

ACC

10000/142/641

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NOV

10000/142/641

DESERTERS FROM ITALIAN ARMY
NOV. 1943 - OCT. 1945

FILE CLOSED : 31 October 1945

102

1070

1080/1

LEGAL 8/C

89A

MEMORANDUM - Policy - Security

U. S. S. R.

Lord Burgess Sub Comm. AG,
(M.I.A.), R O M B.

A 054 31 Oct 46.

To : Admiral

1. On the 1st Sep 1946 there were 161,000 military personnel awaiting trial for war offences, the offences being AG, Desertion or Failure to appear call up in the case of AG, 167. The figure is an increasing one and the Military Tribunals are making little or no headway in bringing offenders to trial. This state of affairs has had and is still having a bad effect on the morale of the Italian Army generally and in some cases arrests cannot be made because there is no room in penal establishments to hold offenders under arrest. AG and Security are directly interested.

2. It was said that now AG have been passing the Ministry of War to dispose of these cases either by trial or some other method.

The Service Ministers have now given their views on the terms of an amnesty and pardon, and a document is being drawn up by General BRASCHI, Procureur Militaire. The general terms which are likely to be included in this document are given in the attached memorandum.

3. In respect of Italian Naval, Army and Air Force personnel, there are to be 5 categories of persons who will have to be dealt with :-

(a) Any persons accused or undergoing sentence for purely military crimes against Italians.

(b) Any persons accused or undergoing sentence for civil crimes against Italians.

(c) Any persons suspected by the Allies as being War Criminals or under suspicion of being War Criminals, whether or not such persons are in Allied hands, Italian hands or at liberty and notwithstanding whether an indictment has or has not been actually made against such persons.

(d) Any persons, male or female, charged with or convicted, either as principal or accessory, of any offence whatsoever, against Allied persons or property, notwithstanding whether such persons are under detention or at liberty, are wanted for trial, awaiting trial or have been tried and convicted.

(e) Any neo-fascist military personnel whether male or female, planners of war or surrendered enemy personnel who have been returned to Italian custody from Allied custody.

- 2 -

4. It is the British and American opinion of 1944 that the Italian Government are within their rights in taking any action they wish in respect of Categories 3(a) and (b) above; but that persons specified in Categories 3(c), (d) and (e) above should be excluded.

5. (a) It is advisable and the Italian Government probably will wish to publish and implement the document referred to in para 3 above, to mark a special occasion, e.g., the departure of the Italian Army to the Italians. The matter is thus urgent.

(b) It is understood that the Italian Government could put the document into effect in a short time since unlike the ordinary Decree this document only requires signature of the Lieutenant General of the Realm.

6. It is requested, therefore, that you signal your agreement to para 4 above at a very early date.

7. The Naval and Air Force Sub Committees A.C. and H.C. A.C. agree to the above.

d. Brown

Major-General,
R.A.F.

Copy to : R.C. A.C.
Naval Sub Committee, A.C.
Air Force Sub Committee, A.C.

100

Jaw

DCLO

Chief Counsel

CJO

Ration

C

1 NOV 1945

MEMORANDUM TO ASSISTANT ATTORNEY GENERALDated 21 Oct 45.

1. The general terms of the Amnesty and Pardon being prepared by H.H. General DEBONI, Prosecution Generale Militare are likely to include the following :-

(a) An amnesty to all those, both awaiting trial and convicted where the offences alleged or committed does not carry a maximum penalty exceeding 5 years. (Deserters and personnel AWOL excluded).

(b) A pardon of 10 years on any sentence to include unexpired portions as well as 10 years served as part of a longer sentence. (Deserters and personnel AWOL excluded).

2. Desertion and AWOL will probably be treated separately. These categories of desertion from the Italian Army are punishable by death; these are :-

(a) Desertion in the face of the enemy.

(b) Desertion to the enemy.

(c) Desertion on three separate occasions during a state of war.

3. In the case of desertion and AWOL the terms of the Amnesty will probably be as follows :-

(a) An Amnesty to all who deserted prior to 8 May 1945 provided they can prove that they actually co-operated with the Allies or joined any Resistance Organisation taking active measures against the Germans. 99

(b) A remission of the death sentence and substitution of 20 years penal servitude for all deserters coming within any of the categories in para. 2(a), (b) and (c) above.

(c) A pardon of the whole sentence in all cases of desertion, AWOL and call-up offences not coming within the categories mentioned in para. 2 above. Such pardon to carry certain restrictions as to civil rights for a limited period only.

4. The apparent anomaly of punishing a man before he has been tried, convicted or sentenced, is covered for by the Italian law. The procedure is as follows :-

The announcement (in our terms indictment) is placed on a document and a conviction and sentence recorded. The accused is then required to sign the document and having done so is pardoned. He may, if he wishes, refuse to sign, and demand trial. If he adopts this course he is put back to await trial.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
AEO 394

/rm.

ACC/AO86/1/1.

27 Sept. 44.

SUBJECT : Discipline.

TO : Military Mission Italian Army.

1. Reference your AQ/6 of 25 Sept. 44.
2. The proposals of the Minister of War appear satisfactory in themselves, but in order to ascertain whether the proposed legislation actually carries them into effect it would be necessary to peruse the text of the special decree referred to.

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

✓
4086/1

(87A)

Subject: Discipline.Military Mission
Italian Army,
R.O. S. B.
AS/G

25

Sep 44

LEGAL SUB COMMISSION, AGG

1. HQ AAI are disturbed by the increasing incidents of desertion and absenteeism in the Italian Army.
2. It is hoped to obviate this by increasing the disciplinary powers delegated to Regional Commanders.
3. The Ministry of War proposals are as shown in the attached copy translation.
4. The G.O.C. MMIA has asked that you will please give these proposals your consideration and forward your comments.

JP Archer. Capt.

~~Major General~~ Lt. Col. A.O.D.
For Major General.
M. M. I. A.

GAL SUB COMMISSION

DCLO

DCLO

Chief Counsel

CJO

Italian Section

CL RKS

97

COPY TRANSLATION

From: Ministry of War
To: M. M. A.

Ref No. 301354/3A
Date: 23 Sept 44

Subject: Discipline.

Ref to letter AC/C of the 4th Sept.

I fully understand the preoccupation that this Ministry also undergo because of the numerous cases of illegal absence amongst the military personnel such absences become, after a certain number of days, under our Military Laws, known as desertion.

I also realize the position in which are the Military Tribunals and the GCR who are relatively in small numbers for the arrests and detaining of the delinquents.

So as to obviate all those inconveniences and considering the gravity of the situation, I have authorized the Regional Command to call upon a special War Tribunal in cases of long absences; these tribunals have been formed to deal with very serious cases and can inflict the penalty of death.

These tribunals in their special judicial form, are to inflict serious punishment without chance of appeal and their sentences will not be reviewed at the end of the hostilities. 96

We hope that a few examples will serve as a lesson to all and help to reduce to a minimum the painful predicament.

We have studied the matter because a special decree approved by the Council of Ministers is needed to increase the length of the punishment that can be given by J.C. Corps or Detachment as it was requested by MIA.

(sgd) CASATI

ALLIED CONTROL COMMISSION
Naval Sub-Commission
APC 394

WAC/651

1 August 1944

First Enclosure of
HQ. ltr AC/045.7
of 14 July 1944.

TO: Chief Naval Sub-Commissioner, Taranto.

SUBJECT: Registration of Former Italian Naval Personnel, Sicily.

Reference: (a) Sicily Region, HQ. ltr. AC/045.7 of 6 May 1944.
(b) HMC AGC secret ltr, serial 6035 of 4 July 1944.
(c) HMC AGC ltr serial 40 of 17 July 1944 to HQ. AAI.
(d) COMNAV-Palermo ltr, serial 2276 of 1 July 1944 to FOTALI.

1. Forwarded.

2. Sicily Region Headquarters, AGC, in reference (a) forwarded a proposed draft for reinstating Italian Naval deserters or absentees in Sicily. The Regional Commissioner recommended that Admiral Bobbiese submit the draft to the Italian Ministry of Marine for promulgation by the Minister after discussion and approval by the Naval Sub-Commission, AGC. It was further recommended that the proposed draft be extended to include the Italian Army and Air Force.

3. The basic correspondence forwards a BASSO which has been approved by Admiral Bobbiese for issue. The BASSO is a revision and modification of the proposed draft submitted in reference (a), and includes a provision that all Italian military personnel of the Royal Navy, employed by Allied authorities, will not be removed from their employment without special authorization. This provision is in accordance with Army Sub-Commission letter A/216 of 2 July 1944, copy enclosed, except that it is applicable only to Naval personnel. In enclosure 2 of the basic letter, Admiral Bobbiese issued instructions to Italian Naval authorities in Sicily that deserters from the Royal Navy who are employed in establishments directed by Allied authorities are not to be taken away from their employment.

4. As the instructions issued by Admiral Bobbiese in the basic correspondence apparently regularize the position of Italian Naval deserters or absentees in Sicily, it is re-

MEMORANDUM
ALLIED CONTROL COMMISSION
Naval Sub-Commission
APC 394

200/851
1 August 1944

Subject: Registration of Former Italian Naval Personnel, Sicily.

recommended that they be approved. It is further recommended that the Army Sub-Commission and Air Force Sub-Commission endeavor to have similar instructions issued by the respective Italian Ministries.

6. In addition to actual deserters from the Italian Navy, there are two other distinct classes of deserters, namely: technical deserters for failure to register for military service and desertions by persons inscribed or inducted in civilian corps under military control, who are considered as military personnel. Adequate instructions have been issued by Hq. AAI to exempt technical deserters from military service who are employed by Allied authorities in essential war work. The Commandant, U.S. Naval Operating Base, Palermo, was furnished with copies of these instructions by reference (b). In reference (c), Hq. AAI was advised that the threatened arrest of deserters in Sicily, who are employed by Allied authorities, has serious consequences and requested to take measures to prevent such action by Italian authorities in the future. It is considered that adequate measures have been taken with respect to actual deserters by the basic correspondence, and with respect to technical deserters by the references quoted in reference (b).

7. This office is not cognizant of any instructions which regularize the position of persons who were inscribed or inducted in civilian corps under military control and who are either deserters or absentees from such service. Apparently, paragraph 3 of reference (d), refers to deserters in this category. These men are reported to be part of a large group of technicians mobilized and transported to various shipyards in German-controlled Italy, prior to the Allied invasion of Sicily. Subsequent to the invasion, they made their way back to Sicily and were employed by the U. S. Navy in Palermo. Under Article 18 of the Italian Codice Penale Militare di Pace e di Guerra, the military penal law is applied to persons considered as military personnel and to persons inscribed or inducted in civilian corps under military control. Apparently, in accordance with this article, deserters or absentees from Italian civilian labor corps are subject to punishment for desertion under Article 146 of the code.

8. Article 18 of the code provides that, for the purposes of the penal military law, during war, the offenses committed by Italian military personnel, or by persons not included in the Armed Forces of the Italian State, to the damage

RECOMMENDED
ALLIED CONTROL COMMISSION
Naval Sub-Commission
APO 304

RSC/551

1 August 1944

Subject: Registration of Former Italian Naval Personnel, Sicily.

of military personnel or of the Armed Forces of an Allied State, shall be considered as having been committed to the damage of the military personnel or of the Armed Forces of the Italian State. If personnel of Italian civilian labor corps are subject to punishment under Italian law for offenses committed against an Allied Nation, it follows that they should receive benefits which accrue for services rendered to Allied Nations. Therefore, any men inscribed or inducted in civilian corps under military control, who left Italian employment and took employment under Allied authorities, should not be considered as deserters.

6. Paragraph 2 of Article 146 of the code provides that legitimate absentees report within two days, unless there are good reasons to the contrary. It is recommended that the Minister of Marine issue instructions requiring all persons now in Sicily who are absentees from civilian corps under military control to report for registration on a prescribed day or within a certain period thereafter. The instructions should provide that any persons who have been or are now employed by Allied authorities are declared to be exempt from punishment under Article 146 of the code. It is further recommended that the Army Sub-Commission have similar instructions issued by the respective Italian Ministries.

COMMEMORATION

Copy to:
No 141 (Adm Gen Off)
Commandant
ComNavAdvices
Army SC, AGC
Air Force SC, AGC
Legal SC, AGC
Sicily HQ Hq.

COPY

SUBJECT:- Recall to colours of
 civilians employed in
 Naval Dockyard PALERMO

Army Sub Commission MMIA(Adv)
H.O.B.

A/216

2 Jul 44

Lt Col Lester R. Albert
 MMIA LO - PALERMO

Copy to:- HQ, 3 District
 MMIA Main HQ - LENTILE
 Naval Sub-Commission (Adv)

1. Civilians, now being recalled to Italian Armed Forces, are in certain instances essential workers in the Naval Operating Base PALERMO.
2. Request you arrange that under no circumstances is any man removed from the H.O.B. if he is essential to the Naval work.
3. H.O.B. will provide full list of the personnel concerned as early as possible. Arrange with 86 Area to obtain the correct exemption for these personnel.

(Sgd) Illigible
 Lt Col.
 A.A. & G.M.G.

ABC

COPY

92

Subject: Trial of Deserters

To: Acting C.L.O.

(84A)
J. H. Papp

P.A.

1. Reference folios 82 and 83 within.
2. This matter arose out of a letter (folio 79) sent to us via the Minister of War by a lawyer from Catanzaro who calls himself a discharged captain. The allegations in the letter are in purely general terms, no specific examples being cited of any improper prosecutions. This letter was forwarded by Col Uffizio to R.L.O. Region VII, whose reply we now have and which indicates that there have so far been no contraventions of the agreement entered into with Marshal Badoglio (folio 81).
3. I suggest no answer need be sent to R.L.O. Region VII.
4. If you are not satisfied, we could invite the complainant to give us more precise details, but I think at the present stage we would be justly criticised by the Italian Government for doing so, and I suggest the matter be allowed to drop for the present.

J. H. Papp

17/7/44.

Thorne.

Capt

HEADQUARTERS REGION VII 45462

ALLIED CONTROL COMMISSION

File Ref: VII/L/732

Date: 11 July 44

SUBJECT: Trials of Deserters

TO: CLO Legal Sub-Commission HQ ACC Salerno.

1. Attention is invited to basic communication your ref.ACC/4086/1/L dated 30 June 44 received by this RLO 8 July 44 Subject Trials of Deserters.
2. Procuratore Militare of the Tribunale Militare Territoriale di Guerra presso XXXI° Corpo d'Armata in Cantanaro reports.
 - a. That no prosecutions have been undertaken contrary to agreement with Italian Government dated 9 May 44, since 13 April 44, when he became Procuratore Militare.
 - b. Procuratore Militare reports that he has searched the records and reviewed all sentences of his Military Tribunale prior to 13 April 44 and finds only 6 cases of prosecutions prior to the 25 Nov. 1943 and before his appointment. Procuratore Militare distinguishes the 6 cases as not being within the operation of the agreement of 9 May 44.
 - c. Letter of explanation of Procuratore Militare distinguishing the aforesaid 6 cases, translated and attached hereto as enclosure 1.

Seen by Acting
C.L.O. who
agrees no action
necessary Jm.

18/7/44 (1 enclosure)

LEGAL SUB-COMMISSION	
CLO	
OCLO	
Chief Counsel	
CLO	
Station Section	
CL RKS	

Donald C. Little
DONALD C. LITTLE
Captain CMP AUS
RLO Region VII

To: Captain Donald C. Little
Regional Legal Officer

Catanzaro, 9 July 44

I certify that all penal procedures for desertion against military personnel belonging to the XXXI^o Corpo d'Armata, whose arbitrary absence fell during period 10 July - 8 September 43, have been disposed of by revocation of penal action from the Commander and consequently by closing the procedure.

I certify also, that all procedures for desertion until 6 Oct. 43 have been disposed of in the same way, in obedience to Proclamation of the XXXI^o Corpo d'Armata published on 23 Sep. 43. I finally certify that I have reviewed all sentences given by this Tribunale during the period prior to my arrival, that is from 10 July 43 to 13 April 44, to ascertain myself that no sentence had been given for desertion during the 10 July to 8 September period, and I have found:

1. Sentence 14 Dec. 43 against C.R. Chiarelli Leonardo di G. Battista for desertion from 28 Aug. to 24 Sep. 43 with 3 years, 4 months military imprisonment. This Carabinieri, by Royal Decree N° 30 dated 10 Feb. 44, has been pardoned and released on 3 March 44.
2. Sentence 10 Dec. 43 against soldier Paone Antonio di Giuseppe for desertion from 30 Aug. to 28 Sep. 43 and other desertion from 12 Oct. to 27 Oct. 43; the first desertion would have to fall out, but also this military is free, having the Tribunale granted him the adjournment of the execution of the sentence.
3. Sentence 27 Aug. 43 against soldier Vencio Donato fu Salvatore for desertion from 25 May to 14 Aug. 43. The case refers to desertion prior to 10 July 43; however the defendant was fugitive; he has been arrested and put in jail on 6 July and has to answer for another desertion.
4. Sentence 16 Nov. 43 against soldier Bruno Salvatore fu Giuseppe for desertion from 6 Aug. to 14 Aug. 43 and for other desertion from 7 Sep. to 2 Nov. 43. The first desertion would fall out, not so the second; however this defendant is fugitive and when caught, has to answer for the other desertion.
5. Sentence 23 Nov. 43 against C.R. Graziano Rodolfo fu Vincenzo for desertion from 5 to 25 Sep. 43. This sentence would fall out but the Carabinieri has been condemned to 5 years military imprisonment for other desertion from 27 Nov. 43 to 29 March 44.
6. Sentence 25 Nov. 43 against soldier La Rosa Nicola di Francesco for 2 desertions. The first from 5 Sep. 42 to 21 June 43; the second from 5 to 28 Aug. 43. The second desertion would fall out, not so the first as prior to 10 July 43; this soldier has been condemned to 10 years imprisonment and the sentence has

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Anyway these 6 sentences are definitive and I have not the power to take any measures against them.

The Procuratore Militare del Regno
Colonel Oreste Trötta.

tran.mz

SECRET

RECOMMENDATIONS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ACC/4086/1/L

30 Jun 44

SUBJECT: Italian Military Deserters.

TO : RLOs (thru DC) Regions 1, 2, 3, 4, 5, 6, 7, 8.
SIOs REG 5th & 8th Armies.

1. Appended hereto is the text of the agreement arrived at with the Italian Government on the 9th May 44 for the handling of Italian military deserters.

2. It will be the duty of RLOs by Inquiry of Italian Military Tribunals sitting in their locality to see that these terms are observed.

Copy to Executive Commissioner.

G. R. UPJOHN, Colonel
Chief Legal Officer.

TEXT OF AGREEMENT BETWEEN ITALIAN GOVERNMENT ON HANDLING OF ITALIAN MILITARY DESERTERS.

1. The position of all members of the Italian Armed Forces, who have been or will be accused of having deserted such forces within the period July 10th - September 8th 1943 inclusive, will be settled by the Italian Authorities by the choice in each case of one of the following ways so that no punishment which is consequential to such desertion be undergone by the said members of the Italian Armed Forces:
 - (a) "archiviazione degli atti" (nolle prosequi) according to art. 74, para 3 Italian code of penal procedure;
 - (b) "revoca dell'azione penale" (revocation of criminal action) according to article 245, para 4, Italian military penal code of war;
 - (c) acquittal at any stage;
 - (d) conviction followed by "grazia" (pardon) or "condono" (general pardon).
2. In the case of members of the Italian Armed Forces who have deserted within the period July 10th - September 8th 1943, inclusive, and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by Italian military authorities after September 8th 1943 and duly published, the desertion perpetrated between July 10th and September 8th 1943, inclusive, shall not be punished as such and by itself but it shall be taken into account, if and whenever necessary, so as to punish as crime of desertion the failure to answer the requests to return to the Italian Armed Forces included in ordinances or proclamations subsequent to September 8th 1943.
3. The above will not apply to those who deserted to the Germans or to other armies or military formations hostile to the Allied Forces.

No publicity shall be given to the present agreement.

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Chief Legal Officer.

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3. The above will not apply to those who deserted to the Germans or to other armies or military formations hostile to the Allied Forces.

No publicity shall be given to the present agreement.

Salerno, May 9th 1944.

/s/ NOEL MACVRIANE

LG

Chief Commissioner

ACC

(s) BADOLLO

ple
NEAR HEADQUARTERS
ARMED CONTROL COMMISSION
Legal Subcommittee
APO 394

GWS/gf

30 Jan 44

Acc/4086/1/L

SUBJECT: Trials of Deserters.

TO : MIS Region 7 (class 80)

I enclose copy of a letter received by this HQ regarding "Desertion in front of the enemy - epoch Sept 43".

Please investigate the matter and report if any prosecutions are being undertaken contrary to agreement with the Italian Government. See my ACC/4086/1/L dated 30 Jan 44.

81
C. R. DAVIS, Colonel
Chief Legal Officer.

87

Trains. n. 851

Lieut. Gerardo

49

To H.E. the Minister of War
and for information to H.M. The Lieutenant of the King
and to A.C.C.

Excellency,

As an old officer of the 1st European War, I turn to you to report a very sorrowful case which may have serious moral & political unsequences -

In some liberated cities (especially in CATANZARO) there a military body which has whose task is to prepare trials against ^{Italian} soldiers and officers - Among the trials there are some concerning "Desertion in front of the enemy" - Epoch. September 1943 -

We can not deny that after the allied landing in our country, there has been a serious collapse among our people and our military organization. But the responsibility of all this does not fall on our soldiers, but on the regime which had imposed on the people a war against the English & the American ~~for~~ countries, which we had always considered as our friends -

When at dawn of 3 September 1943, the Allies landed in Calabria, we attended one of the worst tragedies of history. Then came the armistice which put relationship between Italy and the Anglo-American on the right terms - The moral & political sky of the fatherland became clearer - With the above mentioned trials ~~to~~ we would ~~to~~ intend punishing soldiers & officers, who have made it possible the new situation possible -

These trials are immoral because they bring ~~to~~ into light facts & events, which ought to be forgotten - Papers & Archives are filled of papers to make our shame eternal - And a written proof is given of what ought to be buried because it represents the ~~face~~ of a Nation, which has been a thousand times victorious -

The Basis of these trials does not exist - Desertion in front of the enemy after the 3rd of September is simply nonsense - The Anglo-Americans were not our enemies before the 3rd of September, but juridically they were such: after the date in which the armistice was signed they became our friends, because the end of the war means, at least formally, the end of

If after the third of September in the great disorder and general escape

some command has given orders which were against the Armistice, they become ~~juridically~~ can not represent the basis of accusations against those Italian soldiers, who have refused to obey those orders.

Especially because Also in those moments every order issued against the armistice ~~was a~~ had the unsequence of helping the German enemy which was still in Calabria. One of these orders was given in order that all materials and arms should be destroyed and the troops should withdraw in new positions (which?) - This would have been a help given to the enemy and a potential menace to the Allies. We can understand today how mistaken those orders were, for if the units had been kept in the positions they were occupying on the 3 of September as they had been fixed by the armistice, we would have today an army, ready, organized, supplied of arms and material. Anyone say understand the consequences of this.

These trials may be called the residue of the fascist mentality of somebody belonging to the Army, in separation for the fall of Fascism. For the Fascist elements were very sorry that the Armistice was signed. As they could not oppose it in any other way, they tried to boycott it by ~~every~~ all possible means.

It is ~~right~~ necessary that inquiries be made concerning the reasons for which these orders have been issued. It is necessary that the Army be purified of fascist elements.

It is necessary that documents concerning military personnel for facts which took place after September 1943, be annulled and destroyed. No written proof ought to remain of that temporary shame.

The Italian soldier, who has always been obedient and courageous, did not obey during those tragic events of the 3 September to mistaken orders. He did it for instinct because he understood that the Allies had nothing against him, but intended fighting the Germans. He understood that withdrawing in new positions, his was always getting farther from his own family, he was mixing with retreating German troops. This was clearly shown by the many soldiers who were compelled to pass through the German lines in order to get back to their family.

Ordering that such provisions be taken, You will accomplish a duty of the democratic government, which must avoid that fascist elements ^{political and moral} revenge themselves on soldiers and officers of their military defeat. They only issued the orders in order to boycott that transformation process, by which because of which the Italians and the Allies were made side to side.

- 2 -

You will surely find in the events of September 1943 the ^{exact} proof that all fascist elements must be eliminated from the Army and that their acts must be judged and examined -

Only by these means the democratic government will ~~get~~ be trusted by the Italian people and gets its gratitude -

- Lawyer Braucatisano Francesco -
- Discharged First Captain ~~dis~~

8

8

85



Regal 812 42

All ecc/ IL MINISTRO della Guerra

e per conoscenza a S.A. il LUOGOTENENTE del RE
alla COMMISSIONE ALLEATA di Controllo;

Eccellenza,

Quale vecchio Ufficiale della I^a guerra Europea, mi rivolgo a V. Ecc/ per denunciare un fatto doloroso capace di gravi ripercussioni morali-politiche.

Presso alcune città liberate (compresa Catanzaro) funziona un istituto militare, con il compito di istruire dei processi a carico di soldati ed Ufficiali italiani.

Tra le rubriche, vi è questa: "Diserzione di fronte al nemico"; epoca del fatto: "SETTEMBRE 1943".

Non possiamo negare che con lo sbarco alleato nella nostra patria, un collasso spaventoso si è verificato nel popolo e nel nostro organismo militare, dall'un capo all'altro della penisola. Ma la responsabilità non ricade sui nostri militari, sibbene sul regime che aveva imposto una guerra non sentita dal popolo, contro due popoli, Inglesi ed Americani, ritenuti sempre amici nostri. Tanto vero che il regime, cercava istillare l'odio nell'animo del popolo con manifesti affissi lungo le strade.

Quando all'alba del 3 settembre 1943 gli Alleati si sono

presentati in Calabria, abbiamo assistito ad una tragedia che forse resterà unica nella storia. Sopraggiunse provvidenziale l'armistizio, il quale rimise nella sua vera luce i rapporti dell'Italia con gli Anglo-American, ed il cielo politico-morale della Nazione incominciò a rasserenarsi. Ora, con le istruttorie sopraccennate, si vorrebbe inculcare contro soldati ed Ufficiali, che dopo il 3 settembre, in qualunque maniera hanno reso possibile questo nuovo stato di cose.

Queste istruttorie sono immorali perché portano in luce fatti ed avvenimenti che, per amor di Patria, dovrebbero restare eternamente sepolti nella più completa ignoranza. Fatti avvenuti in un periodo in cui "chi è senza peccato scagli la prima pietra, dal primo all'ultimo degli Italiani." Invece si riempiono Carte, si colmano archivi, per eternare nella storia la nostra vergogna. Si fornisce gratuitamente una prova scritta di ciò che non deve esistere, perché costituisce la morte di una Nazione, mille volte vittoriosa.

Queste istruttorie sono antigiuridiche perché si basano sopra imputazioni inesistenti. Le dismissioni...

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Quale vecchio Ufficiale della Ia guerra Europea, mi rivolgo a V.Ecc/ per denunciare un fatto doloroso capace di gravi ripercussioni morali-politiche.

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Invece si riempiono ~~carte~~, si colmano archivi, per eterna-

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Queste istruttorie sono antigiuridiche perché si basano

sopra imputazioni inesistenti: La diserzione di fronte al

nemico, dopo il 3 settembre, costituisce una volgare fandonia. Gli Anglo -Americani, non erano virtualmente nemici, ma giuridicamente tali prima del 3 settembre; dopo tale data, in cui era stato firmato l'armistizio, essi diventavano giuridicamente amici, perché la cessazione delle ostilità, presuppone, almeno formalmente, la fine dell'inimicizia.

Quindi, se dopo il 3 settembre, nel supremo disordine e squagliamento generale, qualche Comando ha dato ordini che contrastavano con l'armistizio, non possono tali ordini costituire appunto da muovere ai soldati italiani che quegli ordini non hanno potuto o voluto osservare.

Tanto più che in quei momenti, ogni ordine dato in contrasto con l'armistizio, gioveva al nemico tedesco che ancora calpestava il suolo della terra Calabrese. Uno di questi ordini malamente dati, fu quello di distruggere il casermaggio e le armi e ritirarsi su nuove posizioni (quali?) arretrate, ciò che costituiva un aiuto diretto al tedesco, ed una minaccia potenziale agli Alleati. Oggi attraverso il nuovo volto delle cose, vediamo quanto quegli ordini, sono stati delittuosi, perché se i reparti fossero stati fermati al posto che occupavano il 3 settembre, come era obbligo in base all'armistizio, oggi avremmo avuto un esercito pronto, organizzato, provvisto di casermaggio e di armi, con le conseguenze che ognuno può intravedere.

Queste istruttorie possono qualificarsi come un residuo della mentalità fascista di qualche gallonato dell'esercito, addolorato per la caduta del fascismo.

Perché forte fu il disappunto degli elementi fascisti per l'armistizio; e non avendo potuto opporsi altrimenti, hanno cercato di frapporre impedimenti di ogni genere, allo scopo, almeno, di boicottarlo.

Eccellenza. E' prudente che si compiano indagini per conoscere quali sono state le intenzioni che hanno ispirato

certi Comandi, ad emanare quegli inconsulti ordini, che del resto non sono stati eseguiti, perché è bene che l'Esercito sia epurato degli elementi fascisti, camuffati. E' necessario che le istruzioni contro militari per fatti avvenuti nel settembre 1943 siano subito annullate e le cariche distrutte, perché non rimanga scritta la prova della nostra momentanea vergogna.

Il soldato Italiano, sempre disciplinato e valoroso, se non ubbidì in quei frangenti dopo il 3 settembre, agli ordini errati e tendenziosi, lo fece perché per istinto capi che

Gli Alleati venivano non contro di lui, che invece difendevano, ma contro il tedesco. Capi per istinto che cedendo su posizioni più arretrate, si allontanava maggiormente dalla propria famiglia, confondendosi violentemente con i

radio, ente amico, perché la cosa è
suppone, almeno formalmente, la fine dell'inimicizia.
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Queste istruttorie possono qualificarsi come un residuo
della mentalità fascista di qualche gallonato dell'eserci-
to, ancorato per la caduta del fascismo.

Perché forte fu il disappunto degli elementi fascisti per
l'armistizio; e non avendo potute opporsi altrimenti, han-
no cercato di frapporre impedimenti di ogni genere, allo
scopo, almeno, di boicottarlo.

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cedendo su posizioni più arretrate, si allontanava maggior-
mente dalla propria famiglia, confondendosi viepiù con le

schiere tedesche in ritirata, come é dimostrato dai molti militari che per rientrare in famiglia hanno dovuto attraversare le linee tedesche.

Disponendo tali provvidenze, urgenti, V.Ecc/ adempirà ad un preciso dovere del Governo democratico, di non permettere che elementi fascisti, mascherati, si vendichino su alcuni soldati ed ufficiali, della loro disfatta politica e morale, in conseguenza proprio di ordini da loro impartiti allo scopo di boicottare il processo di trasformazione, per cui oggi possiamo procedere spalla a spalla con gli Alleati.

V.Ecc/ troverà negli avvenimenti del settembre 1943 la prova precisa contro tutti gli elementi fascisti che devono essere allontanati dall'esercito, valutandone i singoli atti ed il loro movente.

Così facendo il Governo democratico ~~non~~ ^{ha} acquistato la fiducia e la riconoscenza del popolo Italiano. Con rispettosi ossequi.

Avv: Brancatisano Francesco

1° Capitano in congedo



CP



C O N S I D E R I N G

That by letter dated February 13th 1944 the Allied Control Commission has requested that "members of the Italian Armed Forces who deserted between July 10th and September 8th 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion".

That the Comando Supremo Italiano - though informing the Allied Control Commission to have already given instructions by circular letter of January 29th 1944 to the effect that all proceedings for crimes perpetrated from July 25th up to the end of September 1943 be examined or revised in a spirit of wide indulgence - has stated the necessity not to leave unpunished, in any case and without discrimination, all deserters, and this in order to avoid the serious danger of impairing the sentiment of military honour, fundamental in any army, and of upsetting the disciplinary structure of the Ar-

lian Armed Forces who deserted between July 10th and September 8th 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion".

- That the Comando Supremo Italiano - though informing the Allied Control Commission to have already given instructions by circular letter of January 29th 1944 to the effect that all proceedings for crimes perpetrated from July 25th up to the end or September 1943 be examined or revised in a spirit of wide indulgence - has stated the necessity not to leave unpunished, in any case and without discrimination, all deserters, and this in order to avoid the serious danger of impairing the sentiment of military honour, fundamental in any army, and of upsetting the disciplinary structure of the Armed Forces.

- That the Allied Control Commission making appeal to unavoidable necessities of political order and on the basis of the additional clauses of armistice, has insisted that, in any case, all members of the Italian Armed Forces who deserted in the period July 10th- September 8th 1943

should be exempted from any punishment for the crime perpetrated, but has, however, admitted the necessity that in the fulfilment of the above said precise request the principles of military honour and discipline be safeguarded at the utmost.

It has been agreed as follows:

1.- The position of all members of the Italian Armed Forces, who have been or will be accused of having deserted such forces within the period July 10th - September 8th 1943 inclusive, will be settled by the Italian Authorities by the choice in each case of one of the following ways so that no punishment which is consequential to such desertion be undergone by the said members of the Italian Armed Forces :

- a)- "archiviazione degli atti" (nolle prosequi) according to art. 74, para, 3, Italian code of penal procedure;
- b)- "revoca dell'azione penale" (revocation of criminal action) according to article 245, para 4, Italian military penal code of war;
- c)- acquittal at any stage;
- d)- conviction followed by "grazia" (pardon) or "condono" (general pardon).

2.- In the case of members of the Italian Armed Forces who have deserted within the period July 10th - September 8th 1943, inclusive, and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by

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2.- In the case of members of the Italian Armed Forces who have deserted within the period July 10th - September 8th 1943, inclusive, and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by Italian military authorities after September 8th 1943 and duly published, the desertion perpetrated between July 10th and September 8th 1943, inclusive, shall not be punished as such and by itself but it shall be taken into account, if and whenever necessary, so as to punish as crime of desertion the failure to answer the requests

to return to the Italian Armed Forces included in ordinances or proclamations subsequent to September 8th

1943.-

3.- The above will not apply to those who deserted to the Germans or to other armies or military formations hostile to the Allied Forces.-

No publicity shall be given to the present agreement.

Salerno, May 9th 1944.-

/s/ NOEL MACFARLANE

LC

Chief Commissioner

ACC

/s/ RADOGLIO

A CERTIFIED TRUE COPY:

Robert E. Doe

ROBERT E. DOE

Major, A.C.D.

Secretary General

08

BEST COPY POSSIBLE

Handed by Capt. Amelio to

Major Thacker 26/7/44

present a change same of the. Des.

R/a.

002222

P.M. 155, 11

maggio 1944

I reparto

ufficio affari vari

AL SOSTITUTO PROCURATORE GENERALE MILITARE IT.

- presso la sezione del tribunale supremo
militare per le terre liberate -

Prot. n° _____/AV.

037UNI

OCCETTO : procedimenti penali a carico dei militari disertori.-

Seguito lettera 227/RP., del 26 marzo u.s.

Trasmetto copia dell'accordo intervenuto tra il R. Governo
e la Commissione Alleata di Controllo per la definizione della
posizione dei militari italiani che abbiano disertato nel perio-
do 10 luglio - 8 settembre 1943.

L'accordo - secondo quanto convenuto con la Commissione Al-
leata di Controllo - non deve essere reso pubblico.

Ritengo pertanto che sarebbe opportuno non inviare il testo
dell'accordo ai dipendenti procuratori militari e dare invece
istruzioni agli stessi perchè applichino con larghezza la circo-
lare 29 gennaio 1944 n° 82/RP. di questo Comando Supremo (allega-
ta in copia) e trasmettano alla S.V. tutti quei processi che
potessero essere definiti in istruttoria per archiviare
atti, revoca dell'azione penale od assoluzione.

Per i processi così trasmessi alla Procura
S.V. potrà, caso per caso, adottare le modalità

Test
infrutt
prevede

Prot. n° _____/AV.

O S T U N I

OGGETTO : procedimenti penali a carico dei militari disertori.--

Seguito lettera 227/RV., del 26 marzo u.s.

Trasmetto copia dell'accordo intervenuto tra il R. Governo e la Commissione Alleata di Controllo per la definizione della posizione dei militari italiani che abbiano disertato nel periodo 10 luglio - 8 settembre 1943.

*Tent
with
presumptions*

79

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Per i processi così trasmessi alla Procura S.V. potrà, caso per caso, adottare la modalità loro definizione in uno dei modi previsti dall'art. 100.

2

per quanto riguarda la posizione dei disertori di cui all'art. 2 dell'accordo, la S.V. potrà dare analoghe istruzioni coordinandole con i bandi e le circolari finora emanate in materia.

IL MARESCIALLO D'ITALIA
CAPO DI STATO MAGGIORE GENERALE
(Giovanni Messe)

Copies for information to:
Ministry of War
Ministry of Navy
Ministry of Air Force
Ministry of Communications

78

I 2075744

To Major Thackrah
 Speak to me, before
 Landing to Badoglio.

II

Phone Capt Cerulli
 at Command Superior
 to submit instructions
 for implementation.

III

To Ch. 1.

Copy of instructions
 to Prosecution, Judge
 Military in December.

2075744

Reg

Vaporware

Vaporware

Vaporware

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GMB/gms

76

14 May 1944

AOC/4086/1/1

SUBJECT: Agreement re Trials of Deserters.

TO : Secretary General.

1. Referring to my minute dated 1 May 44 (on attached file 4086/1/1) and the Chief Commissioner's reply, I enclose 2 copies of the agreement on this matter signed by Marshal Badoglio.

Would you please ask the Chief Commissioner to sign and return one copy of the agreement herewith, retaining the other copy in your files.

G. R. UPJOHN, Colonel
Chief Legal Officer.

Enclosed: 2 copies /agreement re
trials of deserters.

II

Enclosure requested to supply office copy of agreement
for files.
A. R. Schacharow
27 May 1944.

7/1/44
HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
AFO 394

GHO/gmf

ACC/4086/1/L

10 May 1944

SUBJECT: Italian deserters.

TO : RLO (thru HQ) Region 5.

1. Reference your R5/511/2 of 6 May 1944.
2. Herewith copy of the existing directive on the subject.
3. The agreement reached with the Italian Government is not yet signed but for CONFIDENTIAL information I enclose a copy of the operative parts as agreed subject to execution.

G. F. UPTON
Colonel
Chief Legal Officer.

76

TO : C.L.O. Rear H.Q. A.C.C.
 FROM : H.Q. Region 5 A.M.G.
 SUBJECT : Italian Deserters.
 REF : R5/511/2.

6 May 1944.

1. A case has been presented to this H.Q. for advice in connection with a deserter from the Italian Army who is now in Campobasso gaol.
2. The full facts are not yet in possession of this H.Q. and are being investigated.
3. It appears however that there is no copy here of an instruction issued by you dealing with this subject about the time when this Region was activated.
4. It would be appreciated if you would supply a copy of that instruction and also of the agreement with the Italian Government on the subject in order to enable us to give the correct advice when the true facts have been discovered.

For Regional Commissioner

LEGAL SUB-COMMISSION

W. E. BEHRENS
 Lt. Colonel
 R.L.O.

CLO

DCLO

Chief Counsel

CJO

Italian Section

75

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Public Safety Sub-Commission
APO 394

May 1, 1944

ACC/14605/PS

SUBJECT : Deserters from the Italian Army
prior to Armistice

TO : Army Sub-Commission.

1. This Sub-Commission has been informed that there are a substantial number of ex-members of the Italian Army at large, who according to their own statements, deserted because they did not wish to fight for Fascism and, after having been apprehended and given prison sentences, escaped about the time of the armistice and whose re-arrest is still being sought.
2. It is said that a number of such persons are in hiding and although anxious to assist the Allies are afraid to show themselves for fear of arrest.
3. I should be glad to know whether any policy has already been contemplated for dealing with such persons and whether there has been any question of granting amnesty in such cases.
4. If you are of the opinion that there are likely to be a sufficient number of persons affected, I believe it would be a wise step to decide upon the policy to be followed so that the necessary publicity can be given.

Al Young
A. E. YOUNG,
Colonel,
Deputy Chief,
Public Safety
Sub-Commission

hgd

92

Date _____

To	From
----	------

Labor

Education

Interior

Public Health

Public Safety

Public Utilities

Agriculture

AG

Hq. Comdt.

Transportation O.

Supply Officer

Billeting O.

Stenographic Section

File Section

Do the rules cover in existence
covering these cases?

Received Gold. 03/20/00
23

73

(initials)

Approved
Information

ed
y action
y action & return
e

*Take your Homebound
Docs to the community
apply to desertions
provided of course that
they took place
(initials)
before the agreed departure date*

For your information
For comment
Contents noted
For necessary action
For necessary action & return
For compliance
For file

For comment

Contents noted

For necessary action

For necessary action & return

For compliance

For file

In any event I
am strongly against
any further annexation
Spain &c

CONSIDERING

That by letter dated February 15th 1944 the Allied Control Commission has requested that members of the Italian Armed Forces who deserted between July 10th and September 8th 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion.

That the Comando Supremo Italiano - though informing the Allied Control Commission to have already given instructions by circular letter of January 20th 1944 to the effect that all proceedings for crimes perpetrated from July 25th up to the end of September 1943 be examined or revised in a spirit of wide indulgence - has stated the necessity not to leave unpunished, in any case and without discrimination, all deserters, and this in order to avoid the serious danger of impairing the sentiment of military honour, fundamental in any army, and of upsetting the disciplinary structure of the Armed Forces.

That the Allied Control Commission, making appeal to unavoidable necessities of political order and on the basis of the additional clauses of armistice, has insisted that, in any case, all members of the Italian Armed Forces who deserted in the period July 10th - September 8th 1943 should be exempted from any punishment for the crime perpetrated, but has, however, admitted the necessity that in the fulfilment of the above said precise request the principles of military honour and discipline be safeguarded at the utmost.

It has been agreed as follows:

1. The position of all members of the Italian Armed Forces, who have been or will be accused of having deserted such forces within the period July 10th - September 8th 1943 inclusive will be settled by the Italian authorities by the choice in each case of one of the following ways so that no punishment which is consequential to such desertion be undergone by the said members of the Italian Armed Forces:

- (a) Archiviazione degli atti ("nolle prosequi") according to Article 74, para 3, Italian Code of Penal Procedure.
- (b) Revoca dell'azione penale (revocation of criminal action), according to Article 245, para 4, Italian Military Penal Code of War. **72**
- (c) Acquittal at any stage.
- (d) Conviction followed by "grazia" (pardon) or "condono" (General pardon).

2. In the case of members of the Italian Armed Forces who have deserted within the period July 10th - September 8th 1943 inclusive and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by Italian military authorities after September 8th 1943 and duly published, the desertion perpetrated between July 10th and September 8th 1943 inclusive shall not be punished as such and by itself but it shall be taken into account, if and whenever necessary so as to punish as crime of desertion the failure to answer the requests to return to the Italian Armed Forces included in

that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion.

That the Comando Supremo Italiano - through informing the Allied Control Commission to have already given instructions by circular letter of January 20th 1944 to the effect that all proceedings for crimes perpetrated from July 25th up to the end of September 1943 be examined or revised in a spirit of wide indulgence - has stated the necessity not to leave unpunished, in any case and without discrimination, all deserters, and this in order to avoid the serious danger of impairing the sentiment of military honor, fundamental in any army, and of upsetting the disciplinary structure of the Armed Forces.

That the Allied Control Commission, making appeal to unavoidable necessities of military order and on the basis of the additional clauses of Article 74, insisted that, in any case, all members of the Italian Armed Forces who deserted in the period July 18th - September 8th 1943 should be exempted from any punishment for the crimes perpetrated