

2502

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

785016

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DIRECT
AUG. 19

2/464

DIRECTIVES, ALLIED MILITARY COURTS
AUG. 1943 - JUN. 1945

2502

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

785016

FILE CLOSED : 2 June 1945

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4061

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AO/4002/L

2 June 1945

SUBJECT : Recording payment of fines on Records

TO : Regional Commissioners, (Attn: Regional Legal Officers),
TOSCANA, EMILIA, LIGURIA, PIEMONTE, LOMBARDIA and
VENETIE Regions.
Provincial Commissioners (Attn: Provincial Legal Officers),
ANCONA and NAPLES Communes.
C.A.O.s LAMPEDUSA and PANTELLERIA

1. Attention is drawn to the necessity of making endorsements on records when fines are paid, as directed by Consolidated Instructions, Article 29. See also Article 26 (2) c and the notes thereto. Similarly if a fine is not paid by the due date an appropriate endorsement should be made.

2. This is particularly important when a term of imprisonment is imposed in addition to a fine, for which a period of time has been allowed for payment. In such cases, in addition to endorsing the record, the prison authority where the accused is detained should be notified of the payment or fact of non-payment, as the case may be.

3. Failure to make an appropriate endorsement on the record entails that if this Sub-Commission is asked by the Italian authorities, perhaps 4-18 months later, to state whether payment has been made it is unable to do so, and as no absolute proof of non-payment can be obtained from the Finance Sub-Commission the default sentence has to be waived.

By command of Rear Admiral STONE :

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W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
AFO 394
LEGAL SUB-COMMISSION

AC/4002/L.

20 April 1945.

SUBJECT : Italian Military Property.

TO : Regional Commissioner, TOSCANA Region.
(Attn. Regional Legal Officer)

1. Reference your RVIII/19/3008 of 17 April 1945.
Italian military property should not be treated as enemy military property, and failure to declare possession of Italian military property should not be held to be an offence under Proclamation 1, Art. V, Sec. 28.

2. Where a civilian is improperly in possession of Italian military property, he can be prosecuted under one or more of the following provisions of Italian law :-

- Art. 166 CPM. Acquisition or retention of military property.
- Art. 648 CP. Receiving.
- Art. 712 CP. Incautious acquisition.
- Art. 624 CP. Theft.

3. Such cases may, if necessary, and subject to the provisions of Consolidated Instructions, Article 14, be tried in AMG Courts or the accused may be referred to the appropriate Italian Court.

4. In all cases where an accused is found by an AMG Court to have been improperly in possession of Italian military property, the court should make an order that the property be restored to the Italian army authorities.

BY command of Rear Admiral STONE.

W. E. BEHRENS.

W. E. BEHRENS,
Colonel,

Deputy Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION
APO 374
LEGAL SUB-COMMISSION

(37A)

AC/4002/L.

18 April 1945.

SUBJECT : Petitions.

TO : H.E. The Minister of Pardon and Justice.

With reference to this HQ letter AC/4002/L. of 5 April 1945 and subsequent telephone communication from Your Excellency's Ministry.

1. This Commission does not require to be informed of any action which Your Excellency's Ministry may take in accordance with para 5 (a) of that letter.

2. Petitions on the grounds of health which are addressed to this Commission or other Allied authorities must be considered here. If the Commission is assured that instructions as suggested have been issued by Your Excellency and that therefore there is no danger of an Italian subject failing to receive the care and attention to which he is entitled under Italian law merely because he is in prison on the order of an Allied Military Court, then it will be unnecessary, except in very rare cases, to take any action on such petitions. Otherwise, this sub-Commission will be bound to forward all such petitions for investigation and report.

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

Inter-Post

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

36A

AG/4002/1.

/lr.
5 April 1945.SUBJECT : ~~Indefinite~~ Petitions.

TO : H.E., Minister of Pardon and Justice.

1. This Sub-Commission understands from Your Excellency's Ministry that persons in prison under a sentence of an Italian Court who may fall sick are dealt with in accordance with Article 107 of the Royal Decree of the 18th June 1931 No. 787 as explained by various circulars.

2. It is the policy of this Commission that persons who are still in prison in Italian Government Territory under an order of an Allied Military Court and who may fall sick should be dealt with in the same way.

3. It is therefore requested that Your Excellency will issue an instruction to all prison directors concerned and to the appropriate members of Your Excellency's Ministry informing them of that policy and instructing them to take action in such cases in all respects as if the sentence had been imposed by an Italian Court.

4. It has been the practice for persons convicted by Allied Military Courts to present petitions asking for release from prison on grounds of ill health. In the past, such petitions were presented and disposed of through Allied Commission channels, but with the withdrawal of Allied Commission personnel, it is thought that petitions will be presented either by post or through the channels of Your Excellency's Ministry.

5. With a view to establishing an orderly system of dealing with such petitions, the following suggestion is made:-

- (a) Any petition based solely on the grounds of ill health and addressed to Your Excellency's Ministry or to any other Italian authority (wherever presented) to be disposed of by Your Excellency in all respects as if the sentence had been imposed by an Italian Court.
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- 2 -

- (b) All such petitions addressed to this Commission or to any allied officer or authority to be disposed of by this Commission. As it is not the practice of this Commission to reduce a sentence on the grounds of ill health, ~~and~~ in normal cases this will involve no action provided that this Commission has Your Excellency's assurance that instructions have been issued in accordance with paras 2 and 3 above.

6. Your Excellency will appreciate that the above remarks apply only to petitions based solely on grounds of ill health. Any other petitions in regard to sentences of Allied Military Courts must be scrutinised at this HQ.

lc

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Adviser.

Copy to file
AC/4083/23/L

35A

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AO/4002/L.

/lrb.
30 March 1945.

SUBJECT : Informal Petitions.

TO : H.E. The Minister of Grace and Justice.

1. As your Excellency is, no doubt, aware a person convicted by an Allied Military Court has the right to present a petition for review within 30 days of conviction. At the expiration of this period every case, with any petition presented, is reviewed by the competent authority. No right exists to present any further petition.

2. In practice it has been found that persons convicted present innumerable petitions, the vast majority of which have no merit whatever.

3. In the past, these petitions were either disposed of at Regional HQ or forwarded to Regional HQ to this Sub-Commission.

4. It is anticipated that, with the withdrawal of the Allied Commission personnel from Italian Government territory, these petitions will be sent direct by the convicted person or by his family to this Sub-Commission - indeed, a few have already been received.

5. In future such petitions will be perused by this Sub-Commission. If no action is called for, no answer will be sent to the petitioner. If, however, in any particular case this Sub-Commission decides that some action is called for, it will be necessary for this Sub-Commission to request your Excellency to communicate the decision to the petitioner or the authority concerned through the channels of the Ministry, no other channels being available.

6. It is not thought that this will impose any substantial burden on your Excellency's Ministry as the number of cases of the latter class is very small.

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lc

W. E. BEHRENS,
Colonel,
Deputy Chief Legal Adviser.

Copy to file 4083/23/L.
4061/L.

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

IGHC /pa.
17 March 1945

AC/4002/L.

SUBJECT : Allied Military Courts : punishment of minors.

TO : Regional Commissioners (Attn: R.I.O.) Sicilia, Southern,
Sardagna, Lazio-Umbria, Abruzzi-Marche, Toscana, Emilia,
Liguria, Piemonte, Lombardia, Venezia and Venezia Giulia
Regions,
SCAOs 5th and 8th Armie

1. From cases reviewed at this HQ, it is thought that Legal Officers are uncertain as to the sentence which should be imposed on minors convicted by Allied Military Courts, having regard to the practical difficulties which now obtain.

2. In theory, every prison should have a wing for minors: and throughout the country there should be a series of "Riformatori giudiziari" each serving a district. In practice, prisons are so congested that the wing for minors does not always exist: and for a variety of reasons some reformatories are not functioning.

3. The reformatories are intended as places where minors may be sent in addition to, or in lieu of, imprisonment (see Penal Code Arts. 223, 224 and 225) to undergo discipline and instruction in some craft.

Nowadays, owing to the lack of materials, it is not possible in reformatories to give this instruction: and a term in a reformatory is in practice not very different from a term in prison.

4. Every PIO should acquaint himself with the facilities for the detention of minors that exist in his province: this can best be done by asking the "Giudice di Sorveglianza". The Courts must then take a practical and realistic view and in each case must impose a sentence which is reasonable and practicable having regard to local conditions.

5. The following principles should be borne in mind:

- a. In appropriate cases, a minor may be given a suspended sentence and put under the care of the parents.

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3. The reformatories are intended as places where minors may be sent in addition to, or in lieu of, prison (see Penal Code Arts. 223, 224 and 225) to undergo discipline and instruction in some craft.

Nowadays, owing to the lack of materials, it is not possible in reformatories to give this instruction: and a term in a reformatory is in practice not very different from a term in prison.

4. Every PLO should acquaint himself with the facilities for the detention of minors that exist in his province: this can best be done by asking the "Giudice di Sorveglianza". The Courts must then take a practical and realistic view and in each case must impose a sentence which is reasonable and practicable having regard to local conditions.

5. The following principles should be borne in mind:

a. In appropriate cases, a minor may be given a suspended sentence and put under the care of the parents.

b. In cases too serious for the above, a minor may be given a term of detention to be served in a reformatory: but in this case the term should be considered not as a period for reform and education but as a punitive term in a special place of detention for minors: it should be made corresponding brief.

c. In yet more serious cases, a term of imprisonment must be imposed: but legal officers should ask Public Safety officers to ensure that such minors are segregated from other inmates.

6. With effect from receipt hereof, the practice of ordering minors to a reformatory for an indefinite term will cease. If a Court wishes to impose a term of detention on a minor it will specify:

- whether the term is to be served in a reformatory or in a prison: and
- the length of the term.

7. This directive is issued for distribution to all legal officers in your Region.

By command of Rear Admiral STONE:

Copy to: AC/4061/L.
AC/4082/L/L.

G. A. WOOD, Brig.
VP CA Sec, HQ AG.

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4002/L.

/rlp.
11 March 1945.

SUBJECT : Allied Military Courts - Corroboration of evidence of accomplice.

TO : Regional Commissioners (Attn: Regional Legal Officers),
SICILIA, SARDEGNA, SOUTHERN, LAZIO-UMBRIA, ABRUZZI-MARCHE, TOSCANA,
EMILIA, LIGURIA, PIEMONTE, LOMBARDIA, VENEZIA, and VENEZIA GIULIA
Regions, and SCALO AMG, 5th Army, SCALO AMG, 8th Army.

1. Para. 22 (3) (c) of the Consolidated Instructions, lays down that, an accused may not be convicted on the evidence of an accomplice unless there is ample corroboration. From cases reviewed at this Hq it is clear that some officers are not clear what constitutes corroboration.

2. Corroboration consists of evidence, direct or circumstantial, which in some material respect confirms the evidence of the accomplice not only that the offence was committed but also that the accused committed it.

3. Attention is particularly drawn to the concluding words of the last paragraph. It is not sufficient that the independent evidence should go to show that the accused had the opportunity or a motive to commit the offence; it must confirm that the accused took part in the commission of the offence. The reason for this is obvious; any person wishing falsely to accuse an innocent person would naturally accuse somebody with such opportunity or motive; hence the necessity for independent evidence confirming that the accused committed the offence.

4. In connection with corroboration, attention is also drawn to the two following points:

a. The evidence of one accomplice cannot be corroborated by the evidence of another; and

b. Where two persons are being tried together, corroboration implicating one only is not corroboration as to the other.

5. Sufficient copies hereof are enclosed for distribution to all legal officers serving under you.

BY command of Rear Admiral STONE:

W. E. BEHFENS,

Colonel,
Deputy Chief Legal Advisor.

Incls.

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/rlp.
7 March 1945.

4061 file.
SUBJECT : Successive Acts of Espionage.

TO : Regional Commissioners (Attn: Regional Legal Officers),
SICILIA, SARDEGNA, SOUTHERN, LAZIO-UMBRIA, ABRUZZO-MOLISE, TOSCANA,
EMILIA, LIGURIA, PIEMONTE, LOMBARDIA and VENEZIA regions; and
SCAGS, 5th and 8th Armies.

1. There appears to be a misconception as to the effect of Article 31 of the Regulations annexed to the Hague Convention, 1907. This article reads as follows:

"A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts as a spy."

2. On the basis of this article, it appears to be accepted in AMG Courts that a spy who completes his mission and is subsequently caught cannot be put on trial in respect of the completed mission.

3. This is an erroneous assumption. The exemption from responsibility applies only to members of the Armed Forces of the enemy. It does not apply to civilians, who, if captured at any time even after completion of the mission, may be put on trial and punished. See Oppenheim, International Law, 6th Edition, Vol. 2, p. 331.

By command of Rear Admiral STONE:

W. E. Harris
W. E. HARRIS,
Colonel,
Deputy Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

IGHC/eap

AG/AC02/10/L

7 March 1945

SUBJECT : Construction of Rules of Procedure
for Allied Military Courts.

TO : Regional Commissioner (for Regional Legal Officer)
Sicilia, Southern, Lazio-Umbria, Abruzzi-Marche,
Toscana, Emilia, Piemonte, Liguria, Lombardia,
Venezia and Venezia Giulia Regions :
SOLIO (for Senior Legal Officer) 5th Army

1. The attention of this HQ has been drawn to the fact that there is a conflict between Rule of Procedure 18 (which provides that an Allied Military Court may admit such evidence, including hearsay, as in its opinion is relevant and material) and Consolidated Instructions art. 22 I (a) (which provides that an Allied Military Court shall admit such evidence).

2. The intention is accurately stated in the Rule of Procedure. The decision whether or not to admit as evidence any particular statement etc which would not be admissible under the law of Great Britain or the United States is one which must be left to the decision of the court in each particular case. Art 22 therefore will be treated as amended by substitution of the word "may" for "shall" in the passage above quoted.

3. Sufficient copies are enclosed for distribution to all Legal Officers within your Region.

By Command of Rear Admiral STONE:

for W. E. SEHRENG,
Colonel,
Deputy Chief Legal Advisor.

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HEADQUARTERS ALLIED COMMISSION

AFG 394

LEGAL SUP. COMMISSION

AS/404/L.

SUBJECT : Execution of Death Sentences.

TO : See Distribution List.

25 /pa.
Jan 45.

1. AMHQ has laid down the procedure for procuring the carrying out of death sentences imposed by Allied Military Courts.

2. The procedure as between this HQ and Regions or AMQ of Armies will be as follows :-

(a) As soon as possible after imposition of any sentence of death, RMO will inform this HQ by signal of :-

- (i) The name of person convicted
- (ii) The date of sentence
- (iii) The place of trial (where thought necessary, specifying province)
- (iv) The place where person convicted is held in custody at time of trial.

(b) On receipt of this information, this HQ will arrange for a formation to be designated to carry out the sentence if confirmed.

(c) Upon expiry of the period for due presentation of a Petition for Review or upon earlier receipt of a Petition for Review, the RMO will forward the record to this HQ for review by the Chief Commissioner.

(d) Immediately a sentence has been confirmed or commuted, this HQ will notify all concerned, including the Region in which the trial took place and the AMQ of the Army concerned.

(e) If the sentence is confirmed, this HQ will make all necessary arrangements with the formation designated (see (b) above) and, when the execution has been carried out, will forward the record to the Region concerned for safe custody.

3. It will be seen that the responsibility of Regions is virtually confined to supplying the information required under para 2 (a) : without this information this HQ cannot make the necessary arrangements and therefore RMOs will please ensure that such information is supplied accurately, fully and promptly.

By Command of Rear Admiral STONE :

1/10/45

- (ii) The date of sentence
 - (iii) The place of trial (where thought necessary, specifying province)
 - (iv) The place where person convicted is held in custody at time of trial.
- (b) On receipt of this information, this HQ will arrange for a formation to be designated to carry out the sentence if confirmed.
- (c) Upon expiry of the period for due presentation of a Petition for Review or upon earlier receipt of a Petition for Review, the RIO will forward the record to this HQ for review by the Chief Commissioner.
- (d) Immediately a sentence has been confirmed or commuted, this HQ will notify all concerned, including the Region in which the trial took place and the AMG of the Army concerned.
- (e) If the sentence is confirmed, this HQ will make all necessary arrangements with the formation designated (see (b) above) and, when the execution has been carried out, will forward the record to the Region concerned for safe custody.

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3. It will be seen that the responsibility of Regions is virtually confined to supplying the information required under para 2 (a): without this information this HQ cannot make the necessary arrangements and therefore RIOs will please ensure that such information is supplied accurately, fully and promptly.

By command of Rear Admiral STONE :

W. E. DEBURNS,
Colonel,
Deputy Chief Legal Advisor.

DISTRIBUTION :

SOAG 5th Army	(3)
SOAG 8th Army	(3)
R.C. (for R.L.O.) Sicilia Region	(4)
" " " " Southern Region	(3)
" " " " Lazio-Umbria Region	(3)
" " " " Abruzzi-Marche Region	(3)
" " " " Sardegna Region	(4)
" " " " Toscana Region	(3)
" " " " Emilia Region	(3)
" " " " Liguria Region	(3)
" " " " Piemonte Region	(3)
" " " " Lombardia Region	(3)
" " " " Venezia Region	(3)

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

12/4002/1944

SUBJECT: Wire cutting.

/rlp.
6 December 1944.

TO: HQ No. 1 District.

1. HQ AMB LARIO-UMBRIA Region have forwarded to this HQ your 716/GSI of 26 Nov 1944, with a request to reply thereto.
2. In AMB Territory any person found in possession of WD cable can be prosecuted in AMB Courts for illegal possession (under AMB Proc 1, Art IV, Sec 11 or Art V, Sec 27); or, if the evidence warrants, for theft (under same sections); or when actual cutting of the wire can be proved, for damaging telephone wire (Art. IV, Sec 12).
3. Frequent instructions have been issued by this HQ that heavy sentences are to be awarded in all cases of wire cutting and interference with communications.
4. In AG Territory and, if desired, in AMB Territory, the cases can be referred to the Italian Courts for trial under Italian law. The Italian law provides drastic remedies, whether as punishment for furto aggravato or for interference with communications, and the Minister of Justice has issued circulars to Italian Courts stressing the importance of adequate sentences. No further legislation is necessary to provide protection for the Allied Forces.
5. It is agreed that Regional and Provincial Legal Officers should approach the appropriate Procuratori Generali and Procuratori del Regno in order to ensure that the seriousness of the offences is realized. It is also agreed that publicity is evidently desirable, and the PRO is being approached to take the necessary action. All court cases should be reported to this HQ to provide material for this purpose.

For the Chief Commissioner,

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W. E. BERRANS,
Colonel,
Deputy Chief Legal Advisor.

Copy to:

AC for MLO, POCANA Region (for action to report publicity material),
" " " LAZIO-UMBRIA " " " " " "
" " " APULIA-MARCH " " " " " "
" " " EMILIA " " " " " "

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HEADQUARTERS ALLIED COMMISSION

APO 904

LEGAL SUE-COMMISSION

AC/4173/1.

/rlp.
29 November 1944.

SUBJECT : Allied Military Courts in Bari Zone.

TO : Regional Commissioner (Attn: Regional Legal Officer),
SOUTHERN Region.

1. In view of the establishment of Military Courts in Bari Zone to deal with cases of damage to, and theft from, ammunition and kindred cases, a Note on the relevant Italian law has been prepared. I forward herewith 20 copies of that Note, please ensure that each officer concerned in any respect with these courts receives a copy thereof and of this letter.

2. Particular attention is drawn to the following:

a. Under CHM, Art. 158 the minimum penalty, if the offence is committed with "dolo", is 15 years' reclusiones." This is above the jurisdiction of a Superior Court. A charge should, therefore, only be laid under this article in cases which justify the convening of a General Court.

b. In the majority of cases, it will be possible to prove theft by the accused. It is recommended that in such cases, unless falling within (a) above, the accused be charged only with theft. It is probable that the theft will be doubly aggravated which carries the penalty of up to 10 years' reclusiones with a fine. See Note, para. 14.

c. In cases not falling within (a) or (b) above, i.e., in cases not justifying a General Court and in cases in which damage to, but not theft of, ammunition can be proved, the accused, if he has acted with "dolo", should be charged under R, Art. 635, second para. (3); this carries a penalty of up to 3 years' reclusiones, liable to increase for aggravating circumstances. See Note, para. 14 (b).

d. In cases envisaged in (c) above, if the accused acted with "colpa" the charge should be laid under CHM, Art. 156, last paragraph.

By command of Commodore STONE:

W. E. Behrens

W. E. BEHRENS.
Colonel.

e. Under CMR, Art. 152 the minimum penalty, if the offense is committed with "dolo", is 15 years "reclusiones." This is above the jurisdiction of a Superior Court. A charge should, therefore, only be laid under this article in cases which justify the convening of a General Court.

b. In the majority of cases, it will be possible to prove theft by the accused. It is recommended that in such cases, unless falling within (a) above, the accused be charged only with theft. It is probable that the theft will be doubly aggravated which carries the penalty of up to 10 years "reclusiones" with a fine. See Note, para. 14.

c. In cases not falling within (a) or (b) above, i.e., in cases not justifying a General Court and in cases in which damage to, but not theft of, ammunition can be proved, the accused, if he has acted with "dolo", should be charged under CMR, Art. 635, second para. (3); this carries a penalty of up to 3 years "reclusiones", liable to increase for aggravating circumstances. See Note, para. 14 (b).

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d. In cases envisaged in (c) above, if the accused acted with "dolus" the charge should be laid under CMR, Art. 152, last paragraph.

By command of Commodore STONE:

W. S. Stephens

W. S. STEPHENS,
Colonel,
Deputy Chief Legal Adviser.

Incl: Note (20 copies).

Copy to: RC (for JLC), Sicilia, Lazio-Umbria, Abruzzi-Marche,
Sardinia, Toscana, Emilia, Piemonte, Liguria, Lombardia and Venezia Regions (with 4 copies of note).

NOTES ON ITALIAN LAW RELATING TO DAMAGE TO AND THEFT OFAMMUNITION AND OTHER MILITARY PROPERTY

INTRODUCTORY

1. The following abbreviations are used throughout:

P. C. = Penal Code

C.P.M.G. = Codice Penale Militare di Guerra

2. The word "soldiers" ("militares") when used herein includes also a member of the other Armed Forces.

3. Under C.P.M.G., Art. 50, certain penalties are established for offences against the State and by Art. 84 these penalties are also applied to offences against a State allied with the Italian State which includes a state associated with Italy in war (Art. 15). It follows that when any such offence is committed against the Allies, who are co-belligerents with Italy, it may be punished exactly as if it had been committed against the Italian State.

ACTS INTENDED TO HELP THE ENEMY

4. Sabotage or destruction of military articles or works may constitute the offence of aid to the enemy (CHS, Art. 51): in the absence of mitigating circumstances conviction carries the obligatory penalty of death; if the accused is a soldier, the death penalty is under that article; if a civilian, it is under that article read with DLL 159, 27 July 1944, which provides,

"Whoever whether a member of the Armed Forces or not, after 8th September 1943 has committed a crime against the loyalty and the military defense of the State by any kind whatsoever of action collaboration, help or assistance given to the German invader shall be punished according to the provisions of the CHS."

5. To establish an offence under CHS, Art. 51, two elements must be established:

(a) The act must be such as to aid the military operations of the enemy or harm those of the state and such aid or harm must have some direct effect on some existing operations; and

(b) The act must be committed with the intent

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ACTS INTENDED TO HELP THE ENEMY

4. Sabotage or destruction of military articles or works may constitute the offence of aid to the enemy (CHAF, Art. 51); in the absence of mitigating circumstances conviction carries the obligatory penalty of death; if the accused is a soldier, the death penalty is under that article; if a civilian, it is under that article read with DIL 159, 27 July 1944 which provides;

"Whoever whether a member of the Armed Forces or not, after 8th September 1943 has committed a crime against the loyalty and the military defense of the State by any kind whatsoever of action collaboration, help or assistance given to the German invader shall be punished according to the provisions of the CHAF."

5. To establish an offence under CHAF, Art. 51, two elements must be established;

(a) The act must be such as to aid the military operations of the enemy or harm those of the state and such aid or harm must have some direct effect on some existing operations; and

(b) The act must be committed with that end in view and the intent must be to commit treason.

ACTS CAUSING DAMAGE TO AMMUNITION AND OTHER MILITARY PROPERTY

6. Charged in respect of damage to ammunition and similar supplies may be laid under CHAF, Art. 158 which is translated as follows:

Article 158

Destruction or Sabotage of Military Works or other Articles

Any person is punished with "reclusiones" for not less than 15 years who, in a place in a state of war:

- (1) Removes, destroys or renders unserviceable, wholly or partly, even temporarily, ships, aircraft, convoys, roads, establishments, depots, machinery, or other instruments of war, telegraphic, radiotelegraphic or telephonic or similar lines or apparatus, or any works of military defense, enclosures and the like constructed or put to military use.

(2) Throws away or makes unusable, wholly or partly or causes injury to arms or munitions.

The penalty is "la pena di morte con degradazione" if the act has compromised the war preparations or war efficiency of the state or any military operations.

The penalty is "reclusioni militare" from one to ten years if the act was committed through "colpa."

7. (a) This article applies whether the offender is a soldier or civilian.

(b) It applies throughout all Italy, the whole of the country having been declared in a state of war (RDL 4 Aug 43, No. 714).

8. CPAS, Art. 158 details precisely the acts which constitute an offence thereunder and the wording of the article must be read with care to see that the act complained of does constitute an offence thereunder.

9. (a) To appreciate the effect of the last paragraph of CPAS, Art. 158, it is essential to consider briefly the degree of "mens rea" required by Italian law. PC, Art. 42, second paragraph provides:

"Nobody can be punished for an act which the law declares to be a crime if he has not committed it with 'dolo', except in the cases when the law expressly provides for preterintentional crimes or crimes committed with 'colpa'."

(b) A crime is preterintentional when the offender commits a wrongful act but consequences follow which are more damaging or dangerous than those wished.

Example: X gives Y a blow on the head. X intended only to assault and not to kill. Y dies of the blow. X has committed preterintentional homicide.

For the purpose of these notes it is not necessary further to consider preterintentional crimes, for the law does not provide that any of the crimes herein considered can be committed preterintentionally.

(c) CPAS, Art. 158, however, expressly provides that an offence thereunder can be committed either with "dolo" (roughly speaking, malice), or with "colpa" (roughly speaking, culpable negligence). It is, therefore, necessary to consider these mental elements in some detail, as the penalty for an offence committed with "dolo" is much heavier than for one committed only with "colpa."

(d) "Dolo" is defined in PC, Art. 43.

A person commits an offence "per dolo" when of his own free will he does an act which is damaging or dangerous to another and which in law amounts

crimes or crimes committed with intent.

(b) A crime is preterintentional when the offender commits a wrongful act but consequences follow which are more damaging or dangerous than those wished.

Example: X gives Y a blow on the head. X intended only to assault and not to kill. Y dies of the blow. X has committed preterintentional homicide.

For the purpose of these notes it is not necessary further to consider preterintentional crimes, for the law does not provide that any of the crimes herein considered can be committed preterintentionally.

(c) CRIM. art. 133, however, expressly provides that an offence thereunder can be committed either with "dolo" (roughly speaking, malice), or with "colpa" (roughly speaking, culpable negligence). It is, therefore, necessary to consider these mental elements in some detail, as the penalty for an offence committed with "dolo" is much heavier than for one committed only with "colpa."

(d) "Dolo" is defined in PC, art. 43.

A person commits an offence "per dolo" when of his own free will he does an act causing consequences damaging or dangerous to another and which in law amount to an offence, provided that he had foreseen and willed such consequences. So, for an offence to have been committed with "dolo" the perpetrator must have foreseen and willed the damaging or dangerous consequence of his act.

Example: X wishes to procure some explosive for use in fishing. He knows that this explosive is contained in ammunition. He therefore steals the ammunition. X acts with "dolo."

(e) "Dolo eventuale" is a form of "dolo." It exists when the perpetrator does not will the consequences of his act, but foresees them and accepts that they will follow if he commits the act, and nevertheless does the act.

Example: X requires a certain part of a bomb; he does not wish to make the bomb useless, but he realizes that if he does remove that part it will become useless. Nevertheless, he removes the part. X acts with "dolo eventuale."

An offence is equally "doloso" whether committed with simple "dolo" or with "dolo eventuale"; the type of "dolo" does not affect the penalty.

(f) "Colpa" is defined in PC art 43.

A person commits an offence "per colpa" when he does a voluntary act with such negligence, imprudence, lack of skill or failure to comply with the laws and regulations that he brings about unforeseen and unwilled consequences which in law amount to an offence.

Example: X is custodian of some boxes of ammunition. He throws them about with such carelessness that the ammunition is made unserviceable. X has acted "per colpa."

A person also commits an offence "per colpa" when he acts with such negligence, etc., that he facilitates the bringing about of the offence either by an innocent third party or by act of God.

Examples: X is custodian of some ammunition. He negligently leaves it lying outside the store. A passer-by damages the ammunition and makes it unserviceable. X is responsible for having made that ammunition unserviceable by his "colpa." It is immaterial if the passer-by acted with "dolo" or "colpa."

Again X is custodian of some ammunition. He negligently leaves it outside the store. It is made unserviceable by rain. X is responsible for having made that ammunition unserviceable by his "colpa."

(g) "Colpa con previsioni" is a refinement of simple "colpa." It exists when the doer of a voluntary act brings about certain consequences which constitute an offence and the doer of the act had foreseen the possibility of such consequences, but had not willed them.

Example: X is the custodian of a depot of explosives. It is dark in the depot. He wishes to see inside. He realizes that to go into the depot with a naked light may cause an explosion. He does not wish to cause such an explosion, nevertheless he enters with a lighted match and an explosion takes place. X acted with "colpa con previsioni." The "previsiones" in itself is an aggravating circumstance; see PC, Art. 61 (3).

(h) The line between "colpa con previsioni" and "dolo eventuale" is narrow. In both cases the doer of the act foresees the possible consequences; in the former case he says to himself "I hope they don't happen"; in the latter case ("dolo eventuale"), he says to himself "I don't mind if they do happen."

(i) For the purpose of this paragraph an act includes an omission.

10. The penalties for an offence under CFS, Art. 158 are as follows:

(a) If committed with "dolo": "reclusiones" for not less than 15 years;

(b) If committed with "dolo" and the offence has compromised (i.e., compromised to a substantial degree), either the warlike preparations or efficiency of the state or any military operations: "la pena di morte con degradazione";

(c) If committed with "colpa": "reclusiones militares" for from 1 to 10 years.

41. In cases in which the penalty under CMC Art 158 is excessive, the chamber may be and under 635 which makes punishable any person who: "perdono, disprezzo, spolia o rendono wholly or partly unserviceable the movable"

naked light may cause an explosion. He does not wish to cause such an explosion, nevertheless he enters with a lighted match and an explosion takes place. X acted with "colpa con previsione." The "previsione" in itself is an aggravating circumstance; see PC, Art. 61 (3).

(h) The line between "colpa con previsione" and "dolo eventuale" is narrow. In both cases the doer of the act foresees the possible consequences: in the former case he says to himself "I hope they don't happen"; in the latter case ("dolo eventuale"), he says to himself "I don't mind if they do happen."

(i) For the purpose of this paragraph an act includes an omission. 49

10. The penalties for an offence under CHM, Art. 158 are as follows:

(a) If committed with "dolo": "reclusioni" for not less than 15 years;

(b) If committed with "dolo" and the offence has compromised (i.e., compromised to a substantial degree), either the warlike preparations or efficiency of the state or any military operations: "la pena di morte con degradazione";

(c) If committed with "colpa": "reclusioni militari" for from 1 to 10 years.

41. In cases in which the penalty under CHM Art. 158 is excessive, the clause may be laid under 655 which makes punishable any person who:

...by means, devices, spoils or renders wholly or partly unserviceable the movable or immovable property of others. In the circumstances under consideration this would carry "reclusioni" up to 5 years. See the second part of that article.

Alternatively and in cases covered by the article, the crime may be laid under PC Art. 253 which carries a higher penalty; but this article does NOT cover offences to communication.

Note that offences under these two articles can only be committed with "dolo".

CHM Art.

12. Theft ("furto") is defined in PC, Art. 624 which is translated as follows:

Article 624 - Theft

Whoever takes possession of movable goods of another, taking them from the person in possession thereof for the purpose of making a profit for himself or others is punished with "reclusioni" up to three years and with a fine of from 300 to 5000 Lire.

"Dolo" is an essential element of theft; the law does not provide for "f. to per colpa" or "furto preterintenzionale."

13. (a) In many cases, an offence under PCMG, Art. 158/As followed by theft, e.g., damage to munitions followed by a theft of some component part. In such circumstances the accused, if convicted, may be punished for the two separate offences. Defense counsel may argue to the contrary, namely that the damage to the ammunition was properly only to be regarded as aggravation of the theft; that the accused should be found guilty of aggravated theft, ~~Art. 635~~ and should not be found guilty of an offence under PCMG Art. 158/and of simple theft. This argument is bad in law and, if put forward, should be rejected.

DETERMINATION OF SENTENCE

14. (a) The sentences properly impossible under PCMG 158/have already been stated; see paras. 19 and 41 above. and PC Art 635
- (b) The aggravating and mitigating circumstances applicable to these offences are those set out in CP, Arts. 61 and 62 respectively.
- (c) The sentence for theft is "reclusiones" up to 3 years and a fine from 300 to 5000 Lire.
- (d) The aggravating and mitigating circumstances applicable to theft are also those set out in CP, Arts 61 and 625, and Arts 62 and 626 respectively.
- (e) The sentence for aggravated theft is as follows:

One set of the aggravating cases set out in PC, Art 625 "reclusiones" for from 1 to 6 years and a fine from 1,000 to 10,000 Lire.

Two sets of those aggravating circumstances or one set of those together with one of those set out in PC, Art 61; "reclusiones" for from 3 to 10 years and a fine from 2,000 to 15,000 Lire.

(f) If an accused is found guilty of the double offence (sabotage and theft) the court, in fixing the penalty for the former offence, should take into consideration any applicable aggravating circumstances; but in fixing the penalty for theft, it should NOT take into account the aggravating circumstances set out in PC, Art. 625, first paragraph (2) and (7); these circumstances are in reality already included in the former offence.

(g) Where the code provides that the penalty for a certain offence is detentive punishment and a fine (as in theft) it is obligatory on the court to impose both parts of the sentence.

APPLICATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES

15. See generally PC, Arts. 63-69; Note particularly

2 5 3 3

Two sets of those aggravating circumstances or one set of those together with one of those set out in PC, Art 61: "reclusiones" for from 3 to 10 years and a fine from 2,000 to 15,000 Lire.

(f) If an accused is found guilty of the double offence (sabotage and theft) the court, in fixing the penalty for the former offence, should take into consideration any applicable aggravating circumstances; but in fixing the penalty for theft, it should NOT take into account the aggravating circumstances set out in PC, Art. 65, first paragraph (2) and (7): these circumstances are in reality already included in the former offence.

(g) Where the code provides that the penalty for a certain offence is detentive punishment and a fine (as in theft) it is obligatory on the court to impose both parts of the sentence.

APPLICATION OF AGGRAVATING AND MITIGATING CIRCUMSTANCES

15. See generally PC, Arts. 63-69: Note particularly

(a) That the permitted increase or decrease is not to be estimated on either the permitted maximum or minimum penalty but on the figure, within those limits, which the court considers appropriate.

(b) That where the law does not expressly otherwise provide, aggravating circumstances raise the penalty by up to one-third (PC, Art. 64).

(c) That "reclusiones" may not be given for more than 30 years (PC, Art. 66).

(d) That for mitigating circumstances "reclusiones" is normally reduced by up to one-third (PC, Art. 65).

Pronouncement of Sentences

16. (a) Sentences of detentive punishment will be awarded in Italian phraseology, e.g., "10 years 'reclusiones militare'." British or American expressions such as "penal servitude" will NOT be used.

(b) If the accused is sentenced to detentive punishment of the same kind on two separate charges, the court will impose one term covering both charges (PC, Art. 73). If, however, he is sentenced to detentive punishments of different kinds, e.g., "reclusiones militare" for an offence "per colpa" (der CPD, Art. 158 and "reclusiones" for theft, then the court will impose the different sentences separately and in full (PC, Art. 74).

1. JURISDICTION OF ALLIED MILITARY COURTS

17. RDL of 13 April 1944, No. 112 is the Italian law giving effect to the right reserved by the Allied Forces to hold Military Courts in Italian Government Territory: see also Consolidated Instructions, Article 3.

SPECIMEN CHARGES

18. Some specimen charges are attached hereto.

November 1944
AC/4173/1/L

2535

Declassified E.O. 12356 Section 3.3/NND No. 785016

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- 5 -

SPECIMEN CHARGES

2.

2. imputato di aiuto al nemico P.M.G., art. 51, in relazione all'art. 5, 2° comma, D.L. 27 luglio 1944 n. 159 e all'art. 15 c.p.m.g.) per avere, in (località) e il (giorno e epoca), distrutto (o reso inservibili) ingenti quantità di munizioni situate in (luogo di deposito), al fine di nuocere alle operazioni delle forze armate alleate contro la Germania;
3.

3. imputato di sabotaggio doloso di cose militari (c.p.m.g., art. 158, primo comma, n. 2°, in relazione all'art. 15 c.p.m.g.) per avere, in Bari, in occasione rappresentata nell'anno 1944 (o il 30 novembre 1944, o nel mese di novembre 1944), danneggiato munizioni di proprietà del comando alleato, site in (località) mediante sottrazione di cordite, sì da renderne impossibile il funzionamento;
4.

4. imputato di sabotaggio doloso continuato di cose militari (c.p.m.g., art. 158, 2° comma in relazione all'art. 15 c.p.m.g.), per avere, in (località), nel (data), distrutto (o reso inservibili) ingenti quantità di munizioni site in (luogo di deposito) e destinate a , sì da aver compromesso le operazioni militari in corso;
5.

5. imputato di sabotaggio doloso continuato di cose militari (c.p.m.g., art. 158, primo comma, n. 2°, in relazione all'art. 15 c.p.m.g. e all'art. 15 c.p.m.g.), per avere, in (località), nel (epoca), con più atti esecutivi del medesimo disegno criminoso, danneggiato (o distrutto o reso inservibili) e munizioni, di proprietà del comando alleato e site in (luogo di deposito);
6.

6. imputato di sabotaggio doloso di cose militari (c.p.m.g., art. 158, primo comma, n. 2°, e c.p., art. 41 n. 2°, in relazione all'art. 15 c.p.m.g.) e di furto in danno delle forze armate alleate (c.p., art. 62), per avere distrutto (o reso inservibili) n. (quantitative) munizioni del tipo a scopo di furore, mediante l'incendio e esportazione corale in esse contenute al

4. IV. imputato di sabotaggio doloso continuato di cose militari (c.p.m.g. art. 15 comma 1°, n. 2°, in relazione all'art. 61, 2° comma c.p. c. all'art. 15 c.p.m.g.), per avere, in (località), nel (epoca), con più atti esecutivi del medesimo disegno criminoso, danneggiato (o distrutto o reso in servibili) e munizioni, di proprietà del comando alleato V e site in (luogo di deposito).
5. IV. imputato di sabotaggio doloso continuato di cose militari (c.p.m.g. art. 15, ult. comma, in relazione all'art. 15 c.p.m.g.) per avere in (località), nel (epoca), provocato per propria azione la distruzione (o il danneggiamento) di munizioni, site in (luogo di deposito), dalle quali aveva il possesso per ragioni di lavoro (o dalle quali aveva la custodia, o che gli erano state affidate per compierla riparazioni), ecc.
6. IV. imputato di sabotaggio doloso aggravato di cose militari (c.p.m.g. art. 15, primo comma, n. 2° c.p. art. 61 n. 2°, in relazione all'art. 15 c.p.m.g.) e di furto in danno delle forze armate alleate (c.p. art. 62), per avere distrutto (o reso inseribili) e (partitativo) munizioni del tipo a scopo di furto, rendendo l'involucro e asportando la comita in esse contenute al fine di trarne profitto.
7. IV. imputato di sabotaggio doloso continuato e aggravato di cose militari (c.p.m.g. art. 158, 1° comma, n. 2°, c.p. art. 61, 2° comma, c.p. art. 61 n. 2°, in relazione all'art. 15 c.p.m.g.) e di furto continuato in danno delle forze armate alleate (art. 62, 81 2° comma c.p.), per avere, in (località), nel (epoca), con più atti esecutivi del medesimo disegno criminoso, distrutto (o reso inseribili) notevoli quantitativi di munizioni del tipo X, site in (luogo di deposito), a scopo di furto, asportando poi il contenuto delle munizioni stesse al fine di trarne profitto dalla vendita di esso.

(F.T.S.)

8. *XX*.....imputato di furto aggravato, in danno delle forze armate alleate (art. 62 e 35 n. 2 e 7 c.p.), per essersi impossessato in (luogo) nel (epoca) di parti di munizioni di proprietà delle forze armate alleate, depositate nel (magazzino, recinto), usando violenza sulle stesse e appropriandone parte del contenuto allo scopo di usare profitto.
9. *XX*.....i putato del reato di danneggiamento aggravato, a sensi dell'art. 35, comma 2°, n. 3 c.p., in relazione all'art. 61 n. 11 c.p., per avere, in data , in (loc. ita.), distrutto (oppure: disperso, deteriorato o raso, in tutto o in parte, inservibili) (indicare le cose danneggiate), trovandosi in (indicare dove le cose si trovavano), abusando, nella sua qualità di (indicare il rapporto di servizio e la posizione dell'imputato), delle relazioni d'ufficio (e di prestatore d'opera).

File 4061

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ALLIED COMMISSION

AFG 204

OFFICE OF CHIEF OF STAFF

WMA:AD
15 Nov 44

AD/AD/AD

SUBJECT : Publicity and Propaganda-Judicial Proceedings.

TO : Regional Commissioners, Sicily, Southern, Lazio-Umbria, Abruzzi-Marche, Sardegna, Toscana, Emilia, Liguria, Piemonte, Lombardia, Venezia, Norcia.
SMAE 5th and 8th Armies.

The following orders are issued by the personal direction of the Supreme Allied Commander and will come into force forthwith.

1. Allied Military Courts.

- (a) No camera or other photographic apparatus may be taken into any Court (except as an exhibit in a case) and no photograph moving or still or sound recording of any proceedings in such Court or of any service personnel engaged in any capacity in such Courts will be permitted.
- (b) The foregoing applies to Allied Military Courts in both Military and Italian Government territory.

2. Italian Courts.

- (a) No camera or other photographic apparatus may be taken into any Court (except as an exhibit in a case) in Military Government territory and no sound recording of any proceedings in such Court or of any service personnel engaged in any capacity in such Courts will be permitted.
- (b) The Minister of Justice has been requested to issue similar orders in respect of Italian Courts in Italian Government territory and copies of his orders will be circulated to Regional Commissioners when received.
3. The Supreme Allied Commander has directed the issue of similar orders to all Allied command.
4. HQs and SOIs will bring the above to the notice of

- (a) all officers serving in their respective regions and particularly of those liable to hold Summary Military Courts or to serve as Presidents of Military Courts who will be held responsible

(except as an exhibit in a case) in such courts or of any service sound recording of any proceedings in such courts will be permitted. Personnel engaged in any capacity in such courts in both military and

- (b) The foregoing applies to Allied Military Courts in both military and Italian Government territory.

Italian Courts.

- (a) No camera or other photographic equipment may be taken into any Court (except as an exhibit in a case) in Italian Government territory and copies of photographs showing or still of sound recordings of any such proceedings in such Court will be permitted.

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- (b) The Minister of Justice has been requested to issue similar orders in respect of Italian Courts in Italian Government territory and copies of his orders will be circulated to Regional Commissioners when received.

- (c) The Supreme Allied Commander has directed the issue of similar orders to all Allied commands.

- 4 ROE and SCADs will bring the above to the notice of:-

- (a) all officers serving in their respective regions and particularly of those liable to hold Summary Military Courts or to serve as Presidents or any General or Superior Military Court who will be held responsible for seeing that the above direction is complied with in their courts and territory within their respective regions.
- (b) all Procuratori Generali and Procuratori del Regno in Military Government territory within their respective regions.

- 5 Directive 20/1/41 dated 31 May 41 (not issued to Regions Liguria, Piemonte, Lombardia, Venezia) is superseded by these instructions.

BY COMMAND OF THE CHIEF COMMISSIONER

J. R. Light
G. R. LIGHT, Brigadier,
W. G. 3rd.
Det CCS

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

WEB/ap.
22 October 1944.

ACC/4002/L.

SUBJECT : Evidence in Allied Military Court Cases.

TO : Regional Commissioners (Attn: Regional Legal Officers),
SICILIA, SARDEGNA, SOUTHERN, LAZIO-UMBRIA, ABRUZZI-MARCHE,
TOSCANA, EMILIA, LIGURIA, PIEMONTE, LOMBARDIA, VENEZIA Re-
gions. SCAOs 5th and 8th Army.

Cases have come to notice in which officers prosecuting in AMG trials, and particularly in spy trials, have failed to bring before the Court all available evidence. The following instructions will therefore be brought to the notice of all officers who are called upon to prosecute in AMG Courts.

1. It is the duty of the prosecution to present to the Court all available relevant evidence whether such evidence is favourable or unfavourable to the accused.

2. On charges of espionage there are two elements to be proved :-

- (a) that the accused was engaged in the clandestine col-
lection of information; and
- (b) that he intended to communicate this information to
the enemy.

3. Both these elements are generally matters of inference. The Court cannot and should not be asked to draw such an inference without being in possession of all the available facts. It may not be sufficient to put in evidence a confession, even where that confession admits attendance at a German spy-school and acceptance of a German mission. It is still necessary to call evidence, in as much

in AMG trials, and particularly in spy trials, have failed to bring before the Court all available evidence. The following instructions will therefore be brought to the notice of all officers who are called upon to prosecute in AMG Courts.

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4. Sufficient copies hereof are forwarded to enable you to make distribution as above directed.

By Command of Commodore STONE:

for *1 Jan 44 H 57*
RICHARD H. WILMER,
Colonel, GAC,
Chief Legal Advisor.

SECRET
HEADQUARTERS
ALLIED CONTROL COMMISSION
CIVIL AFFAIRS SECTION
APO 384

ACC/4159/L.

14 October 1944.

SUBJECT : Enemy Partisans.

TO : Regional Commissioners, Liguria, Piemonte, Lombardia, Venezia and Emilia Regions (Attn: RLOs).
SCLOs 5th & 8th Armies.

1. The arrest and prosecution of members of the civil population for bearing arms against the Allied Forces raise many difficult problems of international law.

2. In some cases no official answer exists to these problems and in others the answers given are based upon the warfare of many years ago and are manifestly impractical in present day conditions.

3. The following memorandum is based upon the official text books of international law, but the actual answers suggested to the problems raised are intended as a guide in practice and are not propounded for scientific juristic analysis.

4. Civilians are entitled to bear arms against the enemy if, but only if, they comply with the following conditions:-

- A. (i) They are commanded by a person responsible for their subordinates; and
(ii) They wear a fixed distinctive emblem recognisable at a distance; and
(iii) They carry arms openly; and
(iv) They conduct their operations in accordance with the laws and usages of war; and possibly also - but as to this see para 9.
(v) They are resisting invasion by our forces, or

B. They form part of a levee en masse.

5. The following answers are suggested to some of the questions which naturally arise out of these conditions.

6. A.

- (i) Guerrilla warfare is officially recognized. It is felt therefore that it is unnecessary for the commander to be within ear-shot of his subordinate - or even in wireless communication, provided that he has in fact allotted a role to his subordinate and left him to carry it out. If in fact there exists any organization, this should be treated as an adequate compliance with this condition and a statement by the "accused" that he was acting under orders should be

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6. A.

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7. A.

- (ii) What is meant by fixed? Distinctive emblem? A distance? Fixed cannot be taken to mean irremovable since the British Home Guard wore originally only a removable arm-band. If at any material time the emblem can be shown to have been removed, obviously the accused was not "wearing" it. The word must therefore be taken to mean "established" or "recognized". In other words it is sufficient if all members of some force wear the same emblem, which by this uniformity becomes established, but it is inadequate if the "accused" can only point to some individual peculiarity of his own conception. Emblems used have been of the most casual nature. Italian partisans habitually wear red scarfs as their only emblem. The safest course is to accept any identifiable peculiarity of clothing or mark, generally worn and recognisable "at a distance", as a distinctive emblem for this purpose.

A reasonable test for the distance at which the emblem must be recognizable would seem to be that when the wearer is exposed to view the emblem must be recognizable at convenient small arms range - 150 to 200 yards - in normal light and by the naked eye.

It must be appreciated that it is a question of fact in each case whether, in the full circumstances, a particular uniform is sufficient. The standard is plainly not high for arm bands have been considered by the Allies to be sufficient both for the British Home Guard and the R.P.I.

8. A.

(iii) & (iv) It is not thought that any difficulty arises on these conditions.

9. Text book writers add that in order for members of the civil population to be protected, they must be resisting during the period of invasion, and that this right to resist ceases on occupation. In view, however, of the declaration that, in occupied France, the VFI are to be treated as part of the armed forces it is very doubtful how far this requirement can now be pressed. The other requirements in paragraph 4 A would seem to provide sufficient safeguard against the ordinary sniper, and it appears dangerous to insist upon a condition which is manifestly at variance with the declared policy of the United Nations.

10. As to a levee en masse - there are 2 kinds of levee which for convenience may be called "spontaneous" and "directed".

A "spontaneous" levee occurs when

"the inhabitants of a territory which has not been occupied... on approach of the enemy spontaneously take up arms to resist the invading troops without having had time to organize".

A "directed" levee consists of

"members of the peaceful population who under similar circumstances are called to arms by a belligerent and thus made part, if an irregular part, of the armed forces".

11. In the case of a spontaneous levee it would seem that if they do take up arms spontaneously on the approach of the enemy they are only required to carry their arms openly and observe the laws and customs of war. Their rights as a levee en masse end upon occupation but if thereafter they comply with the requirements of para 4 A (i)-(iv) the remarks in para 9 appear to apply.

12. The question that arises is what proportion of a local population is required to constitute a levee en masse. There is no definite answer to this, and perhaps theoretically there might be a one-man levee. In practice the test suggested is that there should be either (in the case of populated areas) a substantial body of men or (in other areas) a substantial portion of the population.

invading troops without having had time to organize".

A "directed" levee consists of members of the peaceful population who under similar circumstances are called to arms by a belligerent and thus made part, if an irregular part, of the armed forces".

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13. In the case of a directed levee the people are called to form part of the armed forces. Obviously there must be a call to arms; if there is, are the citizens who muster required to conform to the tests of members of the armed forces (para 4.4 (i)-(iv)) and do they remain members of the armed forces after occupation?

14. The practical answers appear to be:

(a) During the invasion stage they have the same status as a spontaneous levee, save that all citizens who answer the call and fight with the regular forces should be privileged, irrespective of their number.

(b) After occupation they have no rights unless they comply with the conditions - para 4.1 (i)-(iv) .

15. Finally it is emphasized that these instructions are intended only as a guide and that cases of difficulty will be referred to Legal Sub-Commission before prosecutions are instituted. While sniping by civilians must be of course vigorously suppressed and offenders punished in Allied Military Courts it is plain that grave harm by way of reprisals on our own POWs in German hands may result if any prosecution is undertaken against enemy partisans where any case can be made for claiming protection for them under the rules which have been discussed above.

BY COMMAND OF ACTING CHIEF COMMISSIONER:

G. R. Upjohn

G. R. UPJOHN, Brigadier
V.P. C.A. Sec.
Deputy Chief of Staff.

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

785016

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HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

24A

ACC/4042/L.

/rlp.
4 October 1944.

SUBJECT : Penalties under Italian law.

TO : Regional Legal Officer, SICILIA, SOUTHERN, LAZIO, ABRUZZI-MARCHE,
SARDEGNA, TOSCANA, EMILIA, LIGURIA, PIEMONTE, LOMBARDIA and VENEZIA.

1. Art. 14, par. 3 of Consolidated Instructions for Allied Military Courts deals with trials in Allied Military Courts in which the charge is laid under Italian law and provides that in such cases the offence is punishable only as provided by Italian law."

2. In this connection your attention is drawn to the Penal Code, Art. 71 et seq and particularly to the following points:

- a. Concurrent sentences do not exist under Italian law;
- b. Where an accused is convicted of more than one offense and each of such offences carries a detentive punishment of the same kind, the Court must impose one term covering all charges on which he has been found guilty (see Art. 73);
- c. Clearly, such term must be not less than the aggregate of the minimum penalties, and not greater than the aggregate of maximum penalties, provided for such offences; nor must it exceed the limits laid down in Art. 78;
- d. Where an accused is similarly convicted, but the offences carry detentive punishments of a different kind (e.g., reclusioni, reclusioni militari, arresto and ergastolo), the Court must impose penalties of the different kinds separately and in full (see Art. 74).

3. Sufficient copies hereof are forwarded for distribution to PLOs.

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for / *Comptroller* 1-07
RICHARD H. WILMER,
Colonel, CAC,
Chief Legal Advisor.

23A

4061 70

HEADQUARTERS
ALLIED CONTROL COMMISSION
1ST L. SUB-COMMISSION
APO 394

WEB/pa.
22 Sept 44

CC/1085/25/1.

SUBJECT : Applications for conditional liberty in AMG Court cases.

TO : Regional Legal Officers (three Regional Commissioners) Regions I, IV, V, VI, VIII, IX, XI, XII; Southern, Piemonte and Liguria Regions.

1. Cases have occurred recently in which Italian judges have granted conditional liberty to persons convicted by AMG Courts. It is pointed out that during the continuance of the Allied Control Commission the Italian authorities have no jurisdiction to take such action. The position is clearly stated in the Ministerial Circular No. 26013 dated 24 April 1944 and addressed to all Procuratori Generali which provides that for the grant of pardon and conditional liberty

" Per i reati giudicati dai Tribunali Alleati, sia in territorio occupato che non occupato, la competenza spetta al Governo Alleato " .

(Offences tried by Allied Military Courts either in occupied or unoccupied territory will fall within the jurisdiction of the Allied Government).

2. This position is also clearly defined in para 2 of the Chief Legal Officer's Directive of 28 April 1944 reference as above.

3. Persons who have been convicted by AMG Courts but are serving their sentence in territory which either was at the time of conviction or later becomes Italian Government Territory do in fact submit petitions to the Minister of Grace and Justice. These cases are and, during the continuance of the Allied Control Commission, will continue to be referred by the Minister to the Legal Sub-Commission.

4. Executive Memorandum No. 72 para 2 (c) (i) and Consolidated Instructions Art. 26 (i) (c) provide that in the case of long sentences the Italian practice may operate and conditional liberty may be granted after a portion of the sentence has been served.

5. This is no departure from the principles expressed above and simply refers to the fact that after the Peace Treaty and/or the cessation of ACC the Minister of Justice will, in the absence of stipulation to the contrary, have full authority to deal with any application for pardon and conditional liberty in accordance with the normal Italian usage provided of course that he respects the integrity of the original sentence as if it had been imposed by an Italian Court.

Richard E. Wilmer
RICHARD E. WILMER,
Colonel, CAC,
Chief Legal Officer.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

WEB/pa.
8 Sept 44.

ACC/4067/L.

SUBJECT : Requisitioning of Italian Government Vehicles assigned to Court Officials and Courts.

TO : RLOs (Regional Commissioners) Regions I, IV, V, VI, VIII, IX, XI and XII.
Southern, Piemonte and Liguria Regions.

1. Under HQ, ACC Establishment Memorandum 21, Para 12, it is provided that civilian vehicles belonging to the Italian Government will not be requisitioned.
2. For the purpose of this Memo the term " the Italian Government " includes all Court Officials while acting in the course of their duty.
3. Please take steps therefore to ensure that no car is requisitioned which is being used by any court officials or other officers of the Ministry of Justice in your Region. If there is any doubt whether a particular vehicle is being so used a certificate should be obtained from the Ministry .

RICHARD H. WILMER,
Colonel, CAC,
Chief Legal Officer.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

AGC/4002/L.

/rlp.
28 August 1944.

SUBJECT : AMG Courts - long term sentences.

TO : Regional Legal Officers (THRU Regional Commissioners),
Regions I, Southern, IV, V, VI, VIII, IX and "2".

1. a. In all General Military Court cases and in all Superior Court cases in which a total sentence in excess of 5 years is imposed, the Court will include as part of the record a statement of its findings on any material question of fact particularly as to one which may be in dispute. It is not necessary that this statement be made to the public.

b. The object of this statement is to supply information to the reviewing authority. Frequently there is a serious conflict of evidence on some vital element in the case; e.g., in a case in which an Allied soldier is killed in a fight, the conduct of the soldier prior to the fight is most material, had he been behaving quietly or in a noisy or drunken way? had his manner been hostile or offensive? or had he actually threatened or used force against the accused or members of the accused's family? It is the duty of the Court, having heard the evidence and seen the witnesses, to decide such questions of fact. The statement is required to inform the reviewing authority of such decisions, it should be as short as possible provided that it fulfils the above requirements.

2. In any case in which a Court, for some special reason or on account of some special circumstances in that case, imposes a sentence either heavier or lighter than it would normally do in such a case, the Court will make a note on the record to that effect and will state the nature of such reason or circumstances.

3. The above instructions will be brought to the attention of all legal officers and copies for distribution are enclosed herewith.

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Richard H. Wilmer
RICHARD H. WILMER,
Colonel, CAC,
Acting Chief Legal Officer.

Copy to: SCAOs, 5 & 8 Armies.
RC & MG Sec (8).

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HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
28 July 1944.

ACC/4011/12/L.

SUBJECT : Conditional suspension of penalty in cases of offences against Allied personnel and property.

TO : See Distribution List.

1. The enclosed circular addressed to all Procuratori Generali, Avvocati Generali and Procuratori del Re has been forwarded by the Minister of Justice at the request of this Hq. Sufficient copies are provided for distribution to RLOs, PLOs and LOs.

2. Its main object is to restrict as much as is permitted under Italian law, the granting of conditional suspension of sentence in cases affecting Allied interests.

3. If followed closely, the terms of this document should meet the requirements of the Allied authorities in this connection and it will be the duty of LOs to see that all Italian officials concerned follow the spirit as well as the letter of the ministerial directive.

Richard H. Wilmer

RICHARD H. WILMER,
Colonel, CAC,
Acting Chief Legal Officer.

DISTRIBUTION:

Region 1	- 17 copies	} To RLOs (THRU: RCOs) for distribution to PLOs and LOs.
" 2	- 12 "	
" 3	- 15 "	
" 4	- 25 "	
" 5	- 15 "	
" 6	- 10 "	
" 7	- 10 "	
" 8	- 15 "	
" 9	- 15 "	
ROME Region	- 20 "	} To SLOs (THRU: SCACs).
5th Army	- 8 "	
8th Army	- 13 "	

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ACC/4011/12/L.

MINISTRY OF PARDON AND JUSTICE
OFFICE OF THE DIRECTOR GENERAL
FOR PENAL MATTERS

Prot. No.

OFFICE 1

ROME

July 1944.

SUBJECT : Offences to the prejudice of the Allies and conditional suspension of the penalty.

TO : E. Procuratori Generali
Avvocati Generali at Court of Appeal Sections
Sig. Procuratori del Re,

and for information,

TO : E. First Presidents of the Courts of Appeal
Ministry of War
Ministry of Navy
Ministry of Air.

In my circular of 8 March 1944, No. 250022 I had already an opportunity to advise the competent offices of the Pubblico Ministero of the necessity to ensure a speedy and most rigorous repression of offences which are committed to the prejudice of the Allied Military Government, their Armed Forces or persons belonging to them and which in the light of the present war emergency must be considered as hampering the war effort directed against the common German enemy.

I have now received information from authoritative sources that some judicial authorities are granting the benefit of conditional suspension of penalty also in respect to the aforesaid offences with an excessive breadth and frequency.

For this reason I deem it necessary to direct your attention to the principle underlying the combined provisions of Art. 133 and 164 of the Penal Code according to which the power to grant conditional suspension of penalty, although within the broad discretion of the judge, must in the practical application be guided by the criterion of the seriousness of the type of the offence; the latter in turn must be carefully appraised case by case with due consideration being given among others to the nature of the offence and general circumstance of the time and place at which the criminal act took place; it is obvious that the same illegal act may assume a different degree of seriousness according to the varying general social and political situation prevailing at the time of its perpetration and also according to the different type of the offence and according to the collective interests connected at a certain moment with such type of offence.

Thus there does not seem to be any doubt that in the exceptional circumstances existing at present in our country any offence committed to the prejudice of the interests of the United Nations assumes a particularly serious character in that it reveals a conspicuous criminal tendency which can only seldom be reconciled with the assumption that the guilty person will be deterred from committing further crimes and thus the fundamental juridical supposition that is the basis for applying conditional suspension of penalty is lacking.

I, therefore, ask Your Excellencies, kindly, to provide along the general lines of the above considerations, that the aforesaid restrictive rule shall be applied as strongly as possible by all the organs of the Pubblico Ministero before the competent judicial authorities, also where suitable by contesting decisions.

THE MINISTER.

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4160/L.

/rlp.
27 July 1944.

SUBJECT : Instructions to P.G. and Adv. Gen. and Proc. del Regno in connection with offences under the Ministerial Decree of 2 May 44 (Ammassi).

TO : See Distribution List.

1. A copy of a circular from the Minister of Justice to all Pubblici Ministeri is enclosed. Sufficient copies are provided for distribution to legal officers.
2. It stresses the necessity of speeding proceedings and urges the officials concerned to keep a strict control on all proceedings initiated in connection with the above type of offence.
3. It is hoped that this document will serve a useful purpose, and it will be the duty of legal officers to see that all Pubblici Ministeri keep to the letter and the spirit of the directives therein contained.

RICHARD H. WILMER,
Colonel, MAC,
Acting Chief Legal Officer.

DISTRIBUTION:

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" 7	- 10 "
" 8	- 15 "
" 9	- 15 "
RCIE Region	- 20 "
5th Army	- 8 "
8th Army	- 13 "

) To SLOs (CHRU: SCAOs).

RLOs (CHRU: RCs) for distribution to legal officers.

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3. It is hoped that this document will serve a useful purpose, and it will be the duty of legal officers to see that all Publici Ministeri keep to the letter and the spirit of the directives therein contained.

Richard H. Wilmer
 RICHARD H. WILMER,
 Colonel, GAO,
 Acting Chief Legal Officer.

DISTRIBUTION:

Region 1	- 17 copies
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" 3	- 15
" 4	- 25
" 5	- 15
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" 7	- 10
" 8	- 15
" 9	- 15
RCIE Region	- 20
5th Army	- 8
8th Army	- 13

RLOs (THRU: RCOs) for distribution to legal officers.

To SLOs (THRU: SCAOs).

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X

MINISTRY OF PARDON AND JUSTICE

DIRECTOR GENERAL FOR PENAL MATTERS

OFFICE NO. 1

ACC/4160/L.

ROME, July 1944.

SUBJECT : Penal Proceedings regarding violations of the regulations governing the consigning of wheat and barley.

To the Procuratori Generali
To the Avvocati Generali at the
Courts of Appeal Sections
To the Procuratori del Re

And for information

To the First Presidents of the Courts of Appeal and
To the Ministry for Agriculture and Forestry.

The complete and absolute necessity, in the present state of affairs, to secure the supply of foodstuffs indispensable to the Armed Forces and to the Italian civilian population, renders it urgent that the most rapid and exemplary lawful punishment should be meted out by the judicial authorities in penal proceedings for rationing offences which involve violations of the recent Ministerial Decree of 2 May 1944 published in the Official Gazette No. 24 - Special Series concerning the control of consigning wheat and barley of the harvest now in progress.

It is absolutely indispensable, above all, for the purpose of example for preventative effect, that every evasion of this control should be dealt with immediately with the most effective repressive measures and thus avoid fresh and still graver damage to our martyred and suffering country.

In full agreement with the competent Allied authority, I, therefore, recommend Your Excellencies' most strongly, to dispose, and to watch scrupulously, the proceedings for violations of the duty to consign wheat and barley shall, if at all possible, be dealt with by the "direttissima" process (speedy trial) or if that is absolutely impossible, by a summary investigation to be conducted with the greatest speed and that such proceedings shall be brought to trial by the immediate dispatch of the "richiesta" (Trans. Note:- i.e., the request for trial from the Public Ministero to the giudice) in summary investigation proceedings and of the "decreto di citazione" (T. N.:- i.e., the summons for trial issue by the giudice), and to ensure that they are set down for trial and tried in precedence to all other penal proceedings with the sole exception of the absolute precedence that must be accorded, as set out in the instructions given by circular No. 25022 of 8 March 1944, to all proceedings concerning offences committed to the

concerning the control of consigning wheat to
gress.

It is absolutely indispensable, above all, for the purpose of example for preventative effect, that every evasion of this control should be dealt with immediately with the most effective repressive measures and thus avoid fresh and still graver damage to our martyred and suffering country.

In full agreement with the competent Allied authority, I, therefore, recommend Your Excellencies' most strongly, to dispose, and to watch scrupulously, the proceedings for violations of the duty to consign wheat and barley shall, if at all possible, be dealt with by the "direttissima" process (speedy trial) or if that is absolutely impossible, by a summary investigation to be conducted with the greatest speed and that such proceedings shall be brought to trial by the immediate dispatch of the "richiesta" (Trans. Note:- i.e., the request for trial from the Pubblico Ministero to the giudice) in summary investigation proceedings trial from the "decreto di citazione" (T. N.:- i.e., the summons for trial issued in's and of the "decreto di citazione" (T. N.:- i.e., the summons for trial and tried in by the giudice), and to ensure that they are set down for trial and tried in precedence to all other penal proceedings with the sole exceptions given by circular precedence that must be accorded, as set out in the instructions committed to the precedence of 8 March 1944, to all proceedings concerning offences committed to the No. 25022 of 8 March 1944, to all proceedings concerning offences committed to the prejudice of the Allies. You should also supervise closely that in addition to the exact, exhausting and rapid collection of evidence by the judicial police authorities, notifications of the investigation proceedings preliminary to the trial are executed with the greatest diligence and care, thereby excluding as far as possible any grounds for adjournment of the hearings and you should require every judge to endeavor in regard to sentences, even where the grant of some benefit of law is involved, to be inspired by those standards of severity which the character of the infringement makes fully legitimate in this present most exceptional state of affairs.

I expect an immediate confirmation and intend to provide for a direct snap control of procedural records on the spot through officials of the Ministry sent out on special missions for this purpose.

In the meantime the Procuratori Generali and Avvocati Generali shall forward to me a summary report on the course, outcome and duration of every proceeding of this type indicating any irregularity which may have occurred.

THE MINISTER

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

ACC/4002/L

26 July 44

Subject: Judgment of Court in Cases under Italian Law.

To : RLO's (thru R C's) Regions 1,2,3,4,5,6,7,8, & Rome Region.
SLO's AMG, 5th and 8th Army
PLO (thru PC) Foggia Province.

1. When any person is convicted by an Allied Military Court of an offence under Italian Law, it is imperative that the Court should annex as part of the Record a short judgment setting out briefly

- (a) the findings of the Court on questions of fact which may amount to mitigating or aggravating circumstances
- (b) the provision of law under which the accused was convicted including any aggravating or mitigating circumstances which have been taken into consideration in deciding the sentence of the Court.

2. Unless the above is complied with it is impossible to carry out a proper review: e.g. a case recently came up for Review, accompanied by a petition alleging that the sentence was above the permitted maximum in view of the existence of certain mitigating circumstances. The existence (or otherwise) of these mitigating circumstances was a pure question of fact: but the record on its face did not show that the Court had addressed its mind to, or decided on, this question of fact.

3. Please ensure that this is communicated to all officers concerned. It applies equally to trials in Military Government Territory and to any trials which may be ordered by this H. A. in Italian Government Territory. 36

Richard H. Wilmer

RICHARD H. WILMER
Colonel, G.C.
Acting Chief Legal Officer

X

17
HEADQUARTERS

ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION

NO 594

25 July 1944.

ACC/4010/2/L.

SUBJECT : Directive on Implementation of Italian legislation in
Military Government Territory.

TO : See Distribution List.

1. Italian legislation in Italian Government territory is promulgated by publication of Decrees in the Gazzetta Ufficiale of the Kingdom. In order to ensure the continuity of the Italian legal system over as much of Italian territory as is compatible with Allied Military interests and for the purpose of extending appropriate Italian legislation to Military Government Territory the procedure of implementation which has been applied in the past will now be followed in the newly liberated provinces of Military Government Territory administered under Regional Commissioners.

2. The legislation enacted by the Italian Government in Brindisi and Salerno and published in the Gazzetta Ufficiale - Special Series No. 1/3 to 6/B and 1 to 39 in force in Italian Government Territory has been collected and reprinted in book form. In accordance with the principle set out above it is now proposed to render the bulk of this legislation operative in the provinces of Military Government Territory by an endorsement of the Executive Commissioner, ACC. Such endorsement, reproduced on each copy of the reprinted collection, provides that all laws contained in the reprint shall become operative in Military Government Territory with the exception of certain enumerated decrees which have been reproduced for information only.

3. A packet containing sufficient quantities of the reprint (each copy addressed to the regular Italian official recipients of the Gazzetta Ufficiale) will be forwarded to each Provincial Commissioner (for attention of the PIO) for delivery to the Prefect. Each packet will be accompanied by a form of receipt in triplicate (A sample copy enclosed herewith) which will be signed by the Prefect personally and on which each Prefect concerned will record at the request of the Provincial Commissioner the date of receipt of the reprint together with his confirmation that each copy of the reprint will be stamped or otherwise marked with the said date which will be the effective date of the reprinted legislation in the respective province. The Prefect having marked each copy of reprint with the aforesaid date will effect the distribution to Italian officials. One copy of the receipt, signed and dated by the Prefect, will be forwarded by the PIO at once to the Legal Sub-Commission, ACC, the second will be left with the Prefect and the third

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and Salerno and published in the Gazzetta Ufficiale - Special Series No. 1/3 to 6/B and 1 to 39 in force in Italian Government Territory has been collected and reprinted in book form. In accordance with the principle set out above it is now proposed to render the bulk of this legislation operative in the provinces of Military Government Territory by an endorsement of the Executive Commissioner, AGC. Such endorsement, reproduced on each copy of the reprinted collection, provides that all laws contained in the reprint shall become operative in Military Government Territory with the exception of certain enumerated decrees which have been reproduced for information only.

3. A packet containing sufficient quantities of the reprint (255 copy addressed to the regular Italian official recipients of the Gazzetta Ufficiale) will be forwarded to each Provincial Commissioner (for attention of the PLO) for delivery to the Prefect. Each packet will be accompanied by a form of receipt in triplicate (a sample copy enclosed herewith) which will be signed by the Prefect personally and on which each Prefect concerned will record at the request of the Provincial Commissioner the date of receipt of the reprint together with his confirmation that each copy of the reprint will be stamped or otherwise marked with the said date which will be the effective date of the reprinted legislation in the respective province. The Prefect having marked each copy of reprint with the aforesaid date will effect the distribution to Italian officials. One copy of the receipt, signed and dated by the Prefect, will be forwarded by the PLO at once to the Legal Sub-Commission, AGC, the second will be left with the Prefect and the third copy kept in the files of the Provincial Commissioner.

4. In the future all ordinary issues of the Gazzetta Ufficiale will bear an endorsement by the Executive Commissioner ordering that all decrees printed therein or in previous issues, with possible exception of certain enumerated decrees, shall become operative in each province within Military Government Territory as of the date when the Prefect thereof shall first receive from the Allied Control Commission the copies of the issue containing said endorsement. In order to establish as a matter of record the effective date of certain decrees in a particular province, the obtaining of the fully completed receipts mentioned above is required.

5. The procedure designed for the delivery of the reprinted collection and set out in para. 3 above will be followed also in respect to each future issue of the Gazzetta containing the endorsement of the Executive Commissioner referred to above in para. 4.

6. The Gazzetta containing such endorsements will be sent out to each Provincial Commissioner (Attention PLO), in packets containing sufficient quantities and with the necessary indications to enable the Prefect to effect distribution to Italian officials. Accompanying the overall packet will be a triplicate form of receipt in Italian and English on which each Prefect concerned will record at the request of the Provincial Commissioner the date of receipt of the relevant issue of the Gazzetta, together with his confirmation that each copy, before it is distributed, will be stamped, or otherwise marked with the said date.

The three copies of the receipt bearing the Prefect's personal signature will be disposed of as follows: the first copy will be returned by the Provincial Commissioner to this sub-commission at soonest. The second copy of the receipt will be left with the Prefect and the third filed in the files of the Provincial Commissioner.

7. It must be clearly understood that whenever any issue of the Gazzetta contains decrees which have been excepted from implementation in Military Government Territory, that part of such issue is circulated in Military Government Territory, for information of the Italian officials only, and does not become effective therein.

8. It is not proposed to circulate the endorsed Gazette in Army areas.

9. The Regional Legal Officers will see that all Provincial Commissioners and Provincial Legal Officers become thoroughly familiar with this directive and exercise all possible care in putting it into effect.

Richard H. Willmer

RICHARD H. WILLMER,
Colonel, C.I.C.,
Acting Chief Legal Officer.

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RLO (THRU: RC)	RC	Reg 6 - 6	- for info
RLO (THRU: RC)	RC	Reg 7 - 6	- for info
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 Displaced Persons S/C

R E C E I P T R I C E V U T A

To The Provincial Commissioner, ACC.
Al Commissario Provinciale, ACC.

Province of

I hereby acknowledge the receipt on1944 of 2
Con la presente dichiaro di aver ricevuto in data1944

Consignment of copies of the "Gazzetta Ufficiale", year 85
un quantitativo di esemplari della Gazzetta Ufficiale, anno 85

No. for distribution within this Province.
n. per la distribuzione in questa Provincia.

I confirm that before distribution each copy of the Gazette will
Assicuro che prima della distribuzione ogni esemplare della Gaz-
be stamped or otherwise officially marked with the above date
zetta porterà timbrata, od in altro modo ufficialmente annotata,
which shall be the effective date of publication in this
la data di cui sopra, che ha valore di data effettiva di pubblica-
Province on the decrees listed in the special endorsement
zione nell'ambito di questa Provincia dei decreti elencati nella
on the last page thereof.
speciale disposizione di cui all'ultima pagina della Gazzetta
medesima.

THE PREFECT OF THE PROVINCE OF
IL PREFETTO DELLA PROVINCIA DI.....

(Signature - F/to)

ACC/4021/3/1

12 June 1944

Analogy of offences set out in the Proclamations of the Allied Military Government with offences set out in the Italian law.

PROCLAMATION NO. 2

ARTICLE I

No. 1. Classifications of this type of offence fall under:

- a. Aiding the enemy as a spy. This corresponds to the offence of espionage, provided for by Art. 257 of the Penal Code if committed by a civilian and by Art. 59 of the Military Penal Code of War if committed by a soldier. That these articles may be applied to espionage to the prejudice of the Allied forces after the grant of the status of co-belligerency is shown by the rules set out in Article 268 P.C. and Art. 15, H.P.C.V.

Jurisdiction in every case lies with the Military Tribunal.

- b. Harbours or aids an enemy spy. This corresponds to Art. 62 H.P.C.V. Jurisdiction lies in every case with the Military Tribunal.

No. 2. Classification of this type of offence will be according to the different facts of individual cases. If, in fact it is a matter of giving intelligence or of correspondence with the intention of helping the enemy, Art. 54 of the H.P.C.V. applies as regards military personnel and Art. 247 P.C. as regards civilians; both come within the jurisdiction of the Military Tribunal. If there is no intention of assisting the enemy, the following articles apply according to the facts of individual cases and to the status, whether military or civilian of the accused: Art. 56 H.P.C.V. (unlawful communication with the enemy by a soldier), Art. 78 H.P.C.V. (communicating information by means of correspondence by any person) and Art. 93 H.P.C.V. (Violation of orders and other provisions made by the military authorities by any person); all these cases are within the jurisdiction of the Military Tribunal.

No. 3. The first part of this paragraph is as for number 2. But the second part is akin to omitting to denounce crimes, provided for by Arts. 361 to 363 P.C. as regards public officials or persons employed in the public service, and by Art. 364 P.C. as regards citizens; all cases being within the jurisdiction of the Pretor or the Tribunale, with penalties established by law by Art. 30 et seq. of the Code of Penal Procedure. Furthermore, Arts. 85, 88 and 90 of H.P.C.V. may be applied where appropriate; such cases being within the jurisdiction of the Military Tribunal.

No. 4. If committed by a civilian, Art. 242, P.C.
If committed by military personnel, Art. 77 H.P.C.V. together with

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- No. 3. The first part of this paragraph is as for number 2. But the second part is akin to omitting to denounce crimes, provided for by Arts. 561 to 563 P.C. as regards public officials or persons employed in the public service, and by Art. 564 P.C. as regards citizens; all cases being within the jurisdiction of the Pretor or the Tribunale, with penalties established by law by Art. 50 et seq; of the Code of Penal Procedure. Furthermore, Arts. 85, 88 and 90 of M.P.C.V. may be applied where appropriate; such cases being within the jurisdiction of the Military Tribunal.
- No. 4. If committed by a civilian, Art. 242, P.C. If committed by military personnel, Art. 77 M.P.C.P., together with Art. 47 M.P.C.V. Where these do not meet the case, Art. 50 M.P.C.V. Jurisdiction in every case lies with the Military Tribunal.
- No. 5. Art. 698 P.C. within the jurisdiction of the Pretor. When with the failure to surrender arms there is in addition the act of carrying arms outside one's own home, Arts. 17 and 42 of the Consolidated Text of the Law of Public Security 18 June 1931 or Art. 699 P.C. will also apply; all cases are within the jurisdiction of the Pretor. Moreover, if the case so warrants, Art. 93 M.P.C.V. may be applied.
- No. 6. Art. 93 M.P.C.V. as it concerns provisions regarding military defense. Jurisdiction lies with the Military Tribunal.
- No. 7. Art. 247 P.C., if the deceit has been effected with the intention of aiding the enemy. Jurisdiction lies with the Military Tribunal.
- No. 8. Art. 127 M.P.C.V. for cases provided for therein, within the jurisdiction of the Military Tribunale; other cases may be dealt with under Art. 236 and 387 of P.C. normally within the jurisdiction of the Tribunale.
- No. 9.

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- No. 10. As regards civilians and according to the reason for the entrance being made, Art. 260 P.C. within the jurisdiction of the Military Tribunale, or Art. 682 P.C. within the jurisdiction of the Pretor. In extreme cases Art. 63 M.P.C.V. may also be applied, lies within the jurisdiction of the Military Tribunale. As regards military personnel, Art. 90 M.P.C.V. together with Art. 47 M.P.C.V. or Art. 63 M.P.C.V. will apply.
- No. 11. Art. 624 P.C. (theft(furto semplice)) within the jurisdiction of the Pretor or when accompanied by aggravating circumstances (furto a rav-eto) (as set out in Arts. 61 or 625 of P.C.) within the jurisdiction of the Tribunale as regards military personnel Art. 230 et seq. M.P.C.V. may also be applied; within the jurisdiction of the Military Tribunale.
- No. 12. Art. 158 M.P.C.V.: within the jurisdiction of the Military Tribunale (sabotage) or Art. 15 D. No. 1915 of 8-7-1958 within the jurisdiction of the Tribunale.
- No. 13. As preceding paragraph.
- No. 14. As No. 12.
- No. 15. As No. 12.
- No. 16. Art. 575 et seq; within the jurisdiction of the Court of Assize. The Italian law, in fact, does not consider it an especially aggravating circumstance or as a different category of the main offence when the victim of the homicide is of military status except when the soldier is on duty (Art. 140 M.P.C.V. applying to other persons not of the armed forces by Art. 14 M.P.C.V.), or except when the facts of the case amount to insubordination in accordance with Art. 186 et seq. M.P.C.V. or to abuse of authority (abuso di autorita') in accordance with the rules in Art. 195 M.P.C.V. Such cases are within the jurisdiction of the Military Tribunale.
- No. 17. Attempted homicide (Arts. 575 et seq; and 56 of P.C.) or attempted injury (Art. 582 et seq P.C.) being within the jurisdiction respectively of the Court of Assizes or of the Pretor, except where the rules set out in the preceding article may be applied for offences against military personnel, insubordination or abuse of authority.
- No. 18. In appropriate cases Art. 193 or 197 of M.P.C.V.; within the jurisdiction of the Military Tribunale, otherwise the law of theft (Arts 624 and 625 P.C.) within the jurisdiction of the Pretor or of the Tribunale with penalties fixed by law (Art. 50 et seq. C.P.P.).
- No. 19. Art. 519 P.C.; jurisdiction of Tribunale. In cases of attempting to commit the offence, Art. 56 PC together with Art. 519 will apply. If

Art. 93 P.M.C.W. Jurisdiction lies with Military Tribunal.

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ARTICLE II

- No. 24. As 23 above.
- No. 25. As No. 23.
- No. 26. As for cases of false evidence (Art. 372 P.C.) Jurisdiction lies with Pretor except in cases of aggravating circumstances as set out in Art. 375 P.C.
- No. 27. Art. 624 P.C. Jurisdiction lies with Pretor. In cases of aggravating circumstances as set out in Art. 61 P.C. or 625 P.C. Jurisdiction lies with Tribunale. For military personnel in extreme cases Art. 250 et seq R.P.C. also will apply.
- No. 28. Art. 640 P.C. applies. Jurisdiction lies with Tribunale if act to prejudice of the State; with Pretor if to the prejudice of a private interest.
- No. 29. May be variously dealt with. Such a case may indeed, sometimes come within the scope of Art. 67 R.P.C., sometimes may be classified as political dissatisfaction according to Art. 265 P.C., sometimes it may be an offence against the honor of the heads of the Allied States or of their respective representatives or against their flags or other emblems (Art. 297 et seq P.C.). Jurisdiction for all the above offences lies with the Military Tribunale.
- No. 30. As for No. 29.
- No. 31. See No. 17.
- No. 32. Generally Art. 93 R.P.C. will apply, but if the meeting or demonstration is seditious Art. 655, P.C. applies.
- No. 33. For general cases: Art. 347 P.C. Jurisdiction lies with Pretor. But there may be circumstances for applying Art. 346 P.C. and also if necessary Art. 345 P.C. Jurisdiction lies with Tribunale.
- No. 34. Offences of this nature may be classified under
a. corruption (Art. 319 P.C.) General jurisdiction of the Tribunale.
b. intimidation (Art. 336 P.C.) Jurisdiction of the Tribunale.
- No. 35. Art. 376 P.C. Jurisdiction lies with the Tribunale or the Pretor according to the nature of the case as laid down in the aforesaid article.
- No. 36. Art. 648 P.C. (receiving) if the accused is aware of the illegal origin of the article. Jurisdiction lies with the Tribunale. If the accused is not aware that the origin was illegal Art. 712 P.C. Jurisdiction lies with the Pretor.

- No. 30. As for No. 29.
- No. 31. See No. 17.
- No. 32. Generally Art. 93 M.P.C.V. will apply, but if the meeting or demonstration is additional Art. 655, P.C. applies.
- No. 33. For general cases: Art. 347 P.C. Jurisdiction lies with Pretor. But there may be circumstances for applying Art. 346 P.C. and also if necessary Art. 348 P.C. Jurisdiction lies with Tribunal.
- No. 34. Offenses of this nature may be classified under
a. corruption (Art. 319 P.C.) General jurisdiction of the Tribunal.
b. intimidation (Art 336 P.C.) Jurisdiction of the Tribunal.
- No. 35. Art. 378 P.C. Jurisdiction lies with the Tribunal or the Pretor according to the nature of the case as laid down in the aforesaid article.
- No. 36. Art. 648 P.C. (receiving) if the accused is aware of the illegal origin of the article. Jurisdiction lies with the Tribunal. If the accused is not aware that the origin was illegal Art. 712 P.C. Jurisdiction lies with the Pretor.
- No. 37. Art. 265 P.C. Jurisdiction lies with the Military Tribunal; if military personnel Art. 77 M.P.C.V.
- No. 38. According to each particular case Art. 483 P.C. or Arts. 495 or 496 P.C. all within the jurisdiction of the Pretor. Also in the case so warrants, Art. 373 P.C.
- No. 39. Art. 664 P.C. Jurisdiction lies with the Pretor.
- No. 40. As No. 36.
- No. 41. Art. 93 M.P.C.V. Jurisdiction lies with Military Tribunal.
- No. 42. Classes of cases here considered are as in No. 20.
- No. 43. Art. 650 P.C. within jurisdiction of Pretor. If case so warrants Art. 93 M.P.C.V.
- No. 44. As preceding No. 43.
- No. 45. Art. 93 M.P.C.V., Jurisdiction lies with Military Tribunal.

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PROCLAMATION NO. 3

Any person contravening the provisions of this proclamation can be punished only in accordance with Art. 650 P.C. as this proclamation is not concerned with military defense. Jurisdiction lies with the Pretor. Except where the case is such as is provided for by Art. 556 PD No. 1415 8-7-58 (unlawfully introducing or dispatching notes, etc.).

PROCLAMATION NO. 5

As for Proclamation No. 3

PROCLAMATION NO. 6

In appropriate cases Art. 547 et seq PD No. 1415 8-7-58 within jurisdiction of Pretor. Otherwise Art. 650 P.C. again within jurisdiction of Pretor.

PROCLAMATION NO. 7

Examination must be made case by case, whether those individual cases provided for by Art. IV of the Proclamation lay, from the particular way in which they were carried out be included in the judicial conception of anti-national associations (the fascist party has become such a one today as a consequence of its abolition) within the scope of Art. 271 P.C., or whether in that of anti-national propaganda and its defense within the scope of Art. 272 P.C., both offences coming within the jurisdiction of the Military Tribunal. Also it may be the case of a person not being a member of the fascist party or of one of its affiliated associations attending a meeting of that party, a meeting without doubt seditious, thereby contravening the provisions of Art. 655 P.C.; jurisdiction lies with Pretor.

PROCLAMATION NO. 8

The regulations set out in the law of 22 April 1943 concerning the control of consumable goods must be applied, in the various cases therein set out (crimes or contraventions), coming within the jurisdiction of the judicial authority as prescribed by Arts. 30 et seq of GPF.

PROCLAMATION NO. 10

As for Proclamation No. 3

PROCLAMATION NO. 11

1st Classification (Regulations concerning private means of communication) Infringement may be punished under Art. 93 above; Jurisdiction with Military Tribunal.

national associations (the fascist party) within the scope of Art. 271 P.C., or whether consequence of its abolition) within the scope of Art. 271 P.C., or whether in that of anti-national propaganda and its defense within the scope of Art. 272 P.C., both offences coming within the jurisdiction of the Military Tribunal. Also it may be the case of a person not being a member of the fascist party or of one of its affiliated associations attending a meeting of that party, a meeting without doubt seditious, thereby contravening the provisions of Art. 695 P.C.; jurisdiction lies with Pretor.

PROCLAMATION NO. 8

The regulations set out in the law of 22 April 1943 concerning the control of consumable goods must be applied, in the various cases therein set out (crimes or contraventions), coming within the jurisdiction of the judicial authority as prescribed by Arts. 30 et seq of C.P.

PROCLAMATION NO. 10

As for Proclamation No. 3

PROCLAMATION NO. 11

1st Classification (Regulations concerning private means of communication) Infringement may be punished under Art. 93 IPC; Jurisdiction with Military Tribunal.

2nd Classification - (Forfeiting photography and the declaration of photographic material) - Art. 69 IPC. In extreme cases of this offence also Art. 93 IPC; Jurisdiction lies with Military Tribunal.

3rd Classification (Identity cards); Art. 690 PC. Jurisdiction of Pretor.

4th Classification (Regulation of newspapers and printed matters). Art. 6 RDJ No. 19, 14 January 1944 on the control of printing during the present state of war as regards the first section; for the second section Art. 690 PC within jurisdiction of Pretor. For any offence against the first section jurisdiction lies instead with the Tribunal.

As Proclamation No. 3

PROCLAMATION NO. 12

W.G.B.

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**CORRISPONDENZA DEI REATI PREVISTI NEI E NEI DAL
GOVERNO MILITARE ALLEATO E REATI PREVISTI DALLA LEG-
GISLAZIONE ITALIANA.**

PROG. 14 No. 2

art. 1

No. 1

L'ipotesi del reato va scissa in:

- a) aiuto al nemico come spia. Corrisponde al delitto di spio-
naggio, previsto dall'art. 257 C.P. se commesso da civile e
dall'art. 79 C.P. militare in guerra se commesso da militare.
L'applicabilità di detti articoli alle spionaggio in danno
delle forze alleate al fine di evincere, dopo la concessione del-
la cobelligeranza, anche alle norme di cui agli articoli 258
C.P. e 15 C.F.I.G.
- Competenza in ogni caso del Tribunale militare
- b) rifiuto od omicidio ad una spia nemica. Corrisponde all'
l'art. 52 C.F.I.G. - Competenza in ogni caso del Tribunale mi-
litare.

No. 2

L'ipotesi di reato va scissa a seconda delle diverse fatti-
specie. Se, infatti, si tratta di intelligenza o corrispon-
denza per favorire il nemico sono applicabili per i militari
l'art. 54 C.P.I.G. e per i civili l'art. 247 C.P.; entrambi di
competenza dei Tribunali militari, se manca il fine di favori-
re il nemico potranno essere applicati, a seconda delle diver-
se fattispecie e della qualità di militare o civile del colpe-
vole, gli articoli 56 C.P.I.G. (comunicazione illecita con il
nemico da parte del militare), 78 C.P.I.G. (comunicazione di
notizie mediante corrispondenza da parte di chiunque) e 93
C.P.I.G. (violazione di ordinanze e di altri provvedimenti
dell'autorità militare da parte di chiunque); tutti di com-
petenza dei tribunali militari.

No. 3

La prima parte del numero può rientrare nel numero due. 31
Per la seconda parte si rientra nel campo delle omissioni di
denuncia di reati, previsti per i pubblici ufficiali o gli in-
caricati di pubblico servizio negli articoli 361 a 363 C.P. e
per i cittadini dall'art. 304 C.P., tutti di competenza dei Pre-
tori o dei Tribunali a seconda della pena stabilita dalla leg-
ge a norma degli art. 30 e 304 C.P.P. - Possono essere, altresì,
applicati, ove ne ricorra rispettivamente il caso, gli art. 83,
86 e 90 C.P.I.G., di competenza dei Tribunali militari.

No. 4

art. 242 C.P. se commesso da civile, art. 77 C.P.I.G. in rela-
zione all'art. 47 C.P.I.G. se commesso da militare. Ove ne ri-
corra l'ipotesi anche l'art. 50 C.P.I.G. - competenza in ogni ca-

No.2 L'ipotesi di reato va ascissa a seconda delle diverse fattispecie. Se, infatti, si tratta di intelligenza e corrispondenza per favorire il nemico sono applicabili per i militari l'art.54 C.P.M.G. e per i civili l'art.247 C.P., entrambi di competenza del Tribunale Militare, se manca il fine di favorire il nemico potranno essere applicati, a seconda delle diverse fattispecie e della qualità di militare o civile del colpevole, gli articoli 56 C.P.M.G. (comunicazione illecita con il nemico da parte del militare); 78 C.P.M.G. (comunicazione di notizie mediante corrispondenza da parte di chiunque) e 93 C.P.M.G. (violazione di ordinanze e di altri provvedimenti dell'autorità militare da parte di chiunque), tutti di competenza dei tribunali militari.

No.3 La prima parte del numero può rientrare nel numero due. 31
Per la seconda parte si rientra nel campo delle omissioni di denuncia di reati, previsti per i pubblici ufficiali o gli incaricati di pubblico servizio negli articoli 361 a 363 C.P. e per i cittadini dell'art.364 C.P., tutti di competenza del Pretore o del Tribunale a seconda della pena stabilita dalla legge a norma degli art.30 e segg. C.P.P. Possono essere, altresì, applicati, ove ne ricorra rispettivamente il caso, gli art.83, 88 e 90 C.P.M.G., di competenza dei Tribunali Militari.

No.4 art.242 C.P. se commesso da civile, art.77 C.P.M.G. in relazione all'art.47 C.P.M.G. se commesso da militare. Ove ne ricorra l'ipotesi anche l'art.50 C.P.M.G. - competenza in ogni caso del Tribunale Militare.

No.5 art.96 C.P., di competenza del pretore. Ove alla mancata consegna si accompagni il porto d'arma fuori della propria abitazione saranno applicabili anche gli art.17 e 42 T.O. leggi di P.S.18 giugno 1931 o l'art.99 C.P., tutti di competenza del Pretore. Comunque, s. del caso, può applicarsi anche l'art.93 C.P.M.G.

No.6 art.93 C.P.M.G., poiché si tratta di disposizione relativa alla difesa militare. Competenza del Tribunale Militare.

No.7 art.247 C.P., se l'inganno è stato effettuato al fine di favorire il nemico. Competenza del Tribunale Militare.

No.8 art.127 C.P.M.G., per i casi previsti ivi, di competenza del Tribunale Militare; per gli altri casi si potrebbe trovare riscontro negli art.386 e 387 C.P. di competenza del Tribunale, in via normale.

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- No.9 Il caso deve essere sottoposto al comando remoto.
- No.10 Per l'azione, a seconda dello scopo per cui è avvenuta l'introduzione, art.260 C.P. di competenza del Tribunale Militare o art.582 C.P. di competenza del Pretore. Cve ne ricorrano gli estremi può applicarsi anche l'art.53 C.P.I.G., di competenza del Tribunale Militare. Per i militari vanno applicati gli art.50 C.P.I.G. in relazione all'art.3 P.I.G., o 53 C.P.I.G.
- No.11 art.524 C.P., di competenza del Pretore (furto semplice) ovvero furto aggravato (a norma dell'art.51 o 525 C.P.), di competenza del Tribunale. Per i militari possono eventualmente applicarsi gli articoli 20 e seg. C.P.I.G., di competenza del Tribunale Militare.
- No.12 art.158 C.P.I.G., di competenza del Tribunale Militare (sabotaggio), ovvero art.345 R.D. 8/7/1938 n.1415 competenza Tribunale.
- No.13 Come al numero che precede.
- No.14 Come al No. 12.
- No.15 Come al No.12.
- No.16 art.273 e segg. di competenza della Corte di Cassazione. La lesione italiana non prevede, infatti, alcuna speciale disposizione o ipotesi diversa di reato per la qualità di militare nel soggetto passivo dell'omicidio, salvo che il militare non sia in servizio (art.140 C.P.I.G., applicabile anche agli estranei alle forze armate per l'art.14 C.P.I.G.) ovvero il fatto non concreti l'ipotesi d'insubordinazione a norma degli art.186 e segg. C.P.I.G. o dell'abuso di autorità a norma dell'art.195 C.P.I.G. Tutti casi sono di competenza del Tribunale Militare.
- No.17 Tentato omicidio (art.273 e segg. e 36 C.P.) o tentata lesione (art.282 e segg. C.P.) di competenza rispettivamente della Corte di Cassazione o del Pretore, salvo l'applicabilità dello norme di cui all'articolo precedente per i reati contro i militari in servizio, l'insubordinazione e l'abuso di autorità.
- No.18 Nei confronti casi art.193 o 197 C.P.I.G. di competenza del Tribunale Militare. Altrimenti norme sul furto (art.524 e 525 C.P.), di competenza del Pretore o del Tribunale, a seconda della pena stabilita dalla legge (art.30 e segg. C.P.P.).
- No.19 Nel caso di tentativo

- No.22 art.453 e segg. C.P. competenza della Corte di Cassazione.
No.23 art.93 C.P.I.G. competenza del Tribunale Militare.

ART.2

- No.24 Come al numero che precede.
No.25 Come al numero 23.
No.26 Falsa testimonianza (art.372 C.P.). Competenza del Pretore, salvo il caso di concorso delle aggravanti di cui all'art.375 C.P.-
No.27 art.524 C.P.- competenza del Pretore. In caso di concorso di aggravanti di cui all'art.51 C.P. o 325 C.P. competenza del Tribunale. Per i militari, ove ne ricorrano gli estremi, anche l'art.250 e segg. C.P.I.P.-
No.28 Si applica l'art.640 C.P.- competenza del Tribunale se in danno dello Stato, del Pretore se in danno di privati.
No.29 E' suscettibile di diverse applicazioni. Il fatto può, invero, talvolta rientrare nei limiti dell'art.87 C.P.I.G. talvolta concretare l'ipotesi di disfattismo politico a norma dell'art.625 C.P. talvolta vere offese all'onore dei capi degli Stati alleati o dei rispettivi rappresentanti ovvero allo bandiere o altri emblemi (art.697 e segg. C.P.). Competenza per tutti i suddetti reati e il Tribunale Militare.

- No.30 Come il No.29.
No.31 Vedi il No.17.
No.32 In generale si applica l'art.93 C.P.I.G. ma se l'accusa o la dimostrazione è sediziosa si applica l'art.655 C.P.- Competenza del Pretore.
No.33 Caso generico: art.347 C.P.- Competenza del Pretore. Possono però ricorrere motivi per l'applicazione dell'art.346 C.P. ed anche eventualmente dell'art.348 C.P. competenza del Tribunale.
No.34 L'ipotesi di reato va scissa in:
 a) corruzione (art.319 C.P.) di competenza normale del Tribunale.
 b) intimidimento (art.336 C.P.) di competenza del Tribunale.
No.35 art.378 C.P. di competenza del Tribunale o del Pretore a seconda dei casi previsti.

625 C.P. talvolta vere orpelli
all'enti o dei rispettivi rappresentanti ovvero alle bandiere
o altri emblemi (art. 97 e seg. C.P.). Competenza per tutti i
suddetti reati e il Tribunale militare.

No. 30 Come il No. 29.

No. 31 Vedi il No. 17.

No. 32 In generale si applica l'art. 93 C.P.L.G. ma se l'adunanza o la
dimostrazione è sediziosa si applica l'art. 655 C.P. - Competenza
del Pretore.

No. 33 Caso generico : art. 347 C.P. - Competenza del Pretore. Passano
però ricorrere motivi per l'applicazione dell'art. 346 C.P. ed
anche eventualmente dell'art. 348 C.P. competenza del Tribuna-
le.

No. 34 L'ipotesi di reato va scissa in :

- a) corruzione (art. 319 C.P.) di competenza normale del Tri-
bunale.
- b) intimidimento (art. 335 C.P.) di competenza del Tribunale.

No. 35 art. 378 C.P. di competenza del Tribunale o del Pretore a se-
conda dei casi in detto articolo previsti.

No. 36 art. 648 C.P. (ricettazione) se il colpevole conosceva la
provenienza illegittima della cosa. Competenza del Tribunale.
Se il colpevole ignorava tale illegittimità art. 712 C.P. di
competenza del Pretore.

No. 37 art. 265 C.P. competenza Tribunale militare; se trattasi di
militare art. 77 C.P.L.G.

No. 38 -- seconda delle particolarità del fatto art. 483 C.P. ovvero
495 e 496 C.P., tutti di competenza del Pretore. Eventual-
mente anche l'art. 373 C.P.

No. 39 art. 664 C.P. competenza del Pretore.

No. 40 Come al numero 36.

No. 41 art. 93 C.P.L.G. competenza del Tribunale militare.

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No. 42 L'ipotesi ivi prevista è compresa in quella del No. 20.

No. 43 art. 650 C.P., competenza del Pretore. Eventualmente art. 93 C.P. i.G.

No. 44 Come al numero precedente.

No. 45 art. 93 C.P. i.G., competenza del Tribunale Militare. Le fattispecie può concretizzare diverse ipotesi di reati da considerare caso per caso.

PROCLAMA No. 3

Le contravvenzioni alle disposizioni del proclama possono essere punite soltanto a norma dell'art. 650 C.P. non ritenendo il proclama suddetto la difesa militare. Competenza del Pretore. Salvo che non si tratti dell'ipotesi di cui all'art. 356 R.D. 8.7.38 n. 1415 (illecita introduzione o spedizione di titoli ecc.).

PROCLAMA No. 5

Come per il proclama no. 3.

PROCLAMA No. 6

Nel congrui casi art. 347 e segg. R.D. 8.7.1938 n. 1415 di competenza del Pretore; altrimenti art. 650 C.P. pure di competenza del Pretore.

PROCLAMA No. 7

Sarà da esaminare di volta in volta se i singoli casi previsti nell'art. IV del proclama possano, per le loro modalità specifiche di esecuzione, essere compresi nei concetti giuridici di associazione antizionale (tale è divenuto il partito fascista nell'attuale situazione in conseguenza anche dell'abolizione) a norma dell'art. 271 C.P. ovvero di propaganda ed apologia antizionale a norma dell'art. 272 C.P., delitti entrambi di competenza del Tribunale Militare. Potrebbe anche concretarsi, per chi non partecipi comunque al partito fascista o sue filiazioni, un'abbia fatto parte di una raduna dello stesso, senza dubbio sedizioso, la contravvenzione di cui all'art. 355 C.P. di competenza del Pretore.

PROCLAMA No. 8

... nella legge 22

Nel congerui casi art. 547 e segg. R.D. 8.7.1930 n. 1419 di competenza del Pretore; altrimenti art. 550 C.P. nuro di competenza del Pretore.

PROCLAMA No. 7

Sarà da esaminare di volta in volta se i singoli casi previsti nell'art. IV del regolamento possono, per le loro modalità specifiche di esecuzione, essere compresi nei concetti giuridici di associazione antisociale (tale è divenuto il partito fascista nell'attuale situazione in conseguenza anche della sua abolizione) a norma dell'art. 271 C.P. ovvero di propaganda ed apologia antisociale a norma dell'art. 272 C.P., delitti entrambi di competenza del Tribunale Militare. Potrebbe anche concretarsi, per chi non partecipi comunque al partito fascista o sue filiazioni, ma abbia fatto parte di una radunata dello stesso, senza dubbio sediziosa, la contravvenzione di cui all'art. 555 C.P. di competenza del Pretore.

PROCLAMA No. 8

Si dovrebbero applicare le norme previste nella legge 22 aprile 1943 sulla disciplina dei consumi, nelle varie ipotesi (delittuose o contravvenzionali) ivi previste, pertinenti alla competenza delle singole autorità giudiziarie a norma degli art. 50 e segg. C.P.P.

PROCLAMA No. 10

Come per il proclama No. 9.

PROCLAMA No. 11

- 1° ipotesi - (risoluzione di mezzi privati di comunicazione) L'infrazione può essere punita a norma dell'art. 93 C.P.M.G., competenza del Tribunale Militare.
- 2° ipotesi - (divieto di fotografia e dichiarazione di materiali fotografici): art. 55 C.P.M.G., ove non ricorrano gli estremi di

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tale reato, altrimenti art. 93 C.P.M.G., competenza del Tribunale Militare.

3° ipotesi - (tessere di riconoscimento): art. 650 C.P. competenza del Pretore.

4° ipotesi - (regolamento di giornali e materia stampata): art. 6 R.D.L. 14 gennaio 1944 n. 13 sulla disciplina delle stampa nell'attuale stato di guerra per la sezione 1°, per le altre sezioni art. 650 C.P. di competenza del Pretore. Per il reato della 1° sezione la competenza spetta invece al Tribunale.

Proclama. No. 12.

Come per il proclama. No. 3.

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

Ref/283/4/CA

23 May 1944

SUBJECT: AMG Courts in Territory administered by
the Italian Government.

TO : R.C.'s Regions I, II, III, IV, V, VI and VII.

1. The Chief Commissioner directs that recommendations for the setting up of AMG Courts in territory under the jurisdiction of the Italian Government should, as questions of policy are concerned, be made by the Regional Commissioner concerned, after discussion with his Regional Legal Officer, to the R.C. & M.G. Section. In submitting such recommendations the Regional Commissioner will give detailed reasons, together with the advice of his Regional Legal Officer, and, if the request has originated from the local military commander, the opinion of the G.O.C. District concerned. These reasons advice and opinion are required in addition to the facts and particulars already required by paras 3(b) and 4 of Article 3 of Consolidated Instructions for Allied Military Courts. The recommendations will then be passed with comment to the Chief Legal Officer who will advise the Chief Commissioner.

2. Article 3 of the Consolidated Instructions will be amended to conform to the above in due course.

3. Regional Commissioners are reminded that approval for such courts will be given only in very exceptional cases.

M.S. Lush
M.S. LUSH
Brigadier
Executive Commissioner

Copy to:
R.C.'s Regions VIII and IX.
Admin. Section.

4061

File

26

FOR INFORMATION
 ALLIED VICTIMS CENTER
 1000 1st Avenue
 2nd Floor

10/1/54

4 Jan 1954

SUBJECT: Feasibility and importance.

TO

1. Regional Legal Offices (USIA: Regional Commissioners),
 Regions III, IV and V.
 Senior Legal Officers (USIA: SACs), 3rd and 4th Areas.

1. Reference of letter 100/1000/1 of 20 March 1954.
2. A special request has been made to us to secure ~~primary~~ ^{primary} for ~~consideration~~ ^{consideration} in cases of damage to signal lines through sabotage or theft.
3. Will you please send portions of any such cases to this ~~Regional Office~~ ^{Regional Office}, 100, 1000? Will you also discuss with Regional ~~Commissioners~~ ^{Commissioners} or SACs the desirability of local publicity in suitable cases with letters 1954?

CHARLES E. WORTH,
 Colonel,
 Chief Legal Officer.

Copy to: Deputy Executive Commissioner.

27

Enter file
4061

COPY.

25

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

Ref/700/11/CA.

24 May 1944.

SUBJECT : Arming of Tele. Corp. Linemen.

TO : R.C.'s Regions I, II, III, IV, V, VI, VII, VIII and IX.
S.C.A.O.'s 5th & 8th Armies.

1. Representations have been made by the Italian Government for permission to re-issue arms to telephone and telegraph linemen in order to prevent sabotage, theft of wire, etc. which is causing serious threat to communications.

2. In AMG territory, Regional Commissioners should give favourable consideration to issuing permits to carry firearms for such duties, subject to local conditions.

3. In Italian Government territory the Italian Government has given similar instructions to Prefects.

26

M. S. LUSH,
Brigadier,
Executive Commissioner.

Copy to :

Admin Section (3) (for Public Safety Sub-Commission)
Communications Sub-Commission.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LOCAL HQ-CHICAGO
APO 324

24

SEC/1027/1.

18
15 March 1944. CBY/alg.

SUBJECT : Construction of phrase "Allied Forces."

TO : SAC (USAR: HQ), Regions III, IV & V.
SAC 5th & 8th Army.

You are requested to delete the classification "SECRET" from our letter SEC/1027/1 of 25 Feb 44 and reclassify as follows:

"CONFIDENTIAL: To be disclosed only to members of the Allied Control Commission."

DISTRIBUTION: VP 30 & 10

VP Admin Sec
VP Political Sec
VP Legal Sec

25
GEORGE W. JONES
Colonel
Chief Legal Officer

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

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Ref/314/16/CA

8 March 1944

SUBJECT: Release of Prisoners Held for Trial
by Allied Military Courts.

TO : Commanding General, ACAC

1. I am directed by the Chief Commissioner to make known to you the confusion that has resulted from the release of prisoners from jails or prisons by members of the Military Police without knowledge or approval of the Commission's officials. Cases are frequently called for trial in the Military Government Courts only to find that the accused have been released. If there is no case against the prisoner he should of course not be detained, but it is important that the release be ordered by a competent Military Government officer.

2. It is suggested that a prisoner held for trial before an Allied Military Court be released only on written order of the Court or, if none is sitting, of a Provincial Commissioner or a Civil Affairs Police Officer. It would be of great assistance if you should see fit to issue instructions to the above effect.

NORMAN E. FISKE
Colonel, Cavalry
Deputy Executive Commissioner

Copy to:
R.C. All Regions
SCAOs 5 & 8 Armies

24

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394

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22

ACC/4002/L

7 March 1944.

SUBJECT : Allied Courts in Unoccupied Territory.
TO : Regional Commissioners, Regions 1, 2, 3 & 6.

Ref Directive on the a/m subject (ref 283/42/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. UPJOHN
Colonel
Chief Legal Officer.

Copy to:

Regional Commissioners, Regions 4 & 5
Hq ACMF
Hq No. 1 District
Hq No. 2 District
Hq No. 3 District

23

HEADQUARTERS,
ALLIED CONTROL COMMISSION,
APO 394.

Regional Control & Military Government Section.

+++++

5th March 1944.

Ref: 283/42/C.

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 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.

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 Codes, 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 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

2. The Allied forces have 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 3 days to prepare his defence (ref. 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.

-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 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 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, H.Q., A.C.C. submitting reasons why the conviction should be set aside or the sentence modified.

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

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

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

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

[Signature]
H. B. LUSH,
Brigadier,
Executive Commissioner.

Copy to: Regional Commissioner, Regions IV and V.
H.Q., A.C.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 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 promises to the extent necessary.

COPY

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

Ref/287/A/CA.

EXECUTIVE MEMORANDUM)

NUMBER : 37)

2 March 1944.

rlp

POWERS OF SCAOs AND SLOs 5TH AND 8TH ARMY.

1. By Proclamation No. 14 certain powers, originally granted to the CLO by Proclamation No. 2 and 4, were extended to RLOs of Regions. In order to have uniformity in exercise of review and other powers, it has seemed wise to extend to the SLOs 5th and 8th Armies, the same powers conferred on RLOs by Proclamation No. 14. You are therefore herewith instructed that the powers conferred by Proclamation No. 14 on RLOs are hereby extended to and conferred on the SLO of the 5th Army and on the SLO 8th Army.

2. As a result of the authority so granted, the procedure with respect to reviews, 5th and 8th Armies, shall hereafter be as follows:

All petitions for review originating in the 5th and 8th Army areas may be filed with the trial court or may be forwarded to the SLO of the army concerned but shall be addressed to the Chief Commissioner. Every record originating in the army area shall be transmitted to the SLO, that army, for examination and file. Where no petition for review has been filed under Proclamation No. 4, Art. VII, Section I and the sentence does not exceed two years' imprisonment or a fine of 50,000 lire, the Army SCAO shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. In all cases where there is a petition for review or where the sentence exceeds 2 years' imprisonment or a fine of 50,000 lire, the record and petition for review, if any, shall be forwarded to the CLO, Hq, ACC for examination and review.

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3. Other powers, functions and duties conferred on RLOs by Proclamation No. 14, now applicable to SLOs 5th and 8th Army are the followings:

- (a) The SLO may now in his area perform the functions previously assigned to the CLO with respect to detention of suspects (Proc. No. 2, Art VII, Section 2).
- (b) The SLO may now order an Allied Military Court in his area to sit in camera. (Proc. No. 4, Art VII, Section I).

2. As a result of the authority so granted, the procedure with respect to reviews, 5th and 8th Armies, shall hereafter be as follows:

All petitions for review originating in the 5th and 8th Army areas may be filed with the trial court or may be forwarded to the SIO of the army concerned but shall be addressed to the Chief Commissioner. Every record originating in the army area shall be transmitted to the SIO, that army, for examination and file. Where no petition for review has been filed under Proclamation No. 4, Art. VII, Section I and the sentence does not exceed two years' imprisonment or a fine of 50,000 lire, the Army SIO shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. In all cases where there is a petition for review or where the sentence exceeds 2 years' imprisonment or a fine of 50,000 lire, the record and petition for review, if any, shall be forwarded to the CIO, Hq, ACC for examination and review.

3. Other powers, functions and duties conferred on SIOs by Proclamation No. 14 now applicable to SIOs 5th and 8th Army are the following:

- (a) The SIO may now in his area perform the functions previously assigned to the CIO with respect to detention of suspects (Proc. No. 2, Art VII, Section 2).
- (b) The SIO may now order an Allied Military Court in his area to sit in camera. (Proc. No. 4, Art VII, Section I).
- (c) The SIO may now exercise the power of prohibiting any lawyer or other person from appearing in any court in his area. (Proc. No. 4, Art IV, Section 2(b)).

4. In order to preserve the nobility of Hq in army areas the SCAO 5th and 8th Army is at liberty in cases where under para. 2 hereof he has reviewed a case and after all action thereon has been taken to send to the Regional Legal Officer of the Region which will be ultimately responsible for the area in which the case was heard the record and petition (if any) for safe keeping.

5. This memorandum supercedes all previous directives issued by Hq, AMG or Hq, AMG 15 Army Group inconsistent herewith.

By command of Lieut-General MASON MACFARLANE.

M.S. LUCH
Brigadier,
Executive Commissioner.

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18

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4027/L.

29 February 1944

SUBJECT : Construction of Phrase "Allied Forces."

TO : RLO Region 3, 4, & 5.
SLO 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 Francais 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 C in C Italy.

This does not include Italian troops who are only cobelligerents 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.E.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 C 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 C 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: VP RC & MG
VP Admin. Sec.
VP Political Sec.
Army Subcommittee.

G. R. UPJOHN, Colonel
Chief Legal Officer.

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(17)HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394rlp
14th February 1944

EXECUTIVE MEMORANDUM }

NUMBER 18 }

TO : Regional Commissioners,
Regions III, IV & V.POWERS OF REGIONAL LEGAL OFFICERS.MILITARY COURTS.

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

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

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

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2. Reviews of the decisions of Allied Military Courts will be in accordance with Proclamation No. 14 as it amends Proclamation No. 4 which provides for reviews substantially in the following manner:-

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

Every record of trial by an Allied Military Court shall be transmitted to the Chief Legal Officer of the Region for examination and file. The record in any case may on the recommendation of the Chief of the Legal Sub-Commission, and shall, in the event of the sentence exceeding two years imprisonment or a fine of L. 50,000 be reviewed by the Chief Commissioner or by an officer of the Allied Military Government not below the rank of Lieutenant Colonel who may be appointed by the Chief Commissioner for that purpose.

Where there has been no petition of appeal as above provided and the sentence does not exceed two years imprisonment or a fine of L. 50,000 the Chief Legal Officer of the Region shall review the case and may appoint a judicial officer not below the rank of Major for that purpose. Confirmation of death sentences remains as heretofore.

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

ITALIAN COURTS AND PERSONNEL.

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

(16)

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

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

ITALIAN MILITARY TRIBUNALS.

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

PRISONS.

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

ITALIAN LEGISLATION AND LAWS.

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

GENERAL.

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

10. The Chief Legal Officer of the Region will NOT issue directives or render opinions dealing with matters of general legal policy without previous reference to Hq, ACC. He will NOT fix penalties for prescribed offences but

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pending receipt of orders thereon grant provisional or conditional liberty or release, on parole, after consultation with the appropriate Italian Judicial Official. Investigation will also be made of persons charged with crimes and never brought to trial because of political connections and report made to Hq, ACC.

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GENERAL.

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

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

By the command of Lieut-General MASON MACFARLANE.

/s/ M. S. LUSH
M. S. LUSH,
Brigadier,
Executive Commissioner.

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

12 February 1944.

EXECUTIVE MEMORANDUM

NUMBER

7

TO: Regional Commissioners, Regions I, II, and VI.

INSTRUCTIONS TO LEGAL OFFICERS IN
REGIONS TRANSFERRED TO THE ITALIAN
GOVERNMENT

1. GENERAL.

(a) As stated in Memorandum dated 23 January 1944, to which this directive is supplemental, upon the restoration of territory to the Italian Government subject to control by ACC all powers of military government cease within the restored territory and the relationship between ACC and the Italian Government depends entirely on contract. Such contract is contained in the Armistice Terms, and forms the charter of ACC.

(b) For security reasons it is not possible to communicate now in written form the Armistice Terms, but from time to time the Chief Legal Officers in the Regions will be given appropriate information sufficient to enable them to carry out their duties.

(c) It will continue to be the duty of the Chief Legal Officers in the Regions to advise the Regional Commissioners (R.C.'s) on all legal matters affecting the Region. This directive is intended in part to assist the Chief Legal Officers in the Regions in giving advice to the R.C.'s in connection with the newly acquired powers and duties of ACC personnel in the field. It must be appreciated that in furnishing such advice, as pointed out in para (a) above, the position has essentially changed and the powers of military government have ceased and are superseded by the Armistice Terms. In particular and subject to any special directives that may be issued the functions of the R.C.s cease to be executive and become purely advisory and supervisory. Orders are no longer given by the R.C.'s, but by the Italian Administrative officials and it is the duty of the R.C.'s within his region to see that the Italian Administration carries out the orders received from higher Italian authority (as to which the R.C.'s will be duly informed) and to report to HQ, ACC any failure to do so. It will no longer be within the province of the R.C.'s to issue proclamations and General or Regional Orders, but to advise and supervise the local authorities in such matters. It follows that in the initial stages and until the Italian Government has proved its capacity to govern, a number of problems may arise which will have, as a matter of policy, to be referred to HQ, ACC, but in matters of urgency Chief Legal Officers in the Regions will not hesitate to exercise their judgement and common sense in giving advice pending the receipt of instructions from HQ, ACC.

form the Armistice terms, but from time to time the Chief Legal Officers in the Regions will be given appropriate information sufficient to enable them to carry out their duties.

(c) It will continue to be the duty of the Chief Legal Officers in the Regions to advise the Regional Commissioners (R.C.'s) on all legal matters affecting the Region. This directive is intended in part to assist the Chief Legal Officers in the Regions in giving advice to the R.C.'s in connection with the newly acquired powers and duties of ACC personnel in the field. It must be appreciated that in furnishing such advice, as pointed out in para (a) above, the position has essentially changed and the powers of military government have ceased and are superseded by the Armistice terms. In particular and subject to any special directives that may be issued the functions of the R.C.s cease to be executive and become purely advisory and supervisory. Orders are no longer given by the R.C.'s, but by the Italian Administrative officials and it is the duty of the R.C.'s within his region to see that the Italian Administration carries out the orders received from higher Italian authority (as to which the R.C.'s will be duly informed) and to report to Hq. ACC any failure to do so. It will no longer be within the province of the R.C.'s to issue proclamations and General or Regional Orders, but to advise and supervise the local authorities in such matters. It follows that in the initial stages and until the Italian Government has proved its capacity to govern, a number of problems may arise which will have, as a matter of policy, to be referred to Hq. ACC, but in matters of urgency Chief Legal Officers in the Regions will not hesitate to exercise their judgement and common sense in giving advice pending the receipt of instructions from Hq. ACC.

(d) Initially the Chief Legal Officer in a Region and his legal officers will remain at their posts to carry out their duties set forth herein and will retain their offices, motor equipment and requisitioned property to the extent necessary to perform their duties.

(e) On the restoration of territory the Chief Legal Officer in a Region will prepare and forward to the Hq. ACC, through the EC, his report on the activities of his office running from the date of his last monthly report to the date of restoration.

2. LEGAL MATTER CASES.

(a) Legal Officers will see that all pending cases are completed as quickly as possible and the records, petitions for review, etc., are speedily transmitted to the Chief Legal Officer in the Region.

(b) All reviews will be expedited and the following system (as set out in Proclamation No. 14) will be followed:

- 2 -

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

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

(c) If Military Zones are established in unoccupied territory and Allied Military Courts function therein, Summary and Superior Military Courts will be established either by the Commanding Officer, if the power to do so has been delegated to him or by the MC, if still functioning, otherwise by Hq. ACC. A General Military Court may be established only by Hq. ACC.

(d) If Allied Military Courts are to be set up at all in any other part of unoccupied territory, the requisite Military Court, will be established by Hq. ACC at the request of the MC concerned. A separate Directive with regard to the constitution and mode of application for such courts will be issued.

(e) All cases tried by Allied Military Courts referred to in 2 (c) and (d) above, will be reviewed solely by Hq. ACC until further orders.

(f) In closing the activities of the Legal Division of any region as to Allied Military Courts the following specific acts among others shall be performed by the Chief Legal Officer in the Region, or as he shall direct:

(1) The Italian Government will be required to carry out all sentences imposed by Allied Courts as though imposed by their own Courts. However, all cases in which a conviction has resulted and the sentence has not been fully executed will be re-examined and in appropriate cases recommendation for pardon or modification will be made to the MC & MC Section, ACC, for the Legal Sub-Commission, with reasons therefor. All cases in which severe sentences were originally passed and subsequently confirmed, because of military considerations which no longer prevail should therefore be reconsidered by the Chief Legal Officer in the Region with the advice,

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(d) In Allied Military Courts are to be set up in any other part of unoccupied territory, the requisite Military Court, will be established by Hq, ACC at the request of the HQ concerned. A separate Directive with regard to the constitution and mode of application for such courts will be issued.

(e) All cases tried by Allied Military Courts referred to in 2 (c) and (d) above, will be reviewed solely by Hq, ACC until further orders.

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(i) The Italian Government will be required to carry out all sentences imposed by Allied Courts as though imposed by their own Courts. However, all cases in which a conviction has resulted and the sentence has not been fully executed will be re-examined and in appropriate cases recommendation for pardon or modification will be made to the HQ & MP Section, ACC, for the Legal Sub-Commission, with reasons therefor. All cases in which severe sentences were originally passed and subsequently confirmed, because of military considerations which no longer prevail should therefore be reconsidered by the Chief Legal Officer in the Region with the advice, where possible, of the presiding officer who tried the case, and the Chief Legal Officer in the Region should forward his recommendation to the Legal Sub-Commission, Hq, ACC. This is not to be regarded as an invitation to a general reduction in sentences especially having regard to the Italian practice (which will be applicable to these cases) of granting provisional liberty after a portion of the sentence has been served.

(ii) A careful check of outstanding fines will be made, steps will be taken to collect unpaid fines and a report will be made to the Chief of the Legal Sub-Commission at Hq, ACC.

- 3 -

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(iii) All Allied Military Courts dockets will be checked for accuracy of entries required to be made including data on payment of fines and to determine that all fines collected have been remitted to proper authorities. All records properly indexed and files will be held by the Chief Legal Officer of the Region for disposition on orders from Chief of the Legal Sub-Commission, Hq. ACC.

3. WAR OFFICES.

In the event that any evidence should come to the notice of Legal Officers indicating that a War Crime has been committed of the type mentioned in AFHQ Circular dated 27 November 1943, of which copies were transmitted to the Chief Legal Officers of Regions I and II on 6 January 1944, this will be immediately brought to the notice of the Chief of the Legal Sub-Commission, Hq. ACC, and a report in the manner set forth in such Directive shall be made to the Chief of the Legal Sub-Commission, Hq. ACC. If an Italian Court is proposing to try such a case it should be advised against doing so and an immediate report on this situation should be transmitted to the Chief of the Legal Sub-Commission, Hq. ACC.

4. ITALIAN LEGISLATION AND LAWS.

The Chief Legal Officers in the Regions, acting through PC's, will not concern themselves with any amendments to Italian legislation or laws on the ground that they are Fascist or discriminatory, or with suspension of such laws, as all such matters will be dealt with by Hq. ACC. Any suggestions for abrogation, revision, or amendment of any Italian legislation will be transmitted to Hq. ACC.

Amendments to rules of procedure which have been initiated during AMP, will, however, be continued by the Italian Administration and any departure from such amendments will forthwith be reported to Hq. ACC.

5. DETAINÉES.

No persons detained under Article VII of Proclamation No. 2 will be released without further orders from Hq. ACC, but Chief Legal Officers in the Regions will prepare lists of persons so detained. Such lists will show places of detention, and the Chief Legal Officers in the Regions will forward them with his comments to Hq. ACC, within 14 days of the restoration of territory to the Italian Government.

6. ITALIAN MILITARY TRIBUNALS.

These Tribunals will be allowed to function in accordance with the Military Penal Code of Law (Codice Penale Militare di Guerra) and the restrictions laid down by Directive with regard to the holding of these Courts under AMP will be disregarded. If any reports are received indicating that any trial has been unsatisfactory, the circumstances will be investigated.

The Chief Legal Officers in the Regions, acting through the Regions, on the ground that they are Fascist or discriminatory, or with suspension of such laws, as all such matters will be dealt with by Hq. ACC. Any suggestions for abrogation, revision, or amendment of any Italian legislation will be transmitted to Hq. ACC.

Amendments to rules of procedure which have been initiated during ASD, will, however, be continued by the Italian Administration and any departure from such amendments will forthwith be reported to Hq. ACC.

5. DETAINÉES.

No persons detained under Article VII of Proclamation No. 2 will be released without further orders from Hq. ACC, but Chief Legal Officers in the Regions will prepare lists of persons so detained. Such lists will show places of detention, and the Chief Legal Officers in the Regions will forward them with his comments to Hq. ACC, within 14 days of the restoration of territory to the Italian Government.

6. ITALIAN MILITARY TRIBUNALS.

These Tribunals will be allowed to function in accordance with the Military Penal Code of Law (Codice Penale Militare di Guerra) and the restrictions laid down by Directive with regard to the holding of these Courts under ASD will be disregarded. If any reports are received indicating that any trial has been unsatisfactory, the circumstances will be investigated and a report made to Hq. ACC.

7. ITALIAN COURTS GENERALLY.

All civil and criminal courts functioning at the date of the restoration of territory to the Italian Government will continue to function and any attempt to close such courts will forthwith be reported to Hq. ACC.

If any Criminal Courts have not been reopened at the date of restoration steps will be taken to encourage their reopening at the earliest possible date subject to suitable personnel being available (see para 8 below). If any Courts remain unopened one month after the restoration of territory to the Italian Government a report stating the Courts remaining unopened and the reason therefor will be rendered to Hq. ACC.

- 4 -

(12)
The above does not apply to any Court of Cass. Items which will only be reconstituted under the orders of HQ, AGC.

The Chief Legal Officer in the Region will no longer concern himself with the supervision of Italian Courts except for the purpose of carrying out his duties under this or any subsequent directive and he will formally hand over to the First President of the Court of Appeal within his Region the management and supervision of Italian Courts and personnel.

8. APPOINTMENT AND REMOVAL OF JUDGES.

(a) All judges and Italian legal officers will be appointed, promoted or removed by the Italian Government with the consent of HQ, AGC and the IC will not be responsible for any further appointments, promotions or removals.

(b) Chief Legal Officers in the Regions will appoint a legal liaison officer to act with the First President of each Court of Appeal who will carry out the following duties:

- (i) To advise and assist the First President in opening any Courts not yet opened in the administration of the Court of Appeal.
- (ii) To see that all appointments, promotions and removals of officials made by the Italian Government are notified to him by HQ, AGC and duly carried out.
- (iii) To notify immediately HQ, AGC (through Regional HQ) of any reported appointments, promotions or removals of officials not authorized by HQ, AGC. If any judge or official appointed by HQ, AGC is proposed to be removed without the sanction of HQ, AGC he will advise the First President against taking any action without the consent of HQ, AGC.
- (iv) To report to HQ, AGC (through Regional HQ) any cases of biased or incompetent behavior on the part of judges or officials which come to his notice and to investigate any complaints received from attorneys or citizens of unfair treatment by an Italian Court, and if the complaint appears to be well founded to forward a report and recommendation to HQ, AGC (through Regional HQ).
- (v) Generally to keep Regional HQ and HQ, AGC advised of all relevant matters in the Court of Appeal District such as the administration of the Bar Association, the holding of examinations for admission to the profession, the recruitment of Notarial Councils and so forth.

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(c) Chief Legal Officers in the Regions will inform HQ, AGC of the

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are the only American soldiers killed by the Taliban (Government of Afghanistan) in 1997.

[illegible][illegible]

(v) Government to keep informed in and by, SEC advised of all relevant matters in the Court of Appeal District such as the Recommendation of the Per Insurance, the holding of meetings actions for approval or prosecution, the presentation of suggested grounds and no further.

(a) Chief legal officers in the regions will inform the Board of the progress achieved in relation to their respective action plans.

(c) Conditions already existing to render the violation of Federal and State laws will be abated unless the United States can show that the violation is not willful or the duty of the Chief Legal Officer in the Agency to take any steps to will any violation to Federal legal counsel.

(c) If a list of judges has not already been compiled and sent to H, ask the Chief Legal Officer in the region to compile a list of all judges and legal officials in office and forward it to H, as soon as possible.

9. REPLY TO THE OFFICE OF THE ATTORNEY GENERAL

(a) Any Legal Officer in the region who has completed his work may be ordered by the IC to another post in the region to assist another officer to complete his work or be otherwise assigned in the region as circumstances warrant.

- 5 -

(b) When Legal Officers have completed all cases and have performed all other duties assigned to them, they will so report to the Chief Legal Officer in the Region and he in turn will so report to the Legal Sub-Commission, HQ, MAC. If then so ordered they will close their offices and report in person to the Chief Legal Officer in the Region with all records and equipment other than that which has been requisitioned and turned back to the owners upon receipt from them.

(c) It is essential that all Legal Officers complete their work with the utmost expedition, as their services are urgently required in occupied territory.

By Command of Lieutenant General HARRY MACK, C.M.C.

H. S. MACK,
Brigadier,
Executive Commissioner.

COPY

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

10

Ref/45/15/CA.

10 February 1944.

EXECUTIVE MEMORANDUM)

NUMBER

6)

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

(1) No General Military Court shall be appointed other than by the CCAC, HQ ACC.

(2) Application for the appointment of a General Military Court shall be addressed to the CIO, HQ ACC.

(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 CIO HQ ACC 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 SCAO of the Province in which the Court shall sit.

be addressed to the CLO, HQ AGC.

(5) 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.

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2. Superior Military Courts.

(1) Except where a judicial officer is specially authorized by the CLO HQ AGC 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 SCAG 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.

(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.

M. S. LUSH
Brigadier,
Executive Commissioner

DISTRIBUTION:

HC Regions 3, 4, 5 & 6

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Declassified E.O. 12356 Section 3.3/NND No. 785016

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HEADQUARTERS
ALLIED MILITARY GOVERNMENTC
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23 December 1943

REVIEW OF CASES

In terms of Article VII, Section 3 of proclamation No. 4 of 1943 as amended by proclamation No. 14 and by virtue of the powers delegated to Francis, Baron Rennell of Rodd, Major General, Chief Civil Affairs Officer by Sir Harold R. L. G. Alexander, G. C. B., C. S. I., D. S. O., M. C., General, General Officer commanding the Allied Forces in occupied territory and Military Governor of the occupied territories in Italy and Sicily, and in the absence of the said Francis, Baron Rennell of Rodd, and under and by virtue of the powers by him delegated to me,

I, Colonel Charles M. Spofford, G. S. C., Deputy Chief Civil Affairs Officer of the occupied territories in Italy and Sicily which are controlled from Headquarters of the Allied Military Government do hereby appoint Colonel Gerald R. Upjohn, Colonel George Pollock, Lt. Colonel Richard H. Wilmer and Lt. Colonel W. E. Behrens to review under the aforesaid Article and Section all cases heard by Allied Military Courts in those parts of said occupied territories which are controlled by Headquarters of Allied Military Government (as distinct from those parts which are controlled by Hq, AMG, Army Group) and I do hereby ratify and confirm any action heretofore taken by them or any of them in connection with the review of such cases.

CHARLES M. SPOFFORD,
Colonel, G. S. C.
D.C.C.A.O. Hq, AMG.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT.

AMG/4098/L

4 November, 1943.

Subject: Cases of Juvenile Offenders.

In order to ensure that no undue delay occurs in the holding of trials in which juveniles under 16 years of age are involved, by reason of the necessity of waiting for information from the Welfare Officer, amendments have been made to the Directive issued by me under ~~the above~~ ^{AMGOT/4034/L.} reference on 31 August, 1943. The Directive in the amended form is set out below:-

"It has come to the attention of the Chief Legal Officer that arrests have been made of juveniles under of 16 years of age who have violated AMG ordinances, laws or regulations.

1. (a) In these cases it is requested that the following procedure be followed:-
 - (i) That upon the arrests of minors and, if possible prior to trial, a copy of the charges will be given to the nearest Public Welfare Officer of AMG.
 - (ii) The Welfare Officer will procure or cause to be procured such information regarding the minor as may bear upon the case and will forward such information before trial, if possible, and in any event before sentence, together with a recommendation for use by the Judge in making his decision.
 - (iii) Such investigations and reports to the Judge will be made by the Welfare Officer at the earliest possible time in order not to delay the hearing unnecessarily.
 - (iv) The Welfare Officer will report back to the court on every case brought to his attention, even though no information on the individual in question can be furnished.
 - (v) Juveniles will be released pending trial on such conditions as may seem appropriate whenever possible. In those cases where detention of the juvenile is necessary, he or she must, if at all possible, be held in a place separate from those housing adult offenders.
- (b) If the Court feels that a juvenile over 16 years of age is of maturity, both physically and mentally, this individual could be dealt with as an adult offender after taking into consideration his

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- 2 -

- (iv) That the hearings be held informally in a closed chamber instead of open court.
- (v) That in cases of commitment, a court record of the case be forwarded to the institution together with any recommendations which may have been made regarding treatment.
2. In the case of minors under 18 tried by the courts of Italy, copies of the records, indicating the dispositions of such cases shall be forwarded promptly to the Public Health Sub-Commission (Public Welfare Section)."

W. C. Chanler
 WILLIAM C. CHANLER, Lt.Col. F.A.
 Chief Legal Officer.

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT

ASG/4302/L.

1 November 1943.

ADMINISTRATIVE INSTRUCTION (LEGAL)

1. Summary Courts have jurisdiction to impose a sentence of imprisonment for not more than one year or a fine of not more than 50,000 lire or both such imprisonment and fine. Further, the Court has power to order imprisonment in default of payment of a fine, but in no case can a person convicted by a Summary Court be kept in prison in respect of that conviction for more than one year.

2. A sentence of one year's imprisonment and a fine of 20,000 lire imposed, therefore, that whether the fine is paid or not, the accused must be released at the expiration of one year.

3. Similarly, no person convicted by a Superior Court can be detained in respect to that conviction for more than ten years.

4. Where a fine alone is imposed the Court should specify the period to be served in default of payment such period not being merely assessed on the basis of 50 lire a day, but having regard to the probable earnings of the accused to pay.

5. Where a sentence of imprisonment and fine is imposed, the sentence should be in the following form:

"Two months imprisonment and a fine of 50,000 lire; in default of payment of the fine, accused to serve a further period of three months imprisonment."

6. Please take steps to see that all officers trying cases are instructed accordingly.

DISTRIBUTION:

RGAO Region I (6)
Agrianto Province (5)
Calandetta Province (2)

WILLIAM C. CHANLER,
Lt. Col., FA,
Chief Legal Officer.

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in respect to that conviction for more than ten years.

4. Where a fine alone is imposed the Court should specify the period to be served in default of payment such period not being merely assessed on the Italian basis of 50 lire a day, but having regard to the probable capacity of the accused to pay.

5. Where a sentence of imprisonment and fine is imposed, the sentence should be in the following form:

"two months imprisonment and a fine of 50,000 lire; in default of payment of the fine, accused to serve a further period of three months imprisonment."

6. Please take steps to see that all officers trying cases are instructed accordingly.

DISTRIBUTION:

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Syracuse	(2)
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" III	(25)
" IV	(25)

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MGS AFHQ	(12)
Sub-Commissions	(15)
File	(1)
Float	(1)
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WILLIAM C. CHAMBER,
Lt. Col., PA,
Chief Legal Officer.

AMCOT/4002/L.
AMCOT HQ., SICILY
1 October 1943

SUBJECT: Allied Military Courts - Sentences.

TO : All Senior Civil Affairs Officers
and All Senior Legal Officers.

1. On page 10 of minutes of meeting of Senior Civil Affairs Officers ref. AMCOT/263/HQ, the report is contained of directions of Chief Civil Affairs Officer that there was to be no suspension of any sentence pending his decision as to whether or not he would revise it.
2. The above directions have been cancelled by the Chief Civil Affairs Officer and the directive contained in para. 3 of this instruction has been substituted.
3. All Allied Military Courts may impose suspended sentences. As, however, this type of sentence has been much too frequently imposed in the past, Allied Military Courts will suspend a sentence only when it is desirable, having regard to special circumstances of the case, such as the age or other circumstances of the accused, or such as the fact that the accused has acted without any bad intent but has still committed a minor offence.
4. Senior Civil Affairs Officers have no power to review cases, or suspend sentences.
5. The Chief Civil Affairs Officer is concerned about the smallness of sentences imposed for grave offences where the accused has been found "guilty". The attention of all officers who sit on Allied Military Courts will be drawn to the fact that sentences must not only be assessed on the circumstances in which the offence was committed, but also on the gravity of the offence, the frequency with which the offence occurs and its effect on Military Security. As an example, illiterate peasants have frequently been committing the grave offence of cutting off pieces of Military telephone wire. This offence has generally been committed openly to obtain binding wire and with little or no knowledge of the possibilities of its results on the Allied Forces. Nevertheless, the offence must be punished severely as it is a grave offence, is very prevalent and the whole security of the Army may be jeopardised by it.

substituted.

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Charles M. Spofford
CHARLES M. SPOFFORD,
Colonel, G. S. C.,
Chief Staff Officer.

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Palermo	36	AMGOT 8th Army	7
Ragusa	7	Region 2	10

AMGOT 5th Army	10
Region 3	10
File 263/HQ and original	2
Float	1
Divisions	9
M.G.S. A.F.H.Q.	12
Spares	10

AMCOT/4034/L
AMCOT HQ. - SICHU.

29 Sep. 43.

SUBJECT: Records in Summary Court Cases.

To : All Legal Officers (through S.C., O.).

1. Summary Court Dockets have been distributed to each Provincial Legal Officer for use of the Summary Courts in his Province.

2. These dockets have been prepared with a view to lessen the amount of paper work required. Some general directions will systematize and make more uniform the use of these records.

3. It is contemplated that notes will be kept by the Summary Court Judge in all cases. Where there appears to be a possibility of an appeal or a sufficient reason for the submission of the complete record to this headquarters, such record will be prepared on Form 8 and submitted. In all other cases, the notes will be filed and the record of the case will appear on the Summary Court loose leaf pages. If it becomes necessary for any reason, a form #8 can be called for at a later date. Some of the categories of cases where a form #8 report is desired are as follows:

- (a) When a sentence of 90 days imprisonment or more, or a fine of 4000 Lire or more is imposed.
- (b) When the case involves new or complicated questions of law, without regard to the extent of the penalty imposed.
- (c) Where unusual leniency or severity in the sentence is deemed necessary.
- (d) Where there is an indication that an application for review may be filed.
- (e) Where the Summary Court Judge feels that, for any reason, the full record should be submitted to this headquarters.

4. There is no necessity of preparing a full record in categories of cases where the cases themselves are of minor nature and otherwise do not come within the provisions of paragraph 3, above, such as violations of the curfew law, blackout regulations and similar offences.

5. It is believed that the violations, of the price fixing regulations, food control program, thefts and possession of Allied Military property, interfering with telephone and telegraph lines, including the theft of wire, riots and public disturbances, attacks on Allied soldiers, sabotage or war crimes are sufficiently serious, in general, to warrant a substantial sentence or fine and should therefore have a full record submitted.

6. A form of application for review is enclosed.

- (a) When a sentence or more is imposed.
- (b) When the case involves new or complicated questions of law, without regard to the extent of the penalty imposed.
- (c) Where unusual leniency or severity in the sentence is deemed necessary.
- (d) Where there is an indication that an application for review may be filed.
- (e) Where the Summary Court Judge feels that, for any reason, the full record should be submitted to this headquarters.

4. There is no necessity of preparing a full record in categories of cases where the cases themselves are of minor nature and otherwise do not come within the provisions of paragraph 3, above, such as violations of the curfew law, blackouts, regulations and similar offenses. 5

5. It is believed that the violations, of the price fixing regulations, food control program, thefts and possession of Allied Military property, interfering with telephone and telegraph lines, including the theft of wire, riots and public disturbances, attacks on Allied soldiers, sabotage or war crimes are sufficiently serious, in general, to warrant a substantial sentence or fine and should therefore have a full record submitted.

6. A form of application for review is inclosed, printed copies of which will be available for distribution within a few days.

7. It is desired, that this form be used in all applications for review, and be submitted to the Senior Legal Officer of each Province for the addition of any fact or comment desired. Such application will be forwarded promptly to this office with all necessary records for an adequate review. This record will be submitted in the English language or a translation attached. However, it is not to be understood, that review will be refused in cases where an individual submits a personal letter in the Italian language, directly to this office.

8. Records of convictions for misdemeanors and crimes, as far as practicable, should be obtained from the Carabinieri or other local sources and submitted with each case where a review is contemplated.

9. A substantial compliance with this directive by all concerned will render more efficient the work of this Legal Division.

By order of Chief Legal Officer:

W. R. Jordan
 W. R. Jordan,
 Lt. Col., GAO.,
 Chief Judicial Officer.

Copy to File ANGOT/4026/L.

4

Subject:- Fines Imposed by Allied Military Courts.

AMCOT/4002/L.

AMCOT H.Q. SICILY

To:- All Legal Officers and Finance Officers
(through S.C.A.Os.)

14th Sept. 1943.

With reference to the "Rules of Procedure for Allied Military Courts", para. 19 (2), for the purpose of collecting and accounting for fines imposed by the Allied Military Courts, Legal Officers are hereby directed to pay all fines collected to Sub-Accountants as directed in the AMCOT Accounting Manual.

4

W.C. Chatter
W.C. CHATTER, Lt. Col. (A.U.S.)
Chief Legal Officer.

Copies to: All Heads of Divisions.

Subject:- Cases of Juvenile Offenders.

AMGOT/4034/L

To: All Senior Legal Officers (Through S.C.A.O.s)

31 Aug. 43.

It has come to the attention of the Chief Legal Officer that arrests have been made of juveniles under 18 years of age who have violated AMGOT ordinances, laws or regulations.

1. (a) In these cases it is requested that the following procedure be followed:-

(i) That upon the arrests of minors and prior to trial, a copy of the charges will be given to the nearest Public Welfare Officer of AMGOT.

(ii) The Welfare Officer will procure or cause to be procured such information regarding the minor as may bear upon the case and will forward such information before trial together with a recommendation for use by the Judge in making his decision.

(iii) Such investigations and reports to the Judge will be made by the Welfare Officer at the earliest possible time in order not to delay the hearing unnecessarily.

(iv) The Welfare Officer will report back to the court on every case brought to his attention, even though no information on the individual in question can be furnished.

(v) Juveniles will be released pending trial on such conditions as may seem appropriate whenever possible. In those cases where detention of the juvenile is necessary, he or she must, if at all possible, be held in a place separate from those housing adult offenders.

(b) If the court feels that the juvenile over 16 years of age is of maturity, both physically and mentally, this individual could be dealt with as an adult offender after taking into consideration his limited experience. 3

(c) That judges of the military courts will base their procedure in hearing the cases of minors under 17 upon the accepted practices of juvenile courts in Britain and the U.S., namely:

(1) That first consideration be given to rehabilitation of the child instead of punishment.

(iii) Such investigations and reports to the Judge will be made by the Welfare Officer at the earliest possible time in order not to delay the hearing unnecessarily.

(iv) The Welfare Officer will report back to the court on every case brought to his attention, even though no information on the individual in question can be furnished.

(v) Juveniles will be released pending trial on such conditions as may seem appropriate whenever possible. In those cases where detention of the juvenile is necessary, he or she must, if at all possible, be held in a place separate from those housing adult offenders.

(b) If the court feels that the juvenile over 16 years of age is of maturity, both physically and mentally, this individual could be dealt with as an adult offender after taking into consideration his limited experience. 3

(c) That judges of the military courts will base their procedure in hearing the cases of minors under 17 upon the accepted practices of juvenile courts in Britain and the U.S., namely:

(i) That first consideration be given to rehabilitation of the child instead of punishment.

(ii) That where parents seem to be responsible persons the child be given an opportunity for readjustment in his own home under strict supervision of the parents or the police.

(iii) That where it is necessary to place the child in an institution, he be committed for an indefinite period to a school for juveniles, such as Centro Rieducazione Minorenni, until such time as the school decides that he will refrain from further delinquency and is ready for release.

(iv) That the hearings be held informally in a closed chamber instead of open court.

(v) That in cases of commitment, a court record or case be forwarded to the institution together with any recommendation which may have been made regarding treatment.

2. In the case of minors under 18 tried by the courts of Italy, copies of the records indicating the dispositions of such cases shall be forwarded promptly to the Public Health Division (Public Welfare Section) *W. Chanler*

W. CHANLER.

Lt. Col. (AUS). Chief Legal Officer.

Lt. Col. H. Q.,
15 Army Group

CONFIDENTIALAMCOT/4033/14AUG. 1943

SUBJECT:- Instructions to all Senior Legal Officers
in reference to referring cases to
Superior or General Military Courts.

To : All Senior Legal Officers (through S.C.A.O.s.)

1. Pursuant to the provisions of Rule 7, para (3) (b) of the "Rules of Procedure for Allied Military Courts"

(a) In any case referred by a Summary Court to a Superior Court the Senior Legal Officer or any officer designated by him, is empowered to order that the record be sent directly to the Superior Court for trial.

(b) In any case referred to a General Court, the Senior Legal Officer is empowered to order the record sent directly to the General Court for trial, when facilities of transportation and communication are of such a limited nature that undue delay might result if such record were transmitted to the Chief Legal Officer.

2. Pursuant to the provisions of Rule 5, para (1) of the "Rules of Procedure of Allied Military Courts":

(a) The Senior Legal Officer of any Province may order that any particular Case or class of cases within his province shall be brought directly before a Superior Court. The Senior Legal Officer may also order that any particular case be brought directly before a General Court when facilities of transportation and communication are of such a limited nature

(b) In any case referred to a General Court, the Senior Legal Officer is empowered to order the record sent directly to the General Court for trial, when facilities of transportation and communication are of such a limited nature that undue delay might result if such record were transmitted to the Chief Legal Officer.

2. Pursuant to the provisions of Rule 5, para (1) of the "Rules of Procedure of Allied Military Courts":

2

(a) The Senior Legal Officer of any Province may order that any particular Case or class of cases within his province shall be brought directly before a Superior Court. The Senior Legal Officer may also order that any particular case be brought directly before a General Court when facilities of transportation and communication are of such a limited nature that undue delay might result if such record were first transmitted to the Chief Legal Officer, and when there is a good and valid reason for dispensing with the procedure before a Summary Court.

WMA Chandler

WILLIAM C. CHANDLER
Lt. Col.
Chief Legal Officer.

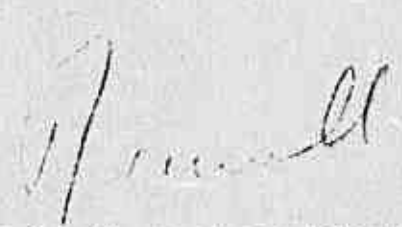
Subject:- Constitution of Allied Military Courts

AMCOT/4002/L

10 Aug 43

1. Each Senior Civil Affairs Officer is hereby authorized to appoint, by special order, such Summary and Superior Courts he may deem necessary, to hear and determine such cases as may arise in the districts and territories under his control in accordance with the provisions of Proclamation No. 4.
2. All Senior Civil Affairs Officers are authorized to sit as a Summary Military Court or as a member of a Superior Military Court.
3. All Officers of AMCOT who are lawyers by profession are hereby designated as Judicial Officers within the meaning of Proclamation No. 4.
4. No officer not assigned to AMCOT will be appointed to an Allied Military Court without the consent of his Commanding Officer.
5. Civil Affairs Police Officers will not be appointed to Allied Military Courts.
6. Two copies of all such orders of appointment will be forwarded to this Headquarters directed to the attention of the Chief Legal Officer.

AMCOT
15 Army Group.


Major-General Lord Rennell of Rodd,
Chief Civil Affairs Officer.