred to Italian Tribunals.

G. R. UPICHI  
Colonel  
Chief Legal Officer.

Copy to:

- Regional Commissioners, Regions 4 & 5
- HQ ACOMF
- HQ No. 1 District
- HQ No. 2 District
- HQ No. 3 District

5

HEADQUARTERS,  
ALLIED CONTROL COMMISSION,  
APO 394.

Regional Control & Military Government Section.  
\*\*\*\*\*

5th March 1944.

Ref: 283/42/G1.

SUBJECT: Allied Military Courts in Unoccupied Territory.

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

1. On the handing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offences against the Allied Forces created by Proclamations and Orders will no longer exist as such.

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

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

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

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

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

(c) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence or (ii) evidence of aggravating

*Legation des Com  
5 Copies*  
**1471**

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

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

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

(c) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence not expressed in the charge, or (ii) evidence of aggravating circumstances (Art. 61, Penal Code) not mentioned in the citation or charge, then on such question being raised by the President or submitted by the Prosecutor, the accused may apply for an adjournment of not more than 5 days to prepare his defence (see 444, 445 and 446 Code Penal Procedure).

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

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

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

(e) Reviews and appeals are dealt with in paras. 7, 8 and 9 below.

5



-2-

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

6. Every accused will be defended by a legal representative. Where the financial position of the accused does not permit him to engage the services of a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 128) and of the Rules of Penal Procedure contained in the Decree No. 602 of 28 May 1951 (Article 3 et seq). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

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

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

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

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

9. In any case in which sentence of death is imposed whether a petition

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

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

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

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

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

*M. S. LUSH*  
 M. S. LUSH,  
 Brigadier,  
 Executive Commissioner.

Copy to: Regional Commissioner, Regions IV and V.  
 H.Q., A.C.M.F.  
 H.Q., No. 1 District  
 H.Q., No. 2 District  
 H.Q., No. 3 District  
 Legal Sub-Commission (3)

Appendix "A" to 283/42/CA  
dated 5th March 1944

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

---

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

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

Military Courts according to their own procedure.

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

(11/6)

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

GRU/gmf

6 March 1944.

ACC/4002/L

SUBJECT: Trial of Civilians.

TO : Executive Commissioner, ACC.

Ref your 283/38/CA dated 2 March 44.

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

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

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

G. R. UPJOHN, Colonel  
Chief Legal Officer.

31  
52

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

4002

~~144~~  
145

Ref/283/39/CA.

2 March 1944

SUBJECT: Allied Military Courts in Occupied Territory.

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

File

123

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

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

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

See folio 132

*[Signature]*  
NORMAN E. FIEGE  
Colonel, Cavalry,  
Deputy Executive  
Commissioner.

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

4002

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

(144)

Ref/283/38/CA.

2 March 1944.

SUBJECT: Trial of Civilians.

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

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

*Norman E. Fiske*  
NORMAN E. FISKE  
Colonel, Cavalry,  
Deputy Executive  
Commissioner.

90

1598

C O P Y

URGENT

1054A

SUBJECT: Trial of Civilians.

HQ ACJAF (Adm Ech),  
C.M.F.

ACJAF/3073/A(0).

29 Feb 44.

EXECUTIVE COMMISSIONER,  
A.C.C.

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

(Signed) C.M.Paton, Brig.  
for Major-General,  
Chief Administrative Officer.

CMP/AM.

29



4002

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

143  
GRU/gmf

2 March 1944.

ACG/4083/L

SUBJECT: Handling of Enemy Agents.

TO : HQ ACMF

4083

Ref your ACMF/1401/7/G(Ib) dated 27 Feb. 44 this HQ is only too anxious to cooperate in any measures that may be taken to ensure speedy trials provided that the investigation is not unduly hurried and the evidence and presentation of the case thereby unduly impaired.

Your letter does not suggest and it is believed that there are no grounds for suggesting that any of the delays which you are seeking to overcome are the concern of this HQ, but if you have any suggestions to make, please do so.

G. R. WYCHIN, Colonel  
Chief Legal Officer.

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HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 374

AMG (142)

ACC/1002/1

1 March 1944.

SUBJECT: Islands of Lampedusa, Pantelleria and Linosa.

TO : FLO Region I.

1. Ref your letter 013.054/HD dated 15 Feb 1944.
2. Executive Memorandum No. 33 HQ ACC dated 27 Feb 44 provides:

"The islands of PANTELLERIA, LAMPEDUSA and LINOSA, hitherto administered by Region I AMG will continue to be so governed under the powers of Military Government which are hereby accorded to Regional Commissioner, Region I (Lt. Col. A.M. Hancock)."

RICHARD H. SIMMER  
Lt. Col. CAC  
Deputy Chief Legal Officer.

SECRET

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

OSU/and

141

*Loyal  
Thank you  
for*

AGC/4027/1

*Copy for file 4002*

29 February 1944

SUBJECT: Construction of Phrase "Allied Forces".

TO : HLG Region 1, 4, & 5.  
HIO 5th & 8th Army.

The question has recently arisen as to proclamation offences against members of armed forces such as Yugoslav and Polish contingents and the Corps Expeditionnaire Francaise who are fighting on the Allied side in Italy and the following directive is issued for your guidance.

1. The expression "Allied Forces" when used in Proclamation No. 2 and other relevant proclamations in describing offences against the Allied Forces will be construed to include organized contingents of other nationalities (such as the above) who are under the command of G in C Italy.

This does not include Italian troops who are only collaborators and who in any event have ample resources in their own courts for punishing offenders.

2. In some cases e.g. Proclamation 2 Art II Sec 30 a different wording is used and in this case the normal construction will be used and if for instance words disrespectful to members of the C.M.F. are used it is not an offence under that section.

3. Allied Military Courts have no jurisdiction over members of the "Allied Forces" (Proc 4 Art II Sec 2(a)) and Courts will not therefore try members of organized contingents of armed forces of other nationalities who are under the command of the G in C Italy. This does not preclude trial in A.M. Courts (1) of soldiers of other nationalities who are not in an organized body under the G in C, (2) of Italian soldiers but normally and in the absence of some reason to the contrary they will be handed over to their own Military Courts for trial.

COPY TO: ~~VF R & MI~~  
~~VF Admin. Sec.~~  
~~VF Political Sec.~~  
Army Subcommission.

*G. R. Phillips*  
G. R. PHILLIPS, Colonel  
Chief Legal Officer.

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REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
NO 394.

GRU/guf

140

1 March 1944.

ACC/4002/L

SUBJECT: Allied Military Courts .

TO : Executive Commissioner, ACC.

*dated 27 Feb 1944*

Ref your 283/23/CA enclosing directive from AGMF returned herewith.

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

G. R. UPTON, Colonel  
Chief Legal Officer.

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COPY

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Subject: Proceedings in Allied Military Courts.

Headquarters  
Allied Central Mediterranean Force

Br. CONFIDENTIAL - U.S. CONFIDENTIAL

ACME/1460/1/G(Ib).

23 Feb 44.

Executive Commissioner, A.C.C.

Reference your 283 /8/CA dated 18 Feb 44 enclosing Circular on "Closed Trials" issued by the Chief Legal Officer, A.C.C., No. ACC/4092/L dated 10 Feb 44.

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

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

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

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

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

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

4. We are therefore instructing Army I(b)/C.I. Staffs, when forwarding to them a copy of your Chief Legal Officer's circular, normally to apply for trials of alleged enemy agents to be held in camera, unless exceptional circumstances render this unnecessary. In view of the reasons set out in para 3 above, it is strongly urged that such applications should normally be supported by the ACC Legal Officers concerned.

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

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

Ref/283/23/CA.

27 February 1944.

SUBJECT: Allied Military Courts.

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

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

*N. E. Fiske*  
Lt. Col.

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

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REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Sub-Commission  
APO 394

GP/jpl

ACC/4002/L

28 February 1944

SUBJECT : Pardons.

TO : SLD, AMS, 8th Army.

1. Reference your letter OA/13/62A dated 11 February 1944.
2. Your para 1 concerning deterrent sentences is spread.
3. It is felt that the effect of deterrent sentences would be destroyed if it became known that such sentences were subject to a probable, or even possible, pardon or parole in the near future. Cases are reviewed in accordance with proclamations and are also subject to re-review on the handing back of Occupied Territory to the Italian Government on the ground that the military necessity which called for deterrent sentences no longer exists.
4. The proper instruction to officers in your area who try cases is that where military necessity so requires, severe sentences should be imposed by way of deterrent but that such sentences must not be extravagant and must always have regard to all the facts of the case.
5. A statement on the record that a particular sentence was imposed for special reasons and a recommendation that it be reconsidered at a later date is proper.

GERALD R. UPJOHN

Colonel  
Chief Legal Officer.



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REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 304

GPU/gmf

27 February 1944

ACC/4002/L

SUBJECT: Representation of Accused at Trial.

TO : WLO Region 3.

Ref your 3/6059/L dated 25 Feb we are both at one in endeavouring to stamp out the admitted evils in the courts at Naples but our views as to the best method of doing it perhaps differ slightly.

I feel your suggested interpretation of limiting the class of representatives other than close relatives or employers is stretching unduly the words of the Proclamation and might indeed involve some hardship in a particular case, e.g. where the accused has a real friend of ability and eloquence.

On the other hand Art. IV Sec 2(b) seems to me to be exactly adapted to the exclusion of racketeers who without having the proper qualifications accept fees for appearing in Court for accused persons.

It seems to me that no one could be otherwise than approving if you issue an order merely prohibiting persons by name from practicing in MG Courts when you are satisfied that they have no legal qualifications and are drawing fees.

Do you not agree?

G. R. URCHIN  
Colonel  
Chief Legal Officer.

3

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4002

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

25 February 1944

JWC/mo  
3/6059/L

Subject: Representation of Accused at Trial.

To : Chief Legal Officer, Legal Sub-Commission,  
Rear Headquarters, Allied Control Commission.

1. Reference to Proclamation 4, Article IV,  
Section 2(b), and Special Administrative Instruction -  
Legal No.2, 2(c).

2. There should be an interpretative amendment  
limiting the phrase "other representative of his own  
choosing" in the first reference and the phrase "other  
person" in the second reference .

3. Major Palmieri, under date of 18 February,  
1944, filed a report with you concerning Allied Courts  
in Naples. In paragraphs 17, 18, 19 and 20 he has touched  
upon the reason for an interpretative amendment. The  
Major has only referred to persons with criminal records  
who have been representing accused before A.M.C. Courts.  
There are others who are just as undesirable. They are  
persons of no legal experience and of no reputation who  
have seized upon this opportunity of representing clients  
as a racket. I am informed that most of them are in  
collusion with the Italian police.

(13) (File 4001/3)

4. However, we have said that an accused may

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have a representative of his own choosing . While the Legal Officer or the Court may prohibit any such representative from appearing, it seems to me that that prerogative is for the protection of the court against unseemly conduct and was not designed to be used as off setting the right to select representatives given in the first clause. There is no appearance "that justice seems to be done ", under such circumstances.

5. It is my thought that representatives, other than lawyers, should be limited to close relatives or employers. I feel that the right was afforded to protect persons in communities in which lawyers were not available or to assist persons who could not afford to employ a lawyer. If the representatives were limited to the categories designated the desired results will be obtained without opening the door to situations such as existed here in Naples.

*John W. Chapman*

JOHN W. CHAPMAN,  
Lt.Col., J.A.G.D.,  
Reg.Chief Legal Officer.

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

GRU/gmf

27 February 1944.

ACC/4002/L

SUBJECT: Summary Court Records.

TO : HQ Region 4.

1. Ref your RH/250.5 dated 19 Feb, this matter was discussed with Col. Willmer and the writer on 19 Feb and a revision on the lines then agreed will be made to Form 8.

2. Unfortunately no trace of your letter dated 25 Jan reached this HQ.

G. R. UPJOHN, Colonel  
Chief Legal Officer.

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HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

/gmf

33

27 February 1944.

ACC/4002/L

SUBJECT: Allied Military Courts in Occupied Territory.

TO : RLO (thru RC) Region 3.

(125)

1. Ref your 3/6105/L dated 25 Feb 44.
2. All officers sitting alone as Superior Courts who have been authorized to do so by RLO Region 3 who shall have tried cases prior to 10 March 1944 will be regarded as approved, in so far as those cases are concerned, by this HQ. If you desire any of these officers to continue to sit alone as a Superior Court after that date, a list should be submitted for approval.
3. Experience from a review of cases has shown the real necessity, if a proper standard of justice is to be attained, of allowing only officers approved by this HQ to sit alone as a Superior Court.

G. R. UPJOHN, Colonel  
Chief Legal Officer.

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

ACC/4002/L

27th February 1944

Subject: Allied Military Courts  
To : Executive Commissioner

1. I enclose copy of letter 3/6105/L dated 23rd February 1944 from Region III requesting that the appointment of General Military Courts be delegated to R.L.O. Region III.
2. The recommendation of this Sub-Commission in respect of this matter will be found in my letter dated 26 February - ACC/4002/L - copy attached.

GERALD P. UNION  
Colonel,  
Chief Legal Officer.

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

*Letter to Ex Amuse  
taken by Col appin*

*See folder 144.*

HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
LEGAL SUB-COMMISSION  
APO 39A.

27th February, 1944.

REFERENCE : ACC/4002/L.  
SUBJECT : Allied Military Courts in Unoccupied Territory.  
TO : Executive Commission.

Will you please consider the attached draft and if approved send copies of the same to Regional Commissioner, Regions, I, II, & VI and three copies to this Sub-Commission.

SEE FOLIO 147

GERARD R. URGENS.  
Colonel,  
Chief Legal Officer.

GEN/acc. Taken by Col Upjohn  
27/2/44

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130-127

MEMORANDUM  
ALLIED MILITARY COMMISSIONS  
APO 394.

130

February, 1944.

SUBJECT : Allied Military Courts in Unoccupied Territory.

TO : Regional Commissioner, England I, II & VI.

1. On the handing back to the Italian Government of territory now occupied by the Allied Forces, General, Superior and Summary Military Courts will cease to function except to deal with pending cases. Offenses against the Allied Force created by Proclamations and Orders will no longer exist as such.

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

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

request that a Military Court be constituted.



and.

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

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

3B

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

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

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

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(o) Where it transpires in the course of hearing that there is established against the accused (i) any other fact constituting an offence not expressed in the charge, or (ii) evidence of aggravating circumstances (Art. 61, Penal Code) not mentioned in the statement of charge, then on such question being raised by the President or submitted by the Prosecutor, the accused may apply for an adjournment of not more than 5 days to prepare his defence (ref. 444, 445 & 446 Code of Criminal Procedure).

If the accused does not ask for this, the offences in question or the aggravating circumstances are furnished to be included in the charge and the trial proceeded with.

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

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

(u) Revisions and appeals are dealt with in paras. 7, 8 & 9 below.

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

change and the trial proceed with.

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

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

(e) Verdicts and appeals are dealt with in paras. 7, 8 & 9 below.

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

6. Every accused will be defended by a legal representative. Where the financial position of the accused does not permit him to engage the services of a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 228) and of the Rules of Penal Procedure contained in the Decree of 23 May 1931 (Article 3 et seq). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

(a) an examining magistrate (giudice istruttore); (b) the public Minister

(procuratore del re or procuratore generale); (c) president of a tribunal (presidente di tribunale); (d) the prosecutor (proteore). The several

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

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

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

9. In any case in which sentence of death is imposed whether a

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those rules, are obliged to appear for the accused, and are selected for this purpose from an official roll established locally at the seat of each Tribunal. If no such arrangements can be made, the accused must be defended by an Allied officer.

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

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

9. In any case in which sentence of death is imposed whether a petition is filed or not, the record of the case at the expiration of the 30 days or on filing of a petition, whichever shall be sooner, shall be forwarded by the Regional Commissioner to the Chief Legal Officer H.Q., A.C.C. for examination of such sentence by the President of the Allied Control Commission or an officer delegated by him for this purpose.

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

Brigadier,  
Executive Commissioner,  
For Chief Commissioner.

APPENDIX 'A'

Article 5 of Royal Decree Law No. 31, 11 February 43.

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

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

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REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

GRV/umf

26 February 1966.

ACC/4002/L

SUBJECT: General Military Courts.

TO : V.P. RC & MI Section.

Ref your 253/20/CA dated 23 Feb it was decided by Brig. Lush and Col. Spofford in January on the recommendation of this Subcommittee that as a matter of policy it was desirable to confine the appointment of General Courts in areas other than army areas to HQ ACC. This recommendation was made as the result of experience and with the object of improving the standard of these Courts by a careful selection of personnel. In really important cases it is contemplated that the Chief Judicial officer will preside.

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

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

G. H. UPJOHN  
Colonel  
Chief Legal Officer.

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31

4002

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

JWC/cm  
3/6105/L.

25 February 1944.

SUBJECT: Allied Military Courts in Occupied Territory.

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

(107)

1. Reference to your ACC/4002/L, 16 February 1944.

2. May I respectfully protest against the instruction contained in paragraph 2 (1) of the above mentioned communication. With a very definite shortage of officers and an increasingly heavy calendar of cases to be heard, this instruction becomes a serious handicap in the expeditious disposal of cases. This is an operating Region with a continual flow of Superior Court cases.

3. Your instruction has probably invalidated all cases heard in this Region since 16 February 1944, of which there have been many. At the moment there were five Superior Courts all of which had heavy dockets and all of them are illegally constituted according to your instruction. It would seem to me that such an instruction should have had an effective date sufficiently in the future to permit of compliance without rendering functioning courts and completed cases invalid.

4. I see nothing to do but to order new trials in all cases tried by Superior Courts since 16 February, as rapidly as the case records reach this office. This will throw a tremendous burden on an already overburdened staff and to no useful purpose.

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See 133.



5. I respectfully request that the instruction be rescinded in its entirety.

*John W. Chapman*

JOHN W. CHAPMAN,  
Lt. Col., J.A.G.D.,  
Regional Chief Legal Officer.

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

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23 February 1944

JWC/oa  
3/6105/L

Subject: Allied Military Courts in Occupied Territory.

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

1. Reference to your AOC/4002/L, 16 February, 1944.

2. Request is made that the Chief Commissioner, Ho. A.C.C. delegate to the Regional Legal Officer, Region 3, A.M.G., the authority to appoint General Military Courts for that Region.

3. Will you please place this request before the Chief Commissioner together with such recommendation as you desire to make.

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

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4002

V-224

HGW/dec  
Legal Sub Comm.

HEADQUARTERS REGION 4  
Allied Military Government  
APO 394

TO : HQ., A.C.C.  
FROM : HQ., Region 4 AMG  
SUBJECT : Summary Court Records  
REF : R4/250.5  
DATE : 19 February 1944

121-122

1. Herewith copy of my letter, reference as above, dated 25 January 1944, addressed to D.C.C.A.C., A.M.G., HQ., A.C.M.F.
2. No reply to this has ever been received, and it is requested that a ruling may now be given by your HQ.

M. Carr  
Brigadier

M. CARR  
Brigadier,  
R. C., Region 4 AMG

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See 134

HEADQUARTERS REGION 4 MAIN  
ALLIED MILITARY GOVERNMENT

TO : D.C.C.A.O., A.M.G., HQ A.C.M.F. 121

FROM : R.C.A.O. ; A.M.G. , Region 4

SUBJECT : Summary Court Records

REF. : R4/250.5

DATE : 25 Jan. 44

1. Reference is made to this HQ letter R4/1064 <sup>NR</sup> of 1. Dec. 43, addressed by Regional Chief Legal Officer to Chief Legal Officer, A.M.G., 15 Army Group. This contained a proposal for the abolition of the Summary Court Record Book, and the substitution of an alternative and simpler means of maintaining records, by endorsing the disposal of each case on the back of the summons or charge sheet.

2. I understand that this proposal was not at the time approved, and consequently no action has been taken.

3. Since the date of this proposal, Rule 12 of the Rules of Procedure has been amended, and a Summary Court judge is now required, in addition to maintaining the Summary Court Record Book, to keep a record of the evidence in every case where the plea is "not guilty", and to submit this record on Form 8 in every case where the punishment exceeds 90 days imprisonment or a fine of 4000 lire, or where a petition for review is filed.

4. Most of the Summary Court <sup>work</sup> has in practice to be done by C.A.Os, because legal officers are too few and the distances and difficulties of transportation too great to admit of the possibility of legal officers going around to the centres of population where courts have to be held.

5. C.A.Os, if they are to carry out their manifold duties, have an exceedingly busy time, and in many cases are already overworked. It is considered important that, in connection with their duties as judges of summary courts, they should not be burdened with any work beyond what is absolutely necessary.

Copy to : R.C.L.O.

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6. I have before me a letter from the S.C.A.O., Foggia Province, complaining that the C.A.Os in that Province are already overworked, and that their work in other directions is being hampered by the excessive amount of time which has to be spent in mere office work in connection with the maintenance of Court Records. There are not enough C.A.Os assigned or attached to Region 4, still less is there enough clerical staff, to cope with more than the barest essentials in respect of office work.

I do not ask at present for the elimination of the Record of evidence required by the amendment of Rule 12. I should like to see the new procedure tried out in practice before forming a final opinion. I do ask, however, that further consideration be given now to the proposal previously made for abolishing the Court Record Book. As this proposal would involve an amendment of the Rules of Procedure, I consider that I should have your authority before putting it into effect.

M.CARR, Brigadier  
R.C.A.O., Region 4

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

23 February 1944.

Ref/283/20/CA

SUBJECT: General Military Courts

TO : Administrative Section

1. Attached copy of B4/250.5(b) of 19 February 1944 is forwarded to you for favor of comment by the Legal Sub-Commission.

*T. Farley Smith*

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

Incl  
As above.

25  
14

HGW/qd

5

(112)

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

TO : MAEN, H.Q. A.C.C. APO 394

FROM : R.C., HQ., Region 4 A.M.G.

SUBJECT : General Military Courts.

REFERENCE : R4/250.5b

DATE : 19 February, 1944.

1. Reference Executive Memorandum No.6 (Ref./45/15/CA) of 10 February 1944, paragraph 1.

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

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

114

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

*H. Carr*

---

H. CARR, Brigadier  
Regional Commissioner.



117

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394

LT/gmf

February 26, 1944

ACC/4002/L

SUBJECT: Allied Military Courts.

TO : RLO Region 3.

112

1. Replying to your letter of 23 Feb 44 concerning conflict between Proclamation No. 4 Art III Section 3 and General Administrative Instruction Legal No. 7-B 4(c), this point has been considered in the revised instructions on Allied Military Courts about to be published and the language in the instructions has been brought more closely into line with the original Proclamation. For your information, the new language in the instructions on Summary Courts will be substantially as follows:-

"Any officer of the Allied Military Government if available, or otherwise any officer of the Allied Forces may sit as a Summary Court Judge. Whenever possible a Summary Court Judge should be a Judicial Officer as defined by Proclamation No. 4, Art. III, Sec. 4, and the SCAG or CAG convening the Court should have in mind the extreme undesirability of appointing untrained officers to sit as judges."

2. After careful consideration and in the light of experience, it has seemed wise to ~~re-form~~ RETAIN THE this provision for use of a judicial officer when possible.

RICHARD H. VILMER  
Lt. Col. CAG  
Deputy Chief Legal Officer.

See (116)

22

(116)

Note to be attached to copy: 26/2/44 - Major Grossman took up with Col. Pollock the matter of difficulty raised in Col. Chapman's letter and pointed out all difficulties with respect to availability of judicial officers could be obviated by substitution in IA of revised instructions "whenever practicable" for "whenever possible" but Col. Pollock felt provision for judicial officer should not be relaxed.

4702

115

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

23 February 1944

JWC/oa  
3/6015/L

Subject: Allied Military Courts.  
To : Chief Legal Officer, Legal Subcommission.

1. Reference to your ACC/4002/L, 16 February, 1944 and attached correspondence.

2. There is a conflict between Proclamation 4 Article III Section 3 and General Administrative Instruction No. 7, B, 4 (c) which should be eliminated. At the moment I am following this procedure: the Provincial Legal Officer puts through a request for AMG officers for Summary Courts; there are none available and I so advise him; then, under the Proclamation, he may use officers of the Allied Forces. That is the plan under which we are using EBS. officers.

3. I have a good legal officer in the person of Colonel Webber who can instruct any officers made available to us.

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

211

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394.

/gmf

114

21 February 1944.

XCC/4002/1

SUBJECT: Transfer of Territory.

TO : DRLO Region I.

113

1. Ref your letter 013.054/HD dated 15 Feb. 1944.
2. The question presented in your letter is already under consideration.

See ~~113~~ 111

G. R. URJCHN  
Colonel  
Chief Legal Officer.

4002

4002

~~113~~ 113

ALLIED CONTROL COMMISSION  
SICILY REGION HQ.  
APO 394

File: RLE 013.054/HD

15 February 1944

SUBJECT: Transfer of Territory.

TO : C.L.O., A.C.C. HQ., APO 394 (Salerno Detachment).

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

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

For Lt. Col. POLETTI:

*H. M. Dickie*

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

jd

See photo (11) in file 4002/4

*Elph*

10

REAR HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394.

/GMD

112

20 February 1944.

ACC/4002/L

SUBJECT: Transfer of Territory.

TO : Executive Commissioner, ACC.

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

G. R. UPJCHIN  
Colonel  
Chief Legal Officer

113

HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394.

~~SECRET~~  
/enf III

17 February 1944.

ACC/4002/L

SUBJECT: Allied Military Courts.

TO : Executive Commissioner, ACC.

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

G. B. HITCHIN  
Colonel  
Chief Legal Officer.

HEAD HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee  
APO 394.

110

16 February 1944

ACC/4002/L

SUBJECT: Allied Military Courts in Occupied Territory.

TO : RLOs (thru RCOs) Regions 3, 4, & 5.

1. General Military Courts

(1) No General Military Court shall be appointed other than by the Chief Commissioner, HQ ACC or by an officer delegated by him.

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

(3) The application shall specify:-

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

2. Superior Military Courts

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

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

(3) In no case shall an officer while sitting as a Summary Court assume the powers of a Superior Court by an announcement to that effect or otherwise. If the case which he is hearing as a Summary Court proves



to be one which should be dealt with by a Superior Court, the officer shall remit the case for trial by a Superior Court and a Superior Court will be duly convened. Such Summary Court Officer is not disqualified from sitting as a member of the Superior Court to try the case so remitted. 109

3. Procedure

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

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

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

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

GERALD UPJOHN  
Colonel  
Chief Legal Officer.

FOR HQ HEADQUARTERS  
ALLIED CONTROL COMMISSION  
LEGAL SUB-COMMISSION  
APO 354

~~SECRET~~

100/4000/L

GMW/3pl

108

16 February 44

Subject : Trial of Civilians

To : GOC 3 District GCP

106

1. Your letter 13 February 1944 with enclosures has been received. Copies have been sent to the Regional Legal Officer, Region III for action.

2. A new Regional Legal Officer has just taken over his duties in Region III and he is now engaged in reorganizing the legal activities in that Region. Among other things he is now engaged in working out plans for more efficient and speedy trials of offenders. The situation in Naples has had to be given his first attention. However, he has been instructed to take immediate action with respect to the matters mentioned in your letter and enclosures.

3. In the event that the present delays continue, please advise us.

GERALD B. HURSON

Colonel  
Chief Legal Officer

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HEAD HEADQUARTERS  
ALLIED CENTRAL COMMISSION  
LEGAL SUB-COMMISSION  
APO 394

REG/4002/1.

REN/jpl

16 February 44

107

Subject : Allied Military Courts.

To : RIG Region III.

~~106~~ 106

1. Enclosed is a copy of a letter dated 13 February 1944, from H.Q. 3 District GEF and enclosures.

2. Please take such immediate steps as you consider necessary and advise us so that I can further answer the letter above mentioned.

3. If you can avail yourself of the offer to supply officers, it will be necessary that some experienced legal officer in your region give these officers full instructions as to trial and procedure including the use of prescribed forms etc.

RICHARD H. WELSH

Lt. Col. G.S.C.  
Deputy Chief Legal Officer

See files 105

21

22

SUBJECT:- Trial of Civilians.

*Royal*

15 FEB 1944  
HQ, 3 District, COMF.  
181 A.  
Tel Ext 13.

4002

13 Feb 44.

AFHQ Adm Adm Sch.

Copy to: 'A', 3 District.  
57 Area.  
Allied Control Commission.

*104125*

*106*

Att herewith are copies of letter ref A.113 dated 28 Jan 44 from 57 Area and minute from JAG branch, 3 District.

2. In view of the remarks of the JAG branch will you please take this matter up with the Allied Control Commission (or A.M.C. if this body be the correct one) so that the distinction between A.M.C. Proclamation No 4, Art III, Sec 3 and AMG General Admin Instr No 7, 3.4(c) may be cleared up.

3. It would appear that, if it is permissible to appoint such officers as are set out in para 4 of 57 Area letter, such procedure should expedite the course of justice.

*[Signature]*  
Maj-Gen,  
Comd 3 Dist. 4

11

3

Copy Minute.

255 A.

A.A.G.  
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~~105~~  
105

Reference 1A.

1. By virtue of A.M.G. proclamation No 4, Article III, Section 3, a Summary Military Court shall consist of "one officer who need not be a judicial officer, but may be any officer of the A.M.G., if available, or otherwise any officer of the Allied Forces."
2. There is, therefore, proclamation Authority for the appointment of the officers enumerated in paragraph 4 on folio 1A to preside over Summary Courts.
3. It would appear, however, that as a matter of policy Summary Courts in practice will only be presided over by "a judicial officer or a Civil Affairs officer of the A.M.G. if available", see AMGOT General Administration Instruction No 7 B.4(c) which appears to curtail the various types of officer who may preside by omitting the words "otherwise any officer of the Allied Forces."
4. If this is the correct interpretation of AMGOT General Administration Instruction No 7 above referred to, even if you are in agreement with the proposals suggested by the Commander 57 Area, you may perhaps think that approval, as asked by him, ought not to be given without reference to the Authority having power to issue AMGOT General Administration Instructions.

3  
Field.  
1 Feb 44.

(Sgd) ?????????????? Capt  
for Major,  
Officer i/c JAG's Branch.  
HQ, No 2 District. 10

SUBJECT:- Trial of Civilians. Copy.

15 FEB 1944  
A.116.

HQ, No 2 District.  
-----

104

1. Certain difficulties have arisen in trying cases against civilians by summary military courts. A.M.G. state that there is a shortage of officers to preside over summary courts outside Naples: that there is difficulty in finding military evidence, both because an up to date location list is not always available and because witnesses may only be in the area for a day or two: and that when witnesses do appear they may have to wait some time, though cases where military witnesses are involved are given priority.

2. My legal adviser therefore discussed the question with A.M.G. and the latter have suggested that I should nominate certain British officers outside Naples to be authorised to hold and preside over A.M.G. Summary Courts. These officers to have the power to sentence Italian offenders to one years imprisonment and or a fine of 10,000 lire, or to remit the case to a Superior Court.

3. If approved, the officer appointed must obviously be one who has an Italian interpreter. A.M.G. themselves suggest that British Town Majors are as a whole far more experienced than many of their own junior officers. It is difficult to assess the amount of time which would be involved in dealing with these cases and I should therefore prefer, at all events at first, to limit their availability to cases in which military witnesses are involved and in other cases to certain hours during the week.

4. If approved, I consider that the following officers might be appointed:-

(a) Town Majors

(b) All officers of the rank of Lt-Colonel. (Note that this would provide summary courts in the I.R.T.D. and G.R.T.D. areas)

(c) Selected Majors in towns where there is neither an A.M.G. permanent resident or an officer qualified under (a) or (b) above.

5. I am anxious to deal with cases of theft or sabotage speedily and I believe that this method will do something to achieve it.

6. Will you please say if you approve?

Field.

26 Jan 44. 3

(Sgd) ????????????

Brigadier,  
Comd 57 Area.

SUBJECT: Pardons.

4002

Rear AMG Eighth Army.

04/13/62A.

11 Feb 44.

~~SECRET~~

103

CLO, HQ, ACC (Salerno Detachment)  
Legal Sub Com.

1. In many cases it is deemed advisable to impose sentences, heavier than the individual culpability of the accused would ordinarily warrant, by way of example and as a deterrent.
2. It is the desire of this office that some office be created or empowered to parole or pardon certain convicted persons after a sufficient period has elapsed to allow for the salutary effects of the exemplary sentence to be felt.
3. The record of proceedings in appropriate cases could contain such a recommendation.
4. This opinion is concurred in by the P.S.L.Os. of Chieti and Campobasso, and is deemed urgent.

X

*Edwin J. Mercer*

Edwin J. Mercer, Maj. Ord.  
Senior Legal Officer AMG Eighth Army.

4002

Sub  
1646

THE SECRETARY OF DEFENSE  
ATTENTION: CHIEF OF STAFF  
WASHINGTON, D.C.

11 Feb 54

Ref: 102/30/4

Subject: Summary and Superior Courts

102

To : All S.C. ...  
(Copy to S.C. ...)

1. All MG officers except police officers are permitted to sit alone as summary courts. Officers of limited experience shall however first attend summary courts under instruction.
2. All appointments of legal or any other officers to sit alone as superior courts, whether made expressly by this Reg. or impliedly by MG instructions are cancelled.
3. Superior Courts will in future be appointed in writing by S.C. ... and will consist of at least two officers, one of whom must be a legal officer, who, irrespective of rank, will be named as president.
4. The order appointing the Superior Court will in future be attached to the records of the case authorized to be heard by such court.
5. The appointment of officers, whether legal or otherwise, to sit alone as superior courts will in future be made, if at all, by S.C. ...

G. W. Mc Caffrey  
Lt. Col., Infantry  
HQAD



HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee

10 February 1944.

ACC/4002/R/L

SUBJECT: Closed Trials.

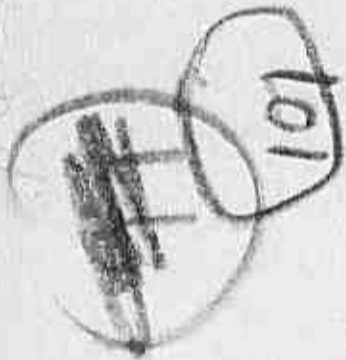
TO : DCICs (thru RCOs) Regions III, IV, and V.  
WIC (thru SCACs) 5th & 8th Army.

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

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

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

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




that intelligence personnel attend as witnesses, particularly in espionage cases. For security reasons it may be important in any particular trial that the testimony of such witnesses be given in secret. Under the provisions of Proclamation No. 4, as amended by Proclamation No. 14, the CGAO (now Chief Commissioner) or RGAO (now Regional Commissioner) or any court may direct that a trial may be conducted in camera. The same powers of the RCOs in this instance should be construed as being lodged in the SCACs of 5th and 8th Army Area.

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

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

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

  
GERALD W. FITCH  
Colonel  
Chief Legal Officer.

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

Ref/45/15/CA.

EXECUTIVE MEMORANDUM )

NUMBER : 6 )

10 February 1944.

ALLIED MILITARY COURTS IN OCCUPIED TERRITORY.

1. General Military Courts.

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

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

(3) The application shall specify: -

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

2. Superior Military Courts.

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

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

(3) In no case shall an officer while sitting as a Summary Court assume the powers of a Superior Court by an announcement to that effect or otherwise. If the case which he is hearing as a Summary Court proves to be one which should be dealt

*Legal*  
*(100)*

## (3) The application shall specify:

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

2. Superior Military Courts.

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

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

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

3 Procedure.

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

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

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

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

M.S. LUSH,  
Brigadier,  
Executive Commissioner.

DISTRIBUTION :

R.C., Region III	6
R.C., Region IV	6
R.C., Region V	4
R.C., Region VI	4
Spares (3)	
File	1

*Old File*

99

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee

10 February 1944.

ACC/4002/R/L

SUBJECT: Proceedings in Allied Military Courts.

TO : SLO AMG 5th Army.

Enclosed is a copy of a directive which has been prepared following receipt of your letter of 7 February 1944 (ref 208/GA/51) and enclosures.

GERALD UPJOHN  
Colonel  
Chief Legal Officer.

HEADQUARTERS  
ALLIED CONTROL COMMISSION  
Legal Subcommittee

98

10 February 1944.

ACC/4002/V/L

SUBJECT: Allied Military Courts.

TO : Executive Commissioner, ACC.

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

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

GERALD HENCHY  
Colonel  
Chief Legal Officer.

97

DRAFT

SUBJECT: Proceedings in Allied Military Courts.

TO : Headquarters ACF, I French.

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

Brigadier  
Executive Commissioner  
Allied Control Commission.



