

16 February 1944.

SUBJECT: Jurisdiction of Italian Military Tribunals (Directive of the Ministry of Justice for the Prefect of Foggia).

TO : H.A. The Undersecretary of State
Ministry of Penion and Justice.

I regret that it has not been possible to transmit the above referred to Directive of 72 Jan. 44 in the form presented to me on account of the fact that it is first necessary to bring the following points to your notice.

I wish to point out that according to the accepted principles of international law the sovereignty over an occupied territory becomes latent for the time of occupation and the powers of administration pass to the occupant. This basic principle operates also in the Allied Controlled territories of Italy; nor has its application been affected by the special situation which has developed in Italy. May I suggest therefore that you reconsider the penultimate paragraph of your letter in the light of this statement of law.

Furthermore, it might have escaped your attention that the Allied Military Governor has consented to the reopening of Italian Military Tribunals in the territory controlled by him on condition that certain rules dictated by military considerations be observed by these Tribunals. I am enclosing a copy of the rules for your information. You might observe that among other limitations, no civilian may be tried by a Military Tribunal without previous consent of the Military Governor.

A. B. THACKER

Major

for Chief Legal Officer.

48

1/9205/307

MINISTER OF GRACE AND JUSTICE

FILE N. 443

Ref. 6025 dated Nov 31 1943

Peri 22 Jan 1944

SUBJECT: JURISDICTION OF OUR MILITARY TRIBUNALS.

TO : YOUR EXCELLENCY THE PREFECT OF TOUGIA IN BOVINO.

With reference to your request on the above subject, I wish to communicate to you, that in the opinion of this Ministry there is no doubt as to the competence of our Military Tribunals to try also, in Occupied Zones (Territories) the crimes set forth by the law of June 16, 1940 N. 582, modified by R.D.I. Dec. 30, 1942 N. 1365, for the following reasons.

All crimes against the personality of the state set forth in book 2 title 1^o P.C. were placed under the jurisdiction of the Special Tribunal for the Defense of the State, by the R.D.I. June 4, 1931, N. 274.

When however, aggravating circumstances set forth in Article 61 N. 5 P.C. dependent upon a state of war occur, these crimes set forth by Article 1^o subsection (a), of the same decree, be it an offense of:

- (1) Devastation or pillage (art. 419 P.C.)
- (2) Carnal Violence (art. 519 P.C.)
- (3) Homicide (art. 573 P.C.)
- (4) Robbery (art. 628 P.C.)
- (5) Extortion (art. 629 P.C.)
- (6) Seizure of a person for purposes of robbery or extortion (art. 630 P.C.)

are considered, for all purposes, by the R.D.I. Nov 30, 1942, N. 1365 Article 2, as crimes against the personality of the state. Thus for the same reason, such crimes must be considered within the jurisdiction of the said Special Tribunal who alone possessed the authority to remit the trials to ordinary authorities for reasons of convenience. Article 2^o R.D. Jan 30, 1942 N. 1665, in relation to Article 2 R.D. Jan. 15, 1936 N. 2136.

When the Tribunal for the defense of the State was suppressed by R.D.I. July 23, 1943 N. 668 the jurisdiction over crimes which formerly belong to the above named body, devolved during the state of war to the Military Tribunal, which thus had been vested with the jurisdiction of crimes against the personality of the state, provided for by book 2^o title 1^o P.C. and of crimes set forth in subsection (a) Article 1 R. D Nov 30 1942, N. 1365 which also are considered for all purposes as crimes against the personality of the state.

Such jurisdiction remained untouched even after the passage of (R.D.I. Dec 6 1943 N. 22(b)), which restores to the ordinary judicial authority (in derogation of TU Public Safety Law Article 219 which assigned said jurisdiction also to the Military Tribunal) the jurisdiction over common crimes, crimes against public order, crimes against public administration, crimes against property or crimes against the persons, but which indubitably has left to the jurisdiction of the Military Tribunals, who by virtue of R.D.I. July 23, 1943 N. 668 retain jurisdiction over the crimes formerly belonging to the jurisdiction of the Special Tribunal as above mentioned) of devastation, pillage, carnal violence set forth in the above

of our Military Tribunals to try also, in Occupied Zones (Territories) the crimes set forth by the law of June 16, 1940 N. 582, modified by R.D.I. Dec. 30, 1942 N. 1365, for the following reasons.

All crimes against the personality of the state set forth in book 2 title 1^o P.C. were placed under the jurisdiction of the Special Tribunal for the Defense of the State, by the R.D.I. June 4, 1931, N. 274.

When however, aggravating circumstances set forth in Article 61 N. 5 P.C. dependent upon a state of war occur, those crimes set forth by Article 1^o subsection (e), of the same decree, be it an offense of:

- (1) Devastation or pillage (art. 440 P.C.)
- (2) General Violence (art. 519 P.C.)
- (3) Homicide (art. 575 P.C.)
- (4) Robbery (art. 628 P.C.)
- (5) Extortion (art. 629 P.C.)

(6) Seizure of a person for purposes of robbery or extortion (art. 630 P.C.)

are considered, for all purposes, by the R.D.I. Nov 30, 1942, N. 1365 Article 2, as crimes against the personality of the state. Thus for the same reason, such crimes must be considered within the jurisdiction of the said Special Tribunal who alone possessed the authority to remit the trials to ordinary authorities for reasons of convenience. Article 2^o R.D. Jan 30, 1942 N. 1665, in relation to Article 2 R.D. Jan. 15, 1936 N. 2136.

When the Tribunal for the Defense of the State was suppressed by R.D.I. July 23, 1943 N. 668 the jurisdiction over crimes which formerly belonged to the above named body, devolved during the state of war to the Military Tribunal, which thus had been vested with the jurisdiction of crimes against the personality of the state, provided for by book 2^o title 1^o P.C. and of crimes set forth in subsection (a) Article 1 R. D Nov 30 1942, N. 1365 which also are considered for all purposes as crimes against the personality of the state.

Such jurisdiction remained untouched even after the passage of (R.D.I. Dec 6 1943 N. 22(b)), which restores to the ordinary judicial authority (in derogation of TU Public Sec by Law Article 219 which assigned said jurisdiction also to the Military Tribunal) the jurisdiction over common crimes, crimes against public order, crimes against public administration, crimes against property or crimes against the persons, but which irrefragably has left to the jurisdiction of the Military Tribunals, who by virtue of R.D.I. July 23, 1943 N. 668 retain jurisdiction over the crimes formerly belonging to the jurisdiction of the Special Tribunal as above mentioned) of devastation, pillage, carnal violence, etc., set forth in the above mentioned Article 1 R.D.I. December 30, 1942 when aggravating circumstances set forth by Article 61 N. 5 P.C. and dependent upon a state of war occur.

That is the present status of our legislation which must be considered unchanged even in occupied territories where above all, by virtue of the terms of the Armistice, and by force of the principles of international law no sovereignty has been transferred to the occupant but to him is given only the authority to impede acts inimical to him with the right of trying these acts in Military Courts.

57
However the special situation (sui generis) brought about by the Armistice the state of co-belligerency, implies the full acknowledgment, on the part of the United Nations, of the Italin Armed Forces as tactical unit fighting with them; the same implies, too, the recognition of the Judicial Organs which follow the forces themselves and which are charged with the supervision over the discipline and enforcement of war laws, for one cannot conceive of discipline and laws without organs directed to their enforcement. In fact the full jurisdiction of the Military Tribunal, even in Occupied Territories, is acknowledged; it cannot be doubted that such jurisdiction must comprise all the crimes devolved to its competence by laws and consequently. Also the offense provided for by Art 10 R.D.L. Nov 11 1942 above cited, when the aggravating Special circumstances contemplated by this Article occur.

above cited, when the aggravating Special circumstances contemplated by this
Article occur.

66

Article occurs.

and consequently also the offense provided for by Art. 10, B.D.L. Not if laws
such jurisdiction must confine all the on now devoted to the competence by laws
tribunal, even in occupied territories, is acknowledged; it cannot be doubted that
organs directed to their enforcement. In fact the full jurisdiction of the military
and enforcement of war laws, for one cannot conceive of discipline and laws without
forces themselves and which are charged with the administration over the discipline
the same implies, too, the recognition of the judicial organs which follow the
United Nations, of the Italian Armed Forces as tactical unit fighting with them;
the state of co-belligerency, implies the full recognition of the fact of the
however the above attention (and General's) present about by the authorities

MINISTER OF GRACE AND JUSTICE

FILE N. 443

Ref. 6023 dated Nov 31 1943

Bari 22 Jan 1944

SUBJECT: JURISDICTION OF OUR MILITARY TRIBUNALS.

TO : YOUR EXCELLENCY THE PREFECT OF FORGIA IN BOVINO.

With reference to your request on the above subject, I wish to communicate to you, that in the opinion of this Ministry there is no doubt as to the competence of our Military Tribunals to try also, in Occupied Zones (Territories) the crimes set forth by the law of June 16, 1940 N. 582, modified by R.D.L. Dec. 30, 1942 N. 1365, for the following reasons.

All crimes against the personality of the State set forth in book 2 title 1^o P.C. were placed under the jurisdiction of the Special Tribunal for the Defense of the State, by the R.D.L. June 4, 1931, N. 274.

When however, aggravating circumstances set forth in Article 61 N. 5 P.C. dependent upon a state of war occur, those crimes set forth by Article 1^o subsection (a), of the same decree, be it an offense of:

- (1) Devastation or pillage (art. 419 P.C.)
- (2) Carnal Violence (art. 519 P.C.)
- (3) Homicide (art. 575 P.C.)
- (4) Robbery (art. 628 P.C.)
- (5) Extortion (art. 629 P.C.)
- (6) Seizure of a person for purposes of robbery or extortion (art. 630 P.C.)

are considered, for all purposes, by the R.D.L. Nov 30, 1942, N. 1365 Article 2, as crimes against the personality of the state. Thus for the same reason, such crimes must be considered within the jurisdiction of the said Special Tribunal who alone possessed the authority to remit the trials to ordinary authorities for reasons of convenience. Article 2^o R.D. Jan 30, 1942 N. 1665, in relation to Article 2 R.D. Jan. 15, 1936 N. 2136.

When the Tribunal for the defense of the State was suppressed by R.D.L. July 23, 1943 N. 668 the jurisdiction over crimes which formerly belong to the above named body, devolved during the state of war to the Military Tribunal, which thus had been vested with the jurisdiction of crimes against the personality of the state, provided for by book 2^o title 1^o P.C. and of crimes set forth in subsection (a) Article 1 R. D. Dec 30 1942, N. 1365 which also are considered for all purposes as crimes against the personality of the state.

Such jurisdiction remained untouched even after the passage of (R.D.L. Dec 6 1943 N.22(b)), which restores to the ordinary judicial authority (in derogation of TU Public Safety Law Article 219 which assigned said jurisdiction also to the Military Tribunal) the jurisdiction over common crimes, crimes against public order, crimes against public administration, crimes against property or crimes against the persons, but which indubitably has left to the jurisdiction of the Military Tribunals, who by virtue of R.D.L. July 23, 1943 N. 668 retaining jurisdiction over the crimes formerly belonging to the jurisdiction of the Special Tribunal as above mentioned) of devastation, pillage, carnal violence, etc., set forth in the above

set forth by the law of June 16, 1940 N. 582, modified by R.D.L. Dec. 30, 1942 N. 1365, for the following reasons.

All crimes against the personality of the state set forth in book 2 title 1^o P.C. were placed under the jurisdiction of the Special Tribunal for the Defense of the State, by the P.D.L. June 4, 1931, N. 274.

When however, aggravating circumstances set forth in Article 61 N. 5 P.C. dependent upon a state of war occur, those crimes set forth by Article 1^o subsection (a), of the same decree, be it an offense of:

- (1) Devastation or pillage (art. 419 P.C.)
- (2) Carnal Violence (art. 519 P.C.)
- (3) Homicide (art. 575 P.C.)
- (4) Robbery (art. 628 P.C.)
- (5) Extortion (art. 629 P.C.)
- (6) Seizure of a person for purposes of robbery or extortion (art. 630 P.C.)

are considered, for all purposes, by the R.D.L. Nov 30, 1942, N. 1365 Article 2, as crimes against the personality of the state. Thus for the same reason, such crimes must be considered within the jurisdiction of the said Special Tribunal who alone possesses the authority to remit the trials to ordinary authorities for reasons of convenience. Article 2^o R.D. Jan 30, 1942 N. 1665, in relation to Article 2 R.D. Jan. 15, 1936 N. 2136.

When the Tribunal for the Defense of the State was suppressed by R.D.L. July 23, 1943 N. 668 the jurisdiction over crimes which formerly belong to the above named body, devolved during the state of war to the Military Tribunal, which thus had been vested with the jurisdiction of crimes against the personality of the state, provided for by book 2^o title 1^o P.C. and of crimes set forth in subsection (a) Article 1 R.D. Nov 30 1942, N. 1365 which also are considered for all purposes as crimes against the personality of the state.

Such jurisdiction remained untouched even after the passage of (R.D.L. Dec 6 1943 N.22(b)), which reverts to the ordinary judicial authority (in derogation of TU Public Safety Law Article 219 which assigned said jurisdiction also to the Military Tribunal) the jurisdiction over common crimes, crimes against public order, crimes against public administration, crimes against property or crimes against the persons, but which indubitably has left to the jurisdiction of the Military Tribunals, who by virtue of R.D.L. July 23, 1943 N. 668 retaining jurisdiction over the crimes formerly belonging to the jurisdiction of the Special Tribunal as above mentioned) of devastation, pillage, carnal violence, etc., set forth in the above mentioned Article 1 R.D.L. December 30, 1942 when aggravating circumstances set forth by Article 61 N.5 PC and dependent upon a state of war occur.

That is the present status of our legislation which must be considered unchanged even in occupied territories where above all, by virtue of the terms of the Armistice, and by force of the principles of international law no sovereignty has been transferred to the occupant but to him is given only the authority to impede acts obnoxious to him with the right of trying these acts in Military Courts.

L.V.

- 2 -

However the special situation (sui generis) brought about by the Armistice the state of co-belligerency, implies the full acknowledgement, on the part of the United Nations, of the Italian Armed Forces as tactical unit fighting with them; the same implies, too, the recognition of the Judicial Organs which follow the forces themselves and which are charged with the supervision over the discipline and enforcement of war laws, for one cannot conceive of discipline and laws without organs directed to their enforcement. In fact the full jurisdiction of the Military Tribunal, even in Occupied Territories, is acknowledged; it cannot be doubted that such jurisdiction must comprise all the crimes devolved to its competence by laws and consequently also the offense provided for by Art 10 R.D.L. Nov. 11 1942 above cited, when the aggravating Special circumstances contemplated by this Article occur.

above cited, when the aggravating Special circumstances contemplated by this Article occur

42

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

/gnt

(54)

Interview with Brig. Lush on 26 Dec. 1943.

SUBJECT: Italian Military Tribunals in 15th Army Gp. Territory.

Brig. Lush wrote to ACC that according to his information received from Lt. Col. Howe, our letter to Messe of Dec. 1 does not correspond to what was actually agreed upon between him and Col. Upjohn. They agreed, it is said in the letter, that the rules will be sent to the Italians for trial in forward areas. Our letter to Messe presents the rules as a definite instruction. Major Thackrah pointed out that it has been agreed by Lt. Col. Howe that the rules will be put into effect in their present form. If it should appear later on that the form of supervision is too close, an amendment will be issued. Brig. Lush took notice of this, and withdrew his above mentioned letter. He declared that he will write another letter conforming to Maj. Thackrah's explanation.

47

Man submitted to the following description:

HEADQUARTERS
ALLIED CONTROL COMMISSION
(SAIAPSC DETACHMENT)
LEGAL SUB-COMMISSION
APO 394

(52)

ACC/4086/A

US/jpl

2 February 44

Subject : F E R R E T T A Emilio

To : HQ. 10 2nd District.

1. Reference your 2022/41 G. dated 13 Jan 44 and conversation Colonel Upjohn, Major Mattia on the 18th Jan.
2. This case has now been reconsidered and it is considered that the above mentioned soldier should be handed over to the Italian Army for trial.
3. The exact nature of the charges against him should be left to the appropriate Italian Military Tribunal.
4. As FERRATA is an Italian Soldier it is felt that if he were handed over to Allied Authorities he would be entitled to be treated as a prisoner of war and therefore not subject to trial before an Allied Military Tribunal.
5. The delay in answering your letter is regretted but has been caused by the move of HQ.

GERALD UPJOHN

Colonel

Chief Legal Officer

33

100
SUBJ: BERETTA Emilio.HQ 2 District GMP.
2022/41 G.

17 JAN 1944

A.C.C. ✓

13 Jan 44

1. The a/n Italian soldier actively collaborated with the Germans from 9 Sep 43 - 25 Oct 43. All documents relating to his case are held by 276 Field Security Section at SALERNO, where BERETTA is at present detained.
2. May this HQ be informed as to whether BERETTA should be tried before an Allied Military Tribunal on the charge of collaborating with Germany after the Armistice, or whether he should be tried by an Italian Military Tribunal on a charge of having disobeyed, whilst still a soldier, the terms of the Armistice!

TOS 1130 A

for L. Kamm on at Payl
Major-General,
Commanding 2 District.

30

2011

HERBERT, Emilio

1) Herbert, Emilio de la Cruz, born 26 July 1914, resident at MICHIGAN, Province of CHMO, driver by trade, was arrested by the Carabinieri at SILENO on 25 Oct 43 and detained by 276 Field Security Section on the grounds that he wilfully gave help to the enemy by driving a motor vehicle from MICHIGAN to SILENO (Province of COTENZA) between the dates of 9 and 12 Sept 43, and in that on the 13 Sep 43 he landed over the said vehicle to the enemy.

2) On initiative day HERBERT was near SORRENTO (Province of CALABRIA), being transferred with his group of about 300 vehicles to SORRENTO after the Justice. According to attached statement, he learned of the Justice on 8 Sep 43 through friends; (the terms of the Justice were not published till the morning of the 10th, but on the evening of the 8th Marshall BELLINI broadcast to the Italian people instructing them not to cooperate with the Germans). Even SORRENTO ARMY, BELLINI said, the Germans forced him and his comrades CALABRIA to drive them to SORRENTO, where they arrived on 13 Sep 43. The Germans did not require him to proceed, so he remained at the house of Signor PALMISTO Antonio, Contrada SORRENTO, until 8 Oct 43. He then obtained a certificate (attached), from the (MGR) at SORRENTO to the effect that he had presented himself there and received instructions to proceed to SORRENTO via S. From SORRENTO he came on foot to SORRENTO, then to SORRENTO, and thence by rail to SORRENTO. Here he stayed until 25 Oct 43 because he had friends in the town and because he had heard that movement to NAPLES was forbidden (actually it was permitted some time previous to 25 Oct 43). CALABRIA went on to SORRENTO where he had friends and CALABRIA had no further news of him.

3) Searched by OVER and VLB on the day of his arrest, the following note, written in German and subsequently retained as evidence by 276 Field Security Section, was found on his person:-

13/9/43

"The Italian soldiers Emilio BERTTA and Antonio CASARULLA, after being disarmed, placed themselves of their own free will at our disposal as drivers and handed over their vehicles and then went away. They proved very helpful and gave us every assistance. They are now on their way home to MICHIGAN. Empty German trucks are requested to grant them lifts if possible".

(Sgt.) VOLLMUTH, P.O. 4/a Calman.

VOLLMUTH also gave BERTTA his name and address in Germany (see attached slip of paper found on BERTTA at time of arrest).

BERTTA made the following statement concerning the note (see attached statement):-

"The note was made for me at my request in order to be able to vindicate myself with other Germans so as not to be maltreated or robbed. As I had stated to the German Warrant Officer, that I was from SORRENTO, he said that I would be able to grant them lifts if possible".

being transferred with the attached state-
ment, he learned of the Justice on 8 Sep 43 through friends; (the terms of the Justice were not published till the morning of the 12th, but on the evening of the 9th Marshall informed broadcast to the Italian people instructing them not to co-operate with the Germans). From ARMANDO ALBANESE, BERNINI said, the Germans forced him and his comrades to drive them to HIVERIA, where they arrived on 13 Sep 43. The Germans did not require him to proceed, so he remained at the house of Signor VILLO-NO Antonio, Contrain FIANO BIVILLO, until 8 Oct 43. He then obtained a certificate (attached), from the CCR, at BIVILLO to the effect that he had presented himself there and received instructions to proceed to HIVERIA to his HQ. From BIVILLO he came on foot to HIVERIA, then to CUNIGLI, and thence by rail to SALING. Here he stayed until 25 Oct 43 because he had friends in the town and because he had heard that movement to HIVERIA was forbidden (actually it was permitted now from previous to 25 Oct 43). BERNINI went on to HIVERIA where he had friends and BERNINI had no further news of him.

3) Searched by GONN and REC on the day of his arrest, the following note, written in German and subsequently retained as evidence by 276 Field Security Section, was found on his person:-

13/9/43

The Italian soldiers Emilio BERNINI and Antonio BIVILLO, after being disarmed, placed themselves of their own free will at our disposal as drivers and handed over their vehicles and then went away. They proved very helpful and gave us every assistance. They are now on their way home to HIVERIA. Every German trucks are requested to grant them life if possible".

(Sgt.) VOLKME, I.O. 4/c Column.

VOLKME also gave BERNINI his name and address in Germany (see attached slip of paper found on BERNINI at time of arrest).

BERNINI made the following statement concerning the note (see attached statement):-

"The note was made for me at my request in order to be able to vindicate myself with other Germans so as not to be maltreated or robbed. As I had stated to the German Warrent Officer, that I was the HIVERIA, he told me that he would write the note so that I would be able to get to HIVERIA quickly. I did not know what was really written in the note, not being conversant with the German language. The German Warrent Officer did not give me a translation of the note".

It is our opinion that REAR did actually lend the Germans, as two meanings can be read into the furnished him by the Germans, and obviously supplied to lists in German transport. Furthermore, we are not sure long stay in SALENO when he had orders to proceed not sure of the address of his friends in SALENO as a name of the people, although his lawyer's narrative states "decided to stay in SALENO, where he had acquaintances". (See attached document). REAR maintains that the Italian Command was not in SALENO and that he intended to go there "in about a week's time".

5. The 2nd Article of the Armistice, terms of which were published on the morning of 12 Sep 45, when REAR was still collaborating with the enemy, states that "ITALY will use its best endeavours to deny to GERMANY facilities that might be used against the UNITED NATIONS".

6. REAR was in uniform during the time he was with the Germans.

5 Jan 44
O. M. F.

No. 276 Field Security Section,
Intelligence Corps.

MAPS and that he intended to go there

5. The 2nd article of the Armistice, terms of which were published on the morning of 12 Sep 43, when BRENNER was still collaborating with the enemy, states that "Prisoners will use its best endeavours to deny to GERMANY facilities that might be used against the UNITED NATIONS".

6. BRENNER was in uniform during the time he was with the Germans.

No. 276 Field Security Section,
Intelligence Corps.

5 Jan 44
C. K. P.

36

COPY

BRUNO RIVELLO

1) Bruno Rivello di Luigi, born 26 July 14, resident at MISSOGNA, Province of NOVO, driver by trade, was arrested by the Carabinieri Regimental Base at SALINGRO on 25 Oct 43 and detained by 276 Field Security Section on the grounds that he wilfully gave help to the enemy by driving a motor vehicle from VERBANO ABBADIA to RIVELLO (Province of NOVARA) between the dates of 9 and 12 Sept 43, and in that on the 13 Sep 43 he handed over the said vehicle to the enemy.

2) On Amistice Day BRUNO was near SOVANA MARMI (Province of CHIARI), being transferred with his group of about 100 vehicles to SPERDINO ALBINO after the Amistice. According to attached statement, he learned of the Amistice on 8 Sep 43 through friends; (the terms of the Amistice were not published till the morning of the 10th, but on the evening of the 9th Marshall MARCELLO broadcast to the Italian people instructing them not to co-operate with the Germans). Even BRUNO, however, BRUNO said, the Germans forced him and his comrades to drive them to RIVELLO, where they arrived on 13 Sep 43. The Germans did not require him to proceed, so he remained at the house of Signor ANTONIO ANTONIO, Contessa ANTONIO RIVELLO, until 8 Oct 43. He then obtained a certificate (attached), from the COM. of RIVELLO to the effect that he had presented himself there and received instructions to proceed to VERBANO to his HQ. Even RIVELLO he came on foot to VERBANO, then to VERBANO, and thence by rail to SALINGRO. Here he stayed until 25 Oct 43 because he had friends in the town and because he had heard that movement to VERBANO was forbidden (actually it was permitted from the 1st of Oct to 25 Oct 43). BRUNO went on to VERBANO where he had friends and BRUNO had no further news of him.

3) Seized by GERM and VER on the day of his arrest, the following note, written in German and subsequently retained as evidence by 276 Field Security Section, was found on his person:-

13/9/43

The Italian soldiers BRUNO BRUNO and ANTONIO ANTONIO, after being disarmed, placed themselves of their own free will at our disposal as drivers and handed over their vehicles and then went away. They proved very helpful and gave us every assistance. They are now on their way home to VERBANO. Every German truck is requested to wait given life if possible".

(Sgt.) VERBANO, C.O. 1/c Column.

BRUNO also gave BRUNO his name and address in the army (see attached list of paper found on BRUNO at time of arrest).

BRUNO made the following statement concerning the note (see attached statement):-

"The note was made for me at my request in order to be able to vindicate myself with other Germans so as not to be maltreated and robbed. As I had stated to the German Warrent Officer, that I was from VERBANO, he told me that he would write the note so that I would be able to get to VERBANO quickly. I did not know what was really going on."

terms of the Republic were not published till the morning of the 14th, but on the evening of the 8th Marshall BODOLLO broadcast to the Italian people announcing that not to co-operate with the Germans). Even BODOLLO himself, BODOLLO said, has been forced him and his comrades to drive them to BODOLLO, where they arrived on 13 Oct 43. The Germans did not refuse him to proceed, so he remained at the house of Signor BODOLLO in BODOLLO, Contrada BODOLLO RIVELLO, until 13 Oct 43. He then obtained a certificate (attached), from the CSM, at BODOLLO to the effect that he had presented himself there and received instructions to proceed to BODOLLO to his HQ. From BODOLLO he came on foot to BODOLLO, then to BODOLLO, and thence by rail to BODOLLO. Here he stayed until 25 Oct 43 because he had friends in the town and because he had heard that it was forbidden (actually it was permitted some time previous to 25 Oct 43). On 25 Oct 43, he went on to BODOLLO where he had relatives and friends and no further news of him.

3) Seized by GUR and on the day of his arrest, the following note, written in German and subsequently retained as evidence by 276 MIAD Security Section, was found on his person:-

13/9/43

The Italian soldiers Emilio BODOLLO and Antonio BODOLLO, after being disarmed, placed themselves at their own fire with our disposed as drivers and handed over their vehicles and then went away. They proved very helpful and gave us every assistance. They are now on their way home to BODOLLO. Hardy German trucks are requested to grant them lives if possible.

(Sign.) BODOLLO, P.O. 4/2 Column.

BODOLLO also gave BODOLLO his name and address in the many (as attention of paper found on BODOLLO at time of arrest).

BODOLLO made the following statement concerning the note (as attached at BODOLLO):-

"The note was made for me at my request in order to be able to vindicate myself with other Germans so as not to be maltreated and robbed. As I had stated to the German Warrent Officer, that I was from BODOLLO, he told me that he would write the note so that I would be able to get to BODOLLO quickly. I did not know what was really written in the note, not being conversant with the German language. The German Warrent Officer did not give me a translation of the note".

It is our opinion that HERRERA did actually lend voluntary service to the Germans, as no two meanings can be read into the declaration furnished him by the Germans, and obviously supplied to help him with lifts in German transport. Furthermore, we are not satisfied with his long stay in SALINAS when he had orders to proceed to NAPLES. He is not sure of the address of his friends in SALINAS and does not know the name of the people, although his lawyer's narrative states that he "decided to stay in SALINAS, where he had acquaintances". (See attached document). HERRERA maintains that the Italian Command was not in NAPLES and that he intended to go there "in about a week's time".

5. The 2nd article of the Amistice, terms of which were published on the morning of 12 Sep 43, when HERRERA was still collaborating with the enemy, states that "ITALY will use its best endeavours to deny to GERMANY facilities that might be used against the UNITED NATIONS".

6. HERRERA was in uniform during the time he was with the Germans.

5 Jan 44
C. M. P.

No. 276 Field Security Section,
Intelligence Corps.

Italian Military TribunalRules for the Establishment of Italian Military Tribunal

Italian Military Tribunal may be established in accordance with the Military Penal Code of May 20, 1941 in areas occupied by the Allied Forces upon the following terms in conflict zone:

- (a) Italian Military Tribunal may be established in respect of offenses whether committed before or after the commencement of occupation.
- (b) No ordinary civilians, or prisoners of war, members of the Italian Forces, Carabinieri or civilians employed by the Military, Naval or Air Force Authorities shall be charged before the Italian Military Court without the consent of the Military Governor.
- (c) The Military Governor may at any time suspend or cause from the Italian Military Tribunal and any order that such a court be heard and determined by such Tribunal as he deems fit.
- (d) Italian Military Tribunal will follow the procedure set forth in Book 4 of the "Military Penal Code for War", as amended reflecting this procedure as may have been from time to time promulgated in various decrees issued after the date of entry into effect of the Code will not be effected.

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

(f) Until it is impossible to constitute the Tribunal, appeals shall be referred from an Italian Military Tribunal and shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.

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

(h) (1) Where the offense charged is also an offense against any provision of Order issued or to be issued by the Military Governor or under his authority, or

(2) is also an offense against the laws and customs of war, or

- (b) No ordinary civilians, ex prisoners of war, members of the Police Forces, Carabinieri or Militiamen employed by the Military, Naval or Air Force Authorities shall be charged before any Italian Military Court without the consent of the Military Governor.
- (c) The Military Governor may at any time withdraw cases from the Italian Military Tribunal and may order that such cases shall be heard and determined by such Trial and Appeal Courts.
- (d) Italian Military Tribunals will follow the procedure set forth in Book 4 of the Military Penal Code for War. An amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (e) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (f) Until it is impossible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (g) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) (1) Where the offense charged is also an offense against any proclamation or Order issued or to be issued by the Military Governor or under his authority, or
- (2) is also an offense against the laws and usages of war, or
- (3) is also an offense triable under the provisions of the Italian Penal Code, then in such cases the name and rank of the accused, the offense with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.
- (i) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or Brigadier to whom he may have delegated such powers in writing. The confirmation of the Italian Unit Commander set forth in Article 291 of the Military Law shall be required.

145
The Military Governor may at any time report an officer or
officers of the Allied Forces to agents all or any of the above
mentioned persons.

(k) The Military Governor may at any time request, suspend or extend
any of the aforesaid.

(l) If any person is arrested by the Italian Military and only for
the purpose of being tried before an Italian Military Tribunal,
within five days of such arrest charges shall be served on such
person and a copy thereof shall be transmitted to the Military
Governor and if such person is not brought to trial within
twenty-eight days from the date of service of such charges a
report setting forth the reasons for such delay shall be trans-
mitted to the Military Governor.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LEGAL SUB-COMMISSION

AMS/ROSE/L

16 January 1944

SUBJECT: Status of Italian Military Personnel.

TO : RCLC (thru RMAO) Region I

1. Reference your RLC 013.13/483 dated 10 Jan 1944.

2. Before this HQ can undertake to consider your enquiry it is necessary that it have your definition of the term "unparoled Italian Military Personnel" and full facts as to persons included therein.

R.H. VILMER
Lt. Col. SAC
Deputy Chief Legal Officer.

Copy to: Col. G. Upjohn (Brindisi)
(with copies of basic correspondence)

File: HLE 013.13/WRF

1st Ind.

ALLIED MILITARY GOVERNMENT SIXTH HEADQUARTERS

10 January 1944

TO: AMG HQ., APO 194.

AMG.

1. Forwarded.
2. This Headquarters is of the opinion that the problem of "unparoled Italian Military Personnel" is one of general importance to all Regions.
3. Instructions are requested as to the status of such personnel.

For Lt. Col. ROBERTI, RCAC:

William R. Jordan
WILLIAM R. JORDAN,
Lt. Col. S. A. C.,
Regional Legal Officer

ALLIED MILITARY GOVERNMENT ✓

CIVIL AFFAIRS OFFICE

PROVINCE OF TRAPANI

13 Via Regina Margherita
(TRAPANI Sicily)

SCAB/3050/L
7 January, 1944.

42

SUBJECT: Status of Italian Military Personnel.

TO : Legal Division, Sicily Region Hq.

THRU : RCAO, Sicily Region Hq.

1. Reference Proc. 4, Art. 11, Sec. 2; are
unparoled Italian Military Personnel, at large,
"persons treated as prisoners of war under the Gen-
eva Convention of July 27, 1929?"

J. A. Langfitt
S. A. LANGFITT
LT. COL. J.A.G.D.
S.C.A.O., Trapani.

JAL/jjd

FORWARDED:

Floyd E. Thomas
FLOYD E. THOMAS
LT. COL. INF.,
S.C.A.O., Trapani.

3

72

So it equals British Subject

Rules for the Establishment of Italian Military Tribunals.

Italian Military Tribunals may be established in accordance with the Military Penal Code of War dated 20 February 1943, in areas occupied by the Allied Forces upon the following terms and conditions:-

- (a) Italian Military Tribunals may try cases in respect of offenses whether committed before or after the commencement of occupation.
 - (b) No ordinary civilians, or Prisoners of War, members of the Police forces, Carabinieri or Civilians employed by the Military, Naval or Air Force Authorities shall be charged before any Italian Military Courts without the consent of the Military Governor.
 - (c) If any person is arrested by any Italian Military Authority for the purpose of being tried before a Military Tribunal then within 5 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 28 days from the date of service of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.
 - (d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
 - (e) Italian Military Tribunals will follow the procedure set forth in Book 4 of the Military Penal Code for War. Any amendments affecting this procedure may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
 - (f) The Military Governor may appoint one or more advisors of the Allied Forces to sit on any Italian Military Tribunal.
 - (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reverse or commute the sentence or order a new trial.
 - (h) The Italian Military Tribunal shall, within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reverse or commute the sentence or order a new trial.
- (i) (i) Where the offense charged is also an offense against any Proclamation or Order issued or to be issued by the Military Governor or under his authority, etc.,
 - (ii) is also an offense against the laws and usages of war, etc.
 - (iii) is also an offense triable under the provisions of the Italian Penal Code, then in such cases the name and rank of the accused, the offense with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the

- Authorities shall be charged before any Italian Military Courts without the consent of the Military Governor.
- (c) If any person is arrested by any Italian Military Authority for the purpose of being tried before a Military Tribunal then within 5 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 28 days from the date of service of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.
- (d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
- (e) Italian Military Tribunals will follow the procedure set forth in Book 4 of the "Military Penal Code for War". Any amendment affecting this procedure is may have been given time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (f) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or sentence, reverse or commute the sentence or order a new trial.
- (h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or sentence, reverse or commute the sentence or order a new trial.
- (i) (1) Where the offense charged is also an offense against any Provisional or Order issued or to be issued by the Military Governor or under his authority, or,
- (ii) is also an offense against the laws and usages of war, or
- (iii) is also an offense triable under the provisions of the Italian Penal Code, that in such cases the name and rank of the accused, the offense with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.
- (j) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or Brigadier to whom he may have delegated such power in writing. The confirmation of the Italian Unit Commander as set forth in Article 291 of the Military Penal Code for War will not be required.
- (k) The Military Governor may at any time appoint an officer or officers of the Allied Forces to execute all or any of the above mentioned powers.
- (l) The Military Governor may at any time reverse, suspend or amend any of these rules.

4086
 Subject: Review of Judgments
 of Italian Military Courts

To: Deputy Chief Legal Officer
 Legal Sub-Commission
 HQ AMC

1. In Paragraph (r) of the recently promulgated Rules for Establishment of Italian Military Tribunals it is provided that until it is impossible (sic) to constitute the Tribunals Supreme Military all appeals from an Italian Military Tribunal shall be addressed to the Military Government".

2. There has recently come to our attention the petition of an Italian soldier who, before the date of occupation was sentenced to eight years imprisonment for a very minor offense which is alleged to have been committed by the order of the soldier's commanding officer. We are anxious to know what, if any, powers analogous to those which are used in granting liberazione condizionale in civil cases. It is hoped that some procedure for dealing with such cases as this may promptly be set up at the Provincial or Regional level.

Edward D. W. Hove

Mark Dew. Hove, Major, AUS
 RCLO, Region 2

HEADQUARTERS
ALLIED MILITARY GOV. FRANCE
APO, 512
LEGAL SUB-COMMISSION

AG 4086/L

1st December, 1945.

SUBJECT: Italian Military Tribunal.

TO : Lieut. Colonel H. B. Brown,

Dear Colonel,

Thank you for your letter AG/206/16 dated 25th November, 1945.

Your references to subpoenas, do not coincide with mine but your references are of course easily followed.

Even if you think that the control to be exercised in these cases can be managed, surely it is better to maintain the power of such control and with your large surplus of legal officers now available in Regions 3 and 4, I should have thought that in such a legal officer could be struck off as officer i/c Italian Tribunal.

I am strongly in favour of keeping in the provision dealing with offences triable by civil courts. We have already had trouble in Region 2 and a very tight control should be maintained here.

Some of the submissions are very flimsy and also two-Germans we have excluded them all.

Yours

NOTE: Colonel Upjohn left before this letter was ready for his signature.

1st December, 1943.

SUBJECT: Italian Military Tribunals.

TO : Head, Colonial A.D. Room.

Dear Colonel,

Thank you for your letter 440/4086/16 dated 25th November, 1943.

Your reference to mygram, on test coincide with mine but your references are of course readily followed.

Even if you think that the control to be exercised is more than can be managed, surely it is better to maintain the power of such control and with your large surplus of legal officers now available in Regions 3 and 4, I should have thought that in fact a legal officer could be struck off an officer 4/6 Italian Tribunal.

I am strongly in favour of keeping in the provision dealing with offences triable by civil courts. We have already had trouble in Region 2 and a very tight control should be maintained here.

Some of the amendments are very fascinating and also pro-German so we have excluded them all.

Yours

NOTE: Colonel Upjohn left before this letter was ready for his signature.

Note on HER's letter

Your letter of 28 Nov. re Italian Military Tribunal 24

Your observations having the following remarks.

Para 2: ^{that} It may not be possible for the officer in the field to exercise at all times the close control set out in ^{the} drafts. There is clearly ^{an} understanding on the other hand, the opinion of persons having good knowledge of Italian mentality, is that it is better to leave no legal loophole of any form of control you wish to ^{practice} ~~practice~~. Whether you ~~enforce~~ ^{enforce} or not time to time the exercise of such powers depends on his judgment & local conditions.

- 2) The Military authorities have ^{II} ~~are~~ ⁱⁿ contact with civil judicial administration in Perugia, and it is always a difficult position for staff officers to intervene as a mediator between these Italian organisations. It is therefore better to set out the rules forthwith & draw out as many classes of complaints as possible.

Para 3 - ^{attempts to} How would you be able to select the record of proceedings you wish to review, if all records were not submitted 25 in some form or other.

Para 4 - 14 amendments, nearly all Bandi del Duce have been

promulgated since July 6 1940. They include among others
a) Conv. 21 Jan 42. Agreement with Germany as regards the use of
armed force of each nation on the territory of the other (
(Military courts, Discipline, Prizes, Penalties etc)

I feel sure you would not like to maintain that one:

I understand most of the amendments deal with administrative
modifications, which could be enforced by the Central Government possessing
all its activities, and not by a temporary set up working in the field.
A list of these is attached.

It was therefore better to study the whole of them
in person, than to make a careful selection of those
who might have improved it on already very comprehensive
Code -

Should necessary amendments can always be promulgated if &
when the need arises -

SSA

SECRET

Subject: - Italian Military Tribunals.

Colonel G. B. John.

Legal Sub-Commission,
Headquarters, Allied Military Government,
PALERMO.

AMS HQ.

15 Army Group,
C.M.P.Ref. AMS/206/16.
25 November 43.

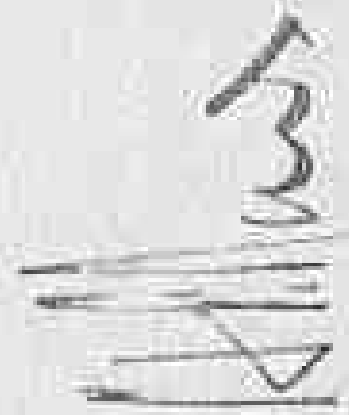
Reference your letter of 18 Nov on the above subject and draft enclosed by you, I have now had an opportunity of considering the same. I have also discussed the draft with Shields as the problem of these tribunals has arisen in Naples. I have the following observations to make.

2. Rule (c) requires copies of charges to be delivered to the Military Governor in all cases and also sets up procedure for notifying delay in trials, Rule (d) gives power to the Military Governor to appoint Allied Officers to sit in Italian Military Tribunals, and rule (i) (iii) provides that no offence triable by an Italian civil Court shall be heard by an Italian Military tribunal without authority from the Military Governor. In my opinion this constitutes a much closer control of such tribunals than the Legal Divisions in the field can manage, and also, I think, it is undesirable to have too close a control. We are concerned about charges against persons of the descriptions mentioned in para (b) of the draft but, beyond such persons, I see no reason to exercise actual control, provided we reserve the power to step in and take action if necessary. If the Military Tribunal interferes with the province of the Italian civil Courts, the latter can and, no doubt, will, complain and administrative action can then be taken. I see no objection to having power for our officers to sit on these Tribunals but the power should not be exercised unless it is absolutely necessary in an exceptional case.

3. For the same reasons I have advanced above, I do not think we can be concerned over reviewing the proceedings in every case which is brought before an Italian Military Tribunal as is provided for by rule (j), although it may be well to reserve a power to call for the record and review the proceedings if we so desire.

4. With regard to rule (e), I would prefer not to alter Italian law, if it can be avoided. Do you know if the amendments referred to are very "Fascist"?

5. Will you kindly re-consider the rules in the light of my comments and then let me hear further.



H. B. HOWE,
Lt. Colonel,
Chief Legal Officer.

HR/ES.

reference your letter of 16 Nov on the above subject and draft enclosed by you, I have now had an opportunity of considering the same. I have also discussed the draft with Shields as the problem of these Tribunals has arisen in Naples. I have the following observations to make.

2. Rule (c) requires copies of charges to be delivered to the Military Governor in all cases and also sets up procedure for notifying delay in trials, rule (d) gives power to the Military Governor to appoint Allied Officers to sit in Italian Military Tribunals, and rule (1) (iii) provides that no offence triable by an Italian civil Court shall be heard by an Italian Military Tribunal without authority from the Military Governor. In my opinion this constitutes a much closer control of such tribunals than the legal Divisions in the field can manage, and also, I think, it is undesirable to have too close a control. We are concerned about charges against persons of the descriptions mentioned in para (b) of the draft but, beyond such persons, I see no reason to exercise actual control, provided we reserve the power to step in and take action if necessary. If the Military Tribunal interferes with the provinces of the Italian civil courts, the latter can and no doubt will, complain and administrative action can then be taken. I see no objection to having power for our officers to sit on these tribunals but the power should not be exercised unless it is absolutely necessary in an exceptional case.

3. For the same reasons I have advanced above, I do not think we can be concerned over reviewing the proceedings in every case which is brought before an Italian Military Tribunal as is provided for by Rule (3), although it may be well to reserve a power to call for the record and review the proceedings if we so desire.

4. With regard to rule (e), I would prefer not to alter Italian law, if it can be avoided. Do you know if the amendments referred to are very "radical"?

5. Will you kindly re-consider the rules in the light of my comments and then let me hear further.

HER/ES.


H. K. ROWE,
Lt. Colonel,
Chief Legal Officer.

19 Nov 41
A 19 m
Teller
10/11/41

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 512
LEGAL SUB-COMMISSION

AME/4104/L

21st November, 1945.

SUBJECT: Italian Military Tribunals.

TO : HQAO (through HQAO) Region I.

1. I enclose a copy of the Rules under which Italian Military Tribunals may be permitted to function in your Region.
2. Normally all members of the Italian Armed Forces will be tried before these Courts unless Allied personnel or property is involved but civilians will be tried before Allied Military Courts.
3. These Rules must of course be exercised with discretion.

GERALD UPJOHN,
Colonel,
Deputy Chief Legal Officer.

SECRET equals British Secret

(20)

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.P.O. 512
LEGAL SUB-COMMISSION

New File

Subject:- Italian Military Tribunals

18th Novr. 1943

Dear

Following our conversation in relation to the above I now
enclose a revised draft of rules to which I take it you will give
the necessary circulation. 15 Aug 5p.

Y-S.

Lt. Col. H. E. Rows,
Chief Legal Officer,
15 Army Group.2 SPARES in Spares File

25

HEADQUARTERS
REGION 3
ALLIED MILITARY GOVERNMENT
LEGAL OFFICE

Amgot 3/608L/I
10 November, 1943

Dear *Rave,*

I am obliged for your two letters of 6th November, 1943 numbered AMG/216/1 and AMG/207/8. With regard to the first my memorandum on Italian Military Tribunals was prepared for Col. Chanler to supplement my telegram to him on this matter attached to my report of 8-22/10/43 which you have. When I received authority from him to reopen these tribunals, as I was of opinion that it was a matter to be considered in relation to the reestablishment of the Italian Army I discussed the matter with Gen. Robertson here, to whom I gave a copy of the memorandum. He apparently considered it necessary to refer the matter to the mission which he did by letter 62/QI of 2nd November 1943 a copy of which came to me. As I realised it would probably be referred to you I sent a copy of my reply AMGOT 3/6005/I of 6th November 1943 to you. No communications with higher echelons have been sent from this office except through 15th Army Group or AMGOT Palermo.

2. My title here has been very varied. On the TO/WE it was C.L.O. and I was so addressed for some time by AMGOT, Palermo. As I was of opinion there could only be one C.L.O. I arranged here to be called R.L.O. Since when I have been addressed as R.S.L.O. and S.L.O. In accordance with your instructions the title S.L.O. will be used by this office.

3. No directive has yet been issued by this office on question of the cumulative maximum sentences of imprisonment and fine which may be imposed by a Summary Court. This will be held up pending official decision between Col. Chanler and you being reached.

Col. Upjohn
See by D.C.O.
2/11/43

10 November, 1943

Dear *Rare,*

I am obliged for your two letters of 6th November, 1943 numbered AMG/216/1 and AMG/207/6. With regard to the first my memorandum on Italian Military Tribunals was prepared for Col. Chanler to supplement my telegram to him on this matter attached to my report of 8.22/10/43 which you have. When I received authority from him to reopen these tribunals, as I was of opinion that it was a matter to be considered in relation to the reestablishment of the Italian Army I discussed the matter with Gen. Robertson here, to whom I gave a copy of the memorandum. He apparently considered it necessary to refer the matter to the mission which he did by letter 62/QI of 2nd November 1943 a copy of which came to me. As I realised it would probably be referred to you I sent a copy of my reply AMGOT 3/6005/L of 6th November 1943 to you. No communications with higher echelons have been sent from this office except through 15th Army Group or AMGOT Palermo.

2. My title here has been very varied. On the TO/WE it was C.L.O. and I was so addressed for some time by AMGOT, Palermo. As I was of opinion there could only be one C.L.O. I arranged here to be called R.L.O. Since when I have been addressed as R.S.L.O. and S.L.O. In accordance with your instructions the title S.L.O. will be used by this office.

3. No directive has yet been issued by this office on question of the cumulative maximum sentences of imprisonment and fine which may be imposed by a Summary Court. This will be held up pending official decision between Col. Chanler and you being reached.

4. No directives will be sought by me as S.L.O. 5th Army from any echelon other than 15th Army Group.

5. I have visited Avellino and Benevento this week and I find the reestablishment of the Italian Tribunals and Praeture there for civil and criminal jurisdiction satisfactory completed. The Military Courts required have also been operating in accordance with the rules. I had hoped to get the Assize Courts and the Court of Appeal restarted after discussing the question

(2)

18

of jurisdiction outside Region 3 with the Legal Officer of Region 2. The unfortunate appointment however by the Marshall of a second first president of Court of Appeal which was referred to 15th Army Group by signal has made it impossible to have any dealings with the Court of Appeal personnel which we are disregarding until it is decided whether Volpe or Libonati is to be the First President.

6. I am looking forward to seeing you here but I am going ~~to~~ 8th Army area on Friday Saturday and Sunday (12th to 14th November inclusive) to a meeting with Group Captain Benson.

Yours sincerely

J. V. M. Smith

Copy to Col. Chanler, AMGCT, Palermo.
Copy to file Argot 3/6005/L.

we are disregarding until it is decided whether Volpe or Libonati is to be the First President.

6. I am looking forward to seeing you here but I am going ~~to~~ 8th Army area on Friday Saturday and Sunday (12th to 14th November inclusive) to a meeting with Group Captain Benson.

Yours sincerely

J. V. P. Smith

Copy to Col. Chanler, AMGOT, Palermo.
Copy to file AMGOT 3/6005/L.

^{and} ~~the~~ ^{the} ~~State~~ ^{State} ~~interior~~ ^{interior} ~~authorities~~ ^{authorities}
 (1) If any person is arrested ~~to be charged with~~ ^{for the purpose} of being tried before a Military Tribunal, within 5 days of such arrest ^{within} charges shall be served on such person and a copy of thereof shall be transmitted to the Military Governor and if such person is not ^{brought to} trial within 28 days from the date of arrest of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.

SECRET equals British SECRET

Rules for the Establishment of Italian Military Tribunals

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

- (a) Italian Military Tribunals may try cases in respect of offences whether committed before or after the commencement of occupation.
- (b) No ordinary civilians, ex Prisoners of War, members of the Police Forces, Carabinieri or Civilians employed by the Military, Naval or Air Force Authorities shall be charged before any Italian Military Courts without the consent of the Military Governor.
- (c) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
- (d) Italian Military Tribunals will follow the procedure set forth in Book 4 of the "Military Penal Code for War". Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (e) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (f) Until it is impossible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (g) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) (i) Where the offence charged is also an offence against any Proclamation or Order issued or to be issued by the Military Governor or under his authority, OR
- (ii) Is also an offence against the law and usages of war, OR
- (iii) Is also an offence triable under the provisions of the Italian Penal Code, then in such cases the name and rank of the accused, the offence with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.
- (i) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor

These Authorities shall be charged before any Italian Military Tribunal without the consent of the Military Governor.

- (c) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
- (d) Italian Military Tribunals will follow the procedure set forth in Book 4 of the Military Penal Code for War. Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (e) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (f) Until it is impossible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (g) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) (i) Where the offence charged is also an offence against any Proclamation or Order issued or to be issued by the Military Governor or under his authority, OR
- (ii) is also an offence against the laws and usages of war, OR
- (iii) is also an offence triable under the provisions of the Italian Penal Code, then in such cases the name and rank of the accused, the offence with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.
- (i) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or Brigadier to whom he may have delegated such power in writing. The confirmation of the Italian Unit Commander as set forth in Article 291 of the Military Penal Code for War will not be required.
- (j) The Military Governor may at any time appoint an officer or officers of the Allied Forces to execute all or any of the above mentioned powers.
- (k) The Military Governor may at any time repeal, suspend or amend any of these rules.

SECRET equals British SECRET

H.Q. 15 Army Group
C.

8 Nov 43

Dear

Up, 2a.

I have shown the attached draft to General Robertson who is in agreement. This H.Q. is also in agreement. Presumably you will now go ahead with the necessary action to bring the Tribunals into being.

2. We will proceed to prepare and put out the posters, as approved by you.

Yours

Sincerely,

J. W. Martin
H.Q. 15

Colonel Up, 2a.

H.Q. 15 Army Group

(15)

1/- for war dated 20 Feb 1941

2/ No ^{offending} civilians, ex. Persons of War, members of the Police Force, Carabinieri or civilians employed by the Military or Naval or Air Force shall be charged before any court without the ~~written~~ ^{written} consent of the Military Governor or of an officer not below the rank of Lieutenant Colonel to whom he may have delegated such power is ~~binding~~.

3/- Italian Military Tribunals will follow the procedure set forth in Book II of the "Military Penal Code for War". Any amendment affecting the procedure as may have been from time to time promulgated by various decrees issued after the date of publication of the Code will not be enforced.

Rules for Establishment of Italian Military Tribunals

Italian Military Tribunals may be established in accordance with the Military Penal Code of 1941 in areas occupied by the Allied Forces upon the following terms and conditions:-

(a) Italian Military Tribunals may try cases in respect of offences whether committed before or after the commencement of occupation.

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

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

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

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

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

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

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

27
(a) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.

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

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

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

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

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

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

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

whom he may have delegated such power in writing. *The confirmation of the Italian Unit Commander as set forth in Article 291 of the Military Penal Code for war will not be required.*

SECRET equals British SECRET

- (13) The Military Governor may at any time appoint an officer or officers of the Allied Forces to execute all or any of the above mentioned powers.
- (1) The Military Governor may at any time repeal, suspend or amend any of these rules.

The order of precedence in the C.M.A. will apply to the following conditions:

The provisions of the C.M.A. will apply to the following conditions:

2. The provisions of the C.M.A. will apply to the following conditions:

(12)

Memorandum on Italian Military Tribunals written with special regard to the problems arising from their re-establishment in occupied territory.

Sources of Law: (Penal Military Code of Peace)(Codice Penale Militare di Pace) (referred to below as PMCP), of 20 February 1941.

Codice Penale Militare di Guerra (Penal Military Code of War) of 20 Feb. 1941 (Referred to below as PMCW).

I. Assumption:

1. The Italian Military Courts, if reestablished, will operate under the PMCW due to the fact that the state of war in the entire State of Italy has been decreed by the King. Military Tribunals operating at war under PMCW are called Tribunali Militari di Guerra (Military War Tribunals). Only this category of Military Tribunals will be considered below.

2. It seems that the King acting under a special law declared a State of Siege (Stato d'assedio) in Italy at the time of Marshal Badoglio's becoming Head of the Government. Under the State of Siege the Military takes over the active civil administration and the Military Tribunals try all criminal offences against both civil and military ^{personnel} codes committed by either military personnel or by civilians. It is assumed that such State has ceased or will cease at the time when the Military Tribunals are reopened.

3. It is assumed that the Commanding General of Allied Forces in occupied territory in his directive permitting the re-establishment of Military Tribunals in occupied territory will alter their jurisdiction ~~in~~ laid out in PMCW and other laws in that he will declare that no offences committed by civilians may be tried by such Tribunals. Thus the jurisdiction of Military Tribunals over civilians will be considered below only for the purpose of formulating a proper clause for the draft of directives which ^{would} exclude such jurisdiction.

I. Assumption:

1. The Italian Military Courts, if reestablished, will operate under the POW and to the fact that the state of war in the entire State of Italy has been decreed by the King. Military Tribunals operating at war under POW are called Tribunali Militari di Guerra (Military War Tribunals). Only this category of Military Tribunals will be considered below.

2. It seems that the King acting under a special law declared a State of Siege (Stato d'assedio) in Italy at the time of Marshal Badoglio's becoming Head of the Government. Under the State of Siege the Military takes over the active civil administration and the Military Tribunals try all criminal offences against both civil and military codes committed by either military personnel or by civilians. It is assumed that such State has ceased or will cease at the time when the Military Tribunals are reopened.

3. It is assumed that the Commanding General of Allied Forces in occupied territory in his directive permitting the re-establishment of Military Tribunals in occupied territory will alter their jurisdiction in laid out in POW and other laws in that he will declare that no offences committed by civilians may be tried by such Tribunals. Thus the jurisdiction of Military Tribunals over civilians will be considered below only for the purpose of formulating a proper clause for the draft of directives which ^{shall} exclude such jurisdiction.

II. There are three main types of Military War Tribunals:

1. Military War Tribunals of Army, of Army Corps and Fortress Tribunals. (1) Roughly speaking, they try military offences committed by the personnel of military units at which the respective Tribunal was established. (Art 251 POW). The Fortress Tribunal ^{is a for trial} under enemy attack tries all persons within the fortress for any crime (Art 258 POW).

2. Territorial Military War Tribunals (Tribunali Militari Territoriali da

Guerra). They adjudge military offences committed by persons other than those indicated under (1), offences committed by enemy prisoners of war during captivity, crimes against laws and usages of war committed by military personnel, or by other persons belonging to enemy armed forces, and crimes committed by Italian prisoners during their captivity by the enemy. (Art 252 PMCW).

Note: The jurisdiction over prisoners of war will have to be expressly excluded in conformity with the Amnesty Provisions. Similarly, the jurisdiction over crimes against laws and usages of war should be given special consideration.

3. Military Naval War Tribunals. (Tribunali Militari di Guerra di bordo).

These courts try (a) military offences committed whether on board ship or on land by crew members of warships, (b) military offences committed by any person on board a warship, (c) all offences committed outside of territorial waters by crew members of a warship, (d) military offences committed by any person embarked upon a merchant ship in convoy escorted by warships, (e) certain offences committed by certain personnel of national merchant ships in cases specified by PMCW, (f) certain military offences (treason, espionage, etc.) committed by any person in an Italian or foreign port occupied by naval forces, (g) some cases of minor practical importance. (Art 277 & 278 PMCW, Art 263 PMCW).

Note: The jurisdiction of the Naval Military Tribunals is set out above in detail in view of the fact that it might be considered advisable to permit their jurisdiction over civilians in certain cases.

III. The jurisdiction of Military War Tribunals is delimited by Art 252 PMCW which reads as follows:

The military war tribunals have jurisdiction over:

1. Military crimes by whomever committed in the territories declared or considered to be in a State of War.
2. Crimes set out in the common penal law committed by military persons

in territories indicated in preceding paragraph.

Military offences committed by any person outside the territories indica-

in conformity with the Amnesty Provisions. Similarly, the jurisdiction over crimes against laws and usages of war should be given special consideration.

3. Military Naval War Tribunals. (Tribunali Militari di Guerra di bordo). These courts try (a) military offences committed whether on board ship or on land by crew members of warships, (b) military offences committed by any person on board a warship, (c) all offences committed outside of territorial waters by crew members of a warship, (d) military offences committed by any person embarked upon a merchant ship in convoy escorted by warships, (e) certain offences committed by certain personnel of national merchant ships in cases specified by FMCP, (f) certain military offences (treason, espionage, etc.) committed by any person in an Italian or foreign port occupied by naval forces, (g) some cases of minor practical importance. (Art 277 & 278 PMCP, Art 263 PMCW).

Note: The jurisdiction of the Naval Military Tribunals is set out above in detail in view of the fact that it might be considered advisable to permit their jurisdiction over civilians in certain cases.

III. The jurisdiction of Military War Tribunals is delimited by Art 232 PMCW which reads as follows:

The military war tribunals have jurisdiction over:

1. Military crimes by whomever committed in the territories declared or considered to be in a State of War.
2. Crimes set out in the common penal law committed by military persons in territories indicated in preceding paragraph.
3. Military offences committed by any person outside the territories indicated in para 1, ^{if} from such offences there may derive a damage to military war operations or to services connected with them or to the conduct of the war ⁱⁿ general.

4. All crimes committed by prisoners of war who are under control or in custody of the Italian State.
5. Crimes against the laws and usages of war committed by members of enemy armed forces.

The Military War Tribunals have also jurisdiction to try any crime committed in territories of military operations or considered to be such:

1. by persons not belonging to State armed forces who for any reason are in a relation, however indirect, of service, of employment, of performing work, administration, of delivering supplies, of undertaking requisitions etc., with the above mentioned armed forces.

2. by persons in private service of those enumerated in the preceding para or by any other person who for whatever reason follows the State armed forces according to a law or to regulations approved by Royal decree.

(In addition to instances enumerated ^{above} in Art 232) the Military War Tribunals are given exclusive jurisdiction over certain groups of military offences by whomsoever committed and connected with espionage, divulging of certain information, publication of critical writings on conduct of war etc.)

IV. It appears from the above (under II & III) that the Military Tribunals of War have a wide jurisdiction over civilians. This jurisdiction is to be excluded as mentioned above under I 3.

In order to draft an appropriate clause for such purpose the following points should be considered:

1. According to Art 7, ENOW the following are considered to be military personnel (militari):

- a. Members of the Royal Army.
- b. Members of the Royal Navy.
- c. Members of the Royal Air Force.

in territories of military operations or considered to be such:

1. by persons not belonging to State armed forces who for any reason are in a relation, however indirect, of service, of employment, of performing work, administration, of delivering supplies, of undertaking requisitions etc., with the above mentioned armed forces.

2. by persons in private service of those enumerated in the preceding ~~xxx~~ para or by any other person who for whatever reason follows the State armed forces according to a law or to regulations approved by Royal decree.

(In addition to instances enumerated ^{above} in Art. 232 the Military War Tribunals are given exclusive jurisdiction over certain groups of military offences by whom ever committed and connected with espionage, divulging of certain information, publication of critical writings on conduct of war etc.)

IV. It appears from the above (under II & III) that the Military Tribunals of War have a wide jurisdiction over civilians. This jurisdiction is to be excluded as mentioned above under I 3.

In order to draft an appropriate clause for such purpose the following points should be considered:

1. According to Art 7, ~~PIEW~~ the following are considered to be military personnel (militari):

- a. Members of the Royal Army.
- b. Members of the Royal Navy.
- c. Members of the Royal Air Force.
- d. Royal Finance Guards.
- e. those "militarized" (militarizzati).

f. any other person ¹⁴ who by force of law acquires the character of

military personnel (~~assimilati~~).

g. those "assimilated" to military personnel (assimilati).

h. members of detachments of volunteers authorized to take part in the war.

(a) The term "militarized" or "assimilated" is not defined in either

THOSE or FACH. In ^(a)viewed in the light of Art 252, CW set forth above under III it would seem to include practically any civilian working for or connected in any way with the armed forces at time of war. All employees of Railways for instance would fall most probably in this category. The matter is obviously regulated by numerous special laws referred in general by Art 10 EMIP.

2. All members of civil bodies organized in a military way are equally subject to penal military law in cases provided for by respective special laws (Art 10, EMIP).

(a) It seems that Carabinieri Reali must be considered to fall within reach of Military Tribunals of War due to the fact that their recruitment, organization, military service and equipment come under control of Ministry of War. They will come either under Art 7 (above under 1) as part of the Armed Forces ^{in time of war} or under Art 10 (above under 2).

(b) The Milizia Volontaria per la Sicurezza Nazionale has become part of the Armed Forces and as such comes under Art 7 (above under 1).

(c) The status of Corpo degli Agenti di Pubblica Sicurezza (Corps of Public Security Agents) in regard to the Military Tribunals seems to be regulated by special laws. They are partly uniformed, sometimes organized in a military manner and given military training (e.g. in Rome). There are also some heavily armed "mobile battalions of police agents" which at wartime are attached to units of the army.

In view of the above (under 3 a-c) an express exclusion of all police forces from the Military Tribunals should be inserted in the draft. It is to be decided whether the exclusion should also cover the carabinieri.

IV. Main features of the procedure before Military Tribunals of War (for the organization of Military Tribunals see law on Judicial ^{System} Organization).

1. Records of initial investigation conducted by police ^{unit commanders} or military prosecutor (all procuratore militare del Re) are presented to the Commander

subject to special military law in cases provided for by respective special laws (Art 10, P.M.P.).

(a) It seems that Carabinieri Peoli must be considered to fall within reach of Military Tribunals of War due to the fact that their recruitment, organization, military service and equipment come under control of Ministry of War. They will come either under Art 7 (above under 1) as part of the Armed Forces or under Art 10 (above under 2).

(b) The Milizia Volontaria per la Sicurezza Nazionale has become part of the Armed Forces and as such comes under Art 7 (above under 1).

(c) The status of Corpo degli Agenti di Pubblica Sicurezza (Corps of Public Security Agents) in regard to the Military Tribunals seems to be regulated by special laws. They are partly uniformed, sometimes organized in a military manner and given military training (e.g. in Rome). There are also some heavily armed "mobile battalions of police agents" which at wartime are attached to units of the army.

In view of the above (under 3 a-c) an express exclusion of all police forces from the Military Tribunals should be inserted in the draft. It is to be decided whether the exclusion should also cover the carabinieri.

IV. Main features of the procedure before Military Tribunals of War (For the organization of Military Tribunals see law on ^{judicial} ~~judicial~~ ^{unit commanders} ~~judicial~~ Organization).

1. Records of initial investigation conducted by police or military prosecutor (il procuratore militare del Re) are presented to the Commander of the unit at which the Military Tribunal has been established. He decides whether further proceeding should be initiated.

2. In affirmative case the prosecutor determines at his will whether a formal or merely summary preliminary investigation should be undertaken.

In the former case the investigating judge ("giudice istruttore") conducts the preliminary investigation and decides by a preliminary judgment on the foundation of the charges and whether the case should proceed to trial.

Investigation

3. There can be no arrest without warrant except in cases of arrest in flagrante.
4. The defendant has no right ~~of~~ to assistance by a counsel during the preliminary investigation. At the trial, however, he must have a counsel under penalty of nullity. Before trial the defendant is given opportunity to examine and copy all records. He is given formal notice of the charges and of the date of the trial.
5. The trial must be held in defendant's presence as a rule. The provisions of common penal code apply to the judgment in contumacious. The defendant has a right to offer evidence on his behalf. The rules of the common penal code of procedure apply with few, not particularly important, exceptions to the conduct of trial.
6. An Extraordinary War Tribunal has jurisdiction to try offences punishable by death provided that the defendant has been arrested in flagrante and the commander authorized to set up such court by the law of Judicial Military organization decides that the case should be tried by such court because of necessity of immediate judgment for the purpose of giving a deterrent example. (Art 285 PRCW). The jurisdiction of such court is limited to the case for which it has been convened. The court will sit in presence of armed units. Defendant is assisted by a counsel. The president informs the defendant on the charges and then the discussion proceeds in the forms prescribed for ordinary military War Tribunals.

7. (a) There is no appeal against the preliminary judgment of the investigating judge pronouncing the result of the preliminary investigation.
- (b) There is no appeal against judgments rendered by Military War

- penalty of nullity. Before trial the defendant is given opportunity to examine and copy all records. He is given formal notice of the charges and of the date of the trial.
5. The trial must be held in defendant's presence as a rule. The provisions of common penal code apply to the judgment in contumacious. The defendant has a right to offer evidence on his behalf. The rules of the common penal code of procedure apply with few, not particularly important, exceptions to the conduct of trial.
6. An Extraordinary War Tribunal has jurisdiction to try offences punishable by death provided that the defendant has been arrested in flagrante and the commander authorized to set up such court by the law of Judicial Military organization decides that the case should be tried by such court because of necessity of immediate judgment for the purpose of giving a deterrent example. (Art. 263 FMCM). The jurisdiction of such court is limited to the case for which it has been convened. The court will sit in presence of armed units. Defendant is assisted by a counsel. The president informs the defendant on the charges and then the discussion proceeds in the forms prescribed for ordinary military War Tribunals.
7. (a) There is no appeal against the preliminary judgment of the investigating Judge pronouncing the result of the preliminary investigation.
- (b) There is no appeal against judgments rendered by Military War Tribunals of Army, Army Corps, Fortress Tribunals, Naval War Tribunals or Extraordinary War Tribunals.
- (c) In certain cases there is a recourse to the Supreme Military Tribunal from judgments rendered by the Territorial Military War Tribunals. (In cases of certain errors of law, both in substantive and procedural sense.)

7
6 (a) The death sentence pronounced within the Italian State territory can be executed only after the lapse of 24 hours from its pronouncement or from the notification of rejection of the recourse wherever such recourse has been filed according to law.

(b) When the death sentence becomes effective, it is subject to confirmation of the commander of the unit at which the tribunal is constituted who may either propose pardon or commutation to the Supreme Commander or refuse to exercise his right of making such proposal. In the latter case the Prosecutor will provide for the execution of the judgement.

("Military offences" are all offences declared to be such by the PMAF, PMDW and in the special laws.")

12 Nov. 43.

ES/maf

either propose pardon or commutation to the Supreme Commander or request the exercise his right of making such proposal. In the latter case the Prosecutor will provide for the execution of the judgment.

("Military offences" are all offences declared to be such by the

EMOF, PMW and in the special laws.")

12 Nov. 45.

ES/ent

11

881

HEADQUARTERS
ALLIED MILITARY GOVERNMENT

BUCK SL- *4104*

Date _____

SUB: _____

Date _____

FROM	TO
☒ C. G. AND	
☒ C. of S.	
☒ Exec Off	
Economic Director	
Industry & Commerce	
Fuel	
Agriculture	
P. W. & Utilities	
Labor	
Interior	
Information	
Public Health	
Legal <i>Col. L. J. Johnson</i>	☒
Public Safety	
Property Control	
Education	
Fine Arts	
Shipping	
Internal Transportation	
Telecommunications	
Hq Commandant	
C of Secretariat	
Message Center	
G-1	
G-4	
Displaced Persons	
Adjutant	
Personnel Office	

FOR:

- ☒ Signature and return
☒ Recommendation & Remark
☒ Information & Guidance
☐ Approval or Disapproval
☐ Necessary Action
☐ Investigation & Report
☐ To note and return
☐ File
☐ Dispatch

REMARKS:

Subject :- Italian Military Tribunals.

SECRET

A.F.H.Q. Adv. Adm. Echelon,
C.M.F.
62/1 Q.

Chief of Allied
Military Mission, BRUSSELS.

2 Nov. '43.

Copy to:- A.M.G. No. III Region,
British Liaison Officer to
Italian Command, NAZI.
C.G., Peninsular Base Section.

I attach a Memorandum on Italian Military Tribunals, prepared by the Chief Legal Officer, A.M.G. Region III.

I have been asked to give a ruling in favour of the establishment of these Military Tribunals. It is my understanding that Italian officers, other than those who commit hostile acts against the Allied Forces, are to be tried by Italian Courts. I do not feel it to be within my province to say whether these Military Tribunals are the correct form of Court to deal with certain cases. The decision presumably rests with the Italian Government and would be communicated to A.M.G. Region III by you, with a copy to myself for information.

DR/emb.

Major-General,
Deputy Chief Administrative Officer.

COZY/gf

This letter was received by me at Brindisi
+ a memorandum establishing rules for
the holding of Military Tribunals was
prepared.

This letter requires no action.

SP/lyj

To Chandler
62/1 Q. 881

Col. W. J. J. J.

Copy to:- A.M.G. No. III Region.
British Liaison Officer to
Italian Command, NAPLES.
C.G., Peninsular Base Section.

I attach a Memorandum on Italian Military Tribunals, prepared
by the Chief Legal Officer, A.M.G. Region III.

I have been asked to give a ruling in favour of the establishment
of these Military Tribunals. It is my understanding that Italian offenders,
other than those who commit hostile acts against the Allied Forces, are to
be tried by Italian Courts. I do not feel it to be within my province to say wheth-
er these Military Tribunals are the correct form of Court to deal with certain
cases. The decision presumably rests with the Italian Government and would
be communicated to A.M.G. Region III by you, with a copy to myself and for
information.

BUR/amb.

Major-General,
Deputy Chief Administrative Officer.

copy/ gmc

This letter was received by me at Brindisi
+ a memorandum establishing rules for
the holding of Military Tribunals was
prepared.

This letter requires now no action.

gmc/ajp
22.11.43.

22

(5)

MEMORANDUM ON ITALIAN MILITARY TRIALS

1. Italian Military Tribunals were established in 1869. In 1941 a military Penal Code was enacted which gives military tribunals jurisdiction in criminal offences committed by military and non-military personnel. These courts also have jurisdiction in territory declared to be in a state of war, among other cases they try all common crimes committed by military personnel, crimes against Italy committed by anyone and infractions of law of civilian mobilization.

2. There were set upon Italy military tribunals in each of the following areas where they had territorial jurisdiction: Torino, Milano, Verona, Trieste, Bologna, Spezia, Rome, Naples, Taranto, Calabria, Sicily, Sardinia and Zara. These courts sat in the principal town of the territorial area and all cases were brought to that court for trial. In addition each Army Corps has a tribunal and an Army Corps Commander may authorize the establishment of other tribunals where required.

3. The court has three categories of officials:-

1. Magistrate.
2. Judges.
3. Cancellarie.

In peace time the first category were reserve officers who, while civilians, donned uniform when they came to sit as members of a military tribunal. In war time all these officers were recalled to active duty for permanence as an organic part of the tribunals. In war time, additional persons, such as University professors of law, magistrates and advocates of not less than 15 years standing were called to military duty to sit on these tribunals.

4. The second category are permanent military, naval and air force officers who form the administrative body of the tribunals, like our Judge Advocate Staff.

5. The third category are really the clerical staff who in peace time are civilians but in war time are called to the colours and serve as soldier clerks.

6. In peace time the military personnel are paid by the War Department and the civilians by the Ministry of Interior through the Intendente di Finanze. In war time all the personnel is paid from Army funds as serving soldiers.

7. In Naples there is staff for the territorial military tribunals of about sixteen Judges and forty four Magistrates and Cancellarie.

8. A Military tribunal is composed of three or five members depending from the gravity of the offence. No officer may be tried by a court of other officers anyone of whom is his junior.

9. If we had occupied Italy and made all her soldiers prisoners of war, in theory, as she was an enemy state, all military tribunals would have been automatically suspended. As, however, the Italian Army is being reconstituted and there are no competent courts previous to our occupation I am of the opinion that the Italian Military tribunals should be re-established to exercise discipline over Italian soldiers and civilians committing offences triable only by those tribunals.

These courts sat in the principal town of the territorial area and all cases were brought to that court for trial. In addition each Army Corps has a tribunal and an Army Corps Commander may authorize the establishment of other tribunals where required.

3. The court has three categories of officials:-

1. Magistrates.
2. Judges.
3. Cancellerie.

In peace time the first category were reserve officers who, while civilians, donned uniform when they came to sit as members of a military tribunal. In war time all these officers were recalled to active duty for permanence as an organic part of the tribunals. In war time, additional persons, such as University professors of law, magistrates and advocates of not less than 15 years standing were called to military duty to sit on these tribunals.

4. The second category are permanent military, naval and air force officers who form the administrative body of the tribunals, like our Judge Advocate Staff.

5. The third category are really the clerical staff who in peace time are civilians but in war time are called to the colours and serve as soldier clerks.

6. In peace time the military personnel are paid by the War Department and the civilians by the Ministry of Interior through the Intendente di Finanze. In war time all the personnel is paid from Army funds as serving soldiers.

7. In Naples there is staff for the territorial military tribunals of about sixteen Judges and forty four Magistrates and Cancellerie.

8. A Military tribunal is composed of three or five members depending from the gravity of the offence. No officer may be tried by a court of other officers anyone of whom is his junior.

9. If we had occupied Italy and made all her soldiers prisoners of war, in theory, as she was an enemy state, all military tribunals would have been automatically suspended. As, however, the Italian Army is being reconstituted and there are no competent courts previous to our occupation I am of the opinion that the Italian Military tribunals should be re-established to exercise discipline over Italian soldiers and civilians committing offences triable only by those tribunals.

A.M.G.
Region 3 HQ
15.10.43.

Sd: J.V.M. Shields,
Lt. Col.
Chief Legal Officer

copy/gmf

Italian Military Tribunal

Italian Military Tribunal may be established in accordance with the Military Penal Code of 1942 in areas occupied by the Allied Forces upon the following terms and conditions:-

(a) Italian Military Tribunal may try cases in regard of offenses whether committed before or after the commencement of occupation.

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

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

(d) Until it is possible to constitute the Italian Supreme Military Tribunal from an Italian Military Tribunal shall be referred to the Military Governor who may and shall may conviction or suspend, reduce or execute the sentence or order a new trial.

(e) The Italian Military Tribunal shall, within 7 days of the institution of sentence forwarded to the Military Governor the record of every trial and the Military Governor may annul any conviction or suspend, reduce or execute the sentence or order a new trial.

(f) Where the offense charged is also an offense against any proclamation or Order issued or to be issued by the Military Governor or under his authority.

(g) In cases of offenses against the laws and usages of war.

(h) In cases of offenses triable under the provisions of the Italian Penal Code, then in such cases the laws and usages of the country, the offense with which he is charged and about particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before

station as indicted before or after the outbreak of occupation.

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

(c) The Military Governor may appoint one or more officers of the Allied Forces to act as any Italian Military Tribunal.

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

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

(f)(1) Where the offense charged is also an offense against any proclamation or order issued or to be issued by the Military Governor or under his authority (2)

(11) Is also an offense against the laws and usages of war (2)

(111) Is also an offense triable under the provisions of the Italian Penal Code, then in such cases the name and rank of the accused, the offense with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 10 days before the date fixed for the trial

(12) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a specified officer not below the rank of Brigadier General or Brigadier, to whom he may have delegated such power in writing.

- (3)
- (b) The Military Governor may at any time appoint an officer or officers of the Allied Forces to execute all or any of the above mentioned powers.
- (c) The Military Governor may at any time repeal, suspend or amend any of these rules.

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

785016

ITALIAN MILITARY TRIBUNAL

1. In respect of what classes of offense (in particular offenses which are also offenses against the Penal Code) have the courts in time of war jurisdiction over (a) military personnel (b) civilian personnel ~~in time of war~~
2. What sentences may be imposed in time of war for the above classes of offense over (a) military personnel
(b) civilian personnel
3. What is the composition of the courts? Who appoints the judges and are they specifically appointed for each case or do the same judges sit for all cases?
4. Does the sentence of this court take effect immediately on being pronounced or does it have to be confirmed by a "confirming" officer? If so, who is this officer?
5. Is there any preliminary judicial investigation of the case before formal charges are made. If so, what rights has the accused during such investigation.
6. Who prosecutes on behalf of the Government.
7. Is the accused entitled to be present at all times during the trial and is he entitled to be legally represented. If he is not legally represented is an officer assigned to defend him.
8. Is evidence permitted for the prosecution as in ordinary Italian criminal cases and is the accused or his representative entitled to cross-examine the witnesses for the prosecution.

of offence over (a) Military personnel

(b) Civilian personnel

3. What is the composition of the Court? Who appoints the judges and are they specifically appointed for each case or do the same judges sit for all cases?
4. Does the sentence of the Court take effect immediately on being pronounced or does it have to be confirmed by a "confirming" officer? If so, who is this officer?
5. Is there any preliminary judicial investigation of the case before formal charges are made. If so, what rights has the accused during such investigation?
6. Who prosecutes on behalf of the Crown?
7. Is the accused entitled to be present at all times during the trial and is he entitled to be legally represented. If he is not legally represented is an officer assigned to defend him?
8. Is evidence produced for the prosecution as in ordinary Italian criminal cases and is the accused or his representative entitled to cross-examine the witnesses for the prosecution?
9. Is the accused entitled to call evidence in support of his own case?
10. Is the accused allowed to give evidence?
11. Can the accused be compelled to give evidence?
12. What right of appeal has the accused. If there is a Court of appeal how is it constituted?

1
13. Can the prosecution appeal against a finding in this Court.

14. Does a death sentence have to be confirmed by anyone and if so, when.

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

785016

5

121

HQ 7th ARMY OFFICIAL BUS SS

4086

OUTGOING MESSAGE

16

Office of origin

SEARS FOR AMNOT - (502)

Date

26th OCTOBER, 1943.

Initials Of

(Originating officer)

Classification

CONFIDENTIAL

(Restricted - Confidential - Secret)

Precedence

ROUTINE

(Routine - Priority - Urgent)

To:

SEVENTH ARMY FOR AMNOT FOR INFO

ITALIAN MILITARY TRIBUNALS TAKEN FROM SEARS FOR AMNOT FROM CHANLER TO SEVENTH ARMY FOR AMNOT FOR INFO RE-STATEMENT SEVENTH ARMY FOR AMNOT FOR INFO CIVIL AMNOT FIVE NAUGHT TWO PAGES MAY BE PERMITTED TO PROSECUTE IN OCCUPIED TERRITORY UNDER CLOSE SUPERVISION FOR TRIAL OF PENDING PROSECUTORIAL CASES NOT INVOLVING ACTS FAVOURABLE TO ALLIED FORCES AND FOR CURRENT CASES

ne Signed:

Content and classification

authenticated by

4

502
HEADQUARTERS
REGION 3, ALLIED MILITARY GOVERNMENT

OUTGOING MESSAGE

TO: FIFTEEN ARMY GROUP FOR AMGOT SICILY
FROM: FIFTH ARMY

DATE 15 OCTOBER 1943

CLASSIFICATION: CONFIDENTIAL

PRECEDENCE: ROUTINE

APPROVED: *Douglas N. Batson*
DOUGLAS N. BATSON
1st LT, CMP,
ACTG ASST ADJUTANT GENERAL

FROM AMG IS POLICY TO ALLOW ITALIAN MILITARY TRIBUNALS TO FUNCTION IN
OCCUPIED TERRITORY IN VIEW STATE OF WAR RECOMMEND IMMEDIATE REESTABLISHMENT
HERE UNDER SUPERVISION FOR TRIAL ALL PRE OCCUPATIONAL CASES NOW PENDING
AND CONTINUATION OF TRIBUNAL FOR TRIAL ALL COMPETENT CASES NO OTHER
COURTS HAVE COMPETENT JURISDICTION SUCH CASES UNLESS VARIED BY
PROCLAMATION JA CONCURS

HUME *From AMGOT Sicily*

DISTRIBUTION:
Personnel Section - 1
Confirmation Copy - 1
File - 1

*To Fifteen Army Group for
AMGOT Fifth Army for Hume
Repeat AMGOT Eighth Army for Benson
Italian Military Tribunals
may be permitted to function in occupied
territory under close supervision for
trial of pending pre-occupational cases not involving
favorable to allied forces and for current cases.*

4086
COPY.

MEMORANDUM ON ITALIAN MILITARY TRIBUNALS.

Italian Military Tribunals were established in 1869. In 1941 a military Penal Code was enacted which gives military tribunals jurisdiction in criminal offences committed by military and non-military personnel. These courts also have jurisdiction in territory declared to be in a state of war, among other cases they try all common crimes committed by military personnel, crimes against Italy committed by anyone and infractions of the law of civilian mobilisation.

2. There were set up Italy military tribunals in each of the following areas where they had territorial jurisdiction, Torino, Milano, Verona, Trieste, Bologna, Spezia, Rome, Naples, Taranto, Calabria, Sicily, Sardinia, and Zara. These courts sat in the principal town of the territorial area and all cases were brought to that court for trial. In addition each Army Corps has a tribunal, and an Army Corps Commander may authorise the establishment of other tribunals where required.

3. The Court has three categories of officials

- 1 - Magistrates
- 2 - Judges
- 3 - Cancellerie

In peace time the first category were reserve officers who while civilians donned uniform when they came to sit as members of a military tribunal. In war time all these officers were recalled to active duty permanently as an organic part of the tribunals. In war time additional persons, such as university professors of law, magistrates and advocates of not less than 15 years standing were called to military duty to sit on these tribunals.

4. The second category are permanent military, naval and air force officers who form the administrative body of the tribunals, like our Judge Advocate staff.

5. The third category are really the clerical staff who in peace time are civilians but in war time are called to the colours and serve as soldier clerks.

6. In peace time the military personnel are paid by the War Department and the civilians by the Ministry of the Interior through the Intendente di Finanza. In war time all the personnel is paid from army funds as serving soldiers.

7. In Naples there is a staff for the territorial military tribunal of about sixteen Judges and forty four Magistrates and Cancellerie.

8. A military tribunal is composed of three or five members depending from the gravity of the offence. No officer may be tried by a court of other officers anyone of whom is his junior.

9. If we had occupied Italy and made all her soldiers prisoners of war

2. There were set up Italy military tribunals in each of the following areas where they had territorial jurisdiction, Torino, Milano, Verona, Trieste, Bologna, Spezia, Rome, Naples, Taranto, Calabria, Sicily, Sardinia, and Zara. These courts sat in the principal town of the territorial area and all cases were brought to that court for trial. In addition each Army Corps has a tribunal, and an Army Corps Commander may authorize the establishment of other tribunals where required.

3. The Court has three categories of officials

- 1 - Magistrates
- 2 - Judges
- 3 - Cancellerie

In peace time the first category were reserve officers who while civilians donned uniform when they came to sit as members of a military tribunal. In war time all these officers were recalled to active duty permanently as an organic part of the tribunals. In war time additional persons, such as university professors of law, magistrates and advocates of not less than 15 years standing were called to military duty to sit on these tribunals.

4. The second category are permanent military, naval and air force officers who form the administrative body of the tribunals, like our Judge Advocate staff.

5. The third category are really the clerical staff who in peace time are civilians but in war time are called to the colours and serve as soldier clerks.

6. In peace time the military personnel are paid by the War Department and the civilians by the Ministry of the Interior through the Intendente di Pienza. In war time all the personnel is paid from army funds as serving soldiers.

7. In Naples there is a staff for the territorial military tribunal of about sixteen Judges and forty four Magistrates and Cancelleria.

8. A Military tribunal is composed of three or five members depending from the gravity of the offence. No officer may be tried by a court of other officers anyone of whom is his junior.

9. If we had occupied Italy and made all her soldiers prisoners of war in theory, as she was an enemy state all military tribunals would have been automatically suspended. As however the Italian Army is being reconstituted and there are no competent courts to try those persons who were waiting trial before these courts previous to our occupation, I am of the opinion that the Italian military tribunals should be reestablished to exercise discipline over Italian soldiers and civilians committing offences triable only by those tribunals.

(Sgd) J.V.M. SHIELDS,
Lieutenant Colonel,
Chief Legal Officer.

A.M.G.,
Region 3 H.Q.,
15/10/43.

- 1) Shall corpse ~~test~~ certain other cases be tried by Italian Cts?
(Question by SLO Mexico Nov 4007/4005/L). How do we give them jurisdiction to try offense under proclamation? ^{if corpses}
Sources Italian Ok. liability different?
- 2) Is it intended to publish ~~very~~ ^{any} ~~for~~ ^{of} ~~the~~ ^{the} ~~100~~ ¹⁰⁰ ~~Reg 3~~ ^{Reg 3}?
- 3) What is to be done with ~~hundreds of~~ ^{hundreds of} ~~1000~~ ¹⁰⁰⁰?
- 4) Are we going to allow Italian military Cts to try ~~the~~ ^{the} ~~Italian~~ ^{Italian} ~~civilian~~ ^{civilian} ~~accused~~ ^{accused} ~~of~~ ^{of} ~~offenses~~ ^{offenses} ~~against~~ ^{against} ~~Italian~~ ^{Italian} ~~military~~ ^{military}?
and copy of letter to head of each RCO
- 5) Jurisdiction of summary courts (one year + 50,000 ~~fr~~ ^{fr}) ~~all~~ ^{all} ~~Shields~~ ^{Shields}
suggests max. right is one year.
- 6) Are we going to suspend racial discrimination & similar laws?
(see Reg 3 report of 2200t incrementing laws)
- 7) What authority have RCOs to issue orders in matters such as reopening land ~~transmissions~~ ^{transmissions}, enforcing amnesty provisions etc.
(see Reg 3 report of Nov 3)
- 8) Can Reg 3 post all proclamations other than 7 & 9? (Yes, they want more of 6 10 & 11)
- 9) ~~Send from Shields: Is there a blank line for with Article 9M at HQ. Palermo?~~

- 2) Is it intended to publish Italy forgettable? (also R10 Reg 3) ?
- 3) What is to be done with plans of Rome?
- 4) Are we going to allow Italian military to try to Italian civilians accused of offenses against Italian military?
 which scope of letters to forward to each R10 & R11
- 5) Distribution of summary counts (one year + 50,000 $\pm$) all shields
 reports may wait is one year.
- 6) Are we going to suspend racial discrimination & similar laws?
 (see Reg 3 report of 2200t enumerating laws)
- 7) What authority have READS to issue orders in matters such as reopening land transmissions, enforcing amnesty provisions etc
 (see Reg 3 report of Nov 3)
- 8) Can Reg 3 post all proclamations other than 7 & 9? (2/2/50, they want more of 6 10 & 11)
- 9) First from shields: is there a black line for into include 9/17 at
 H.Q. formations?
 Disrupt Altorneys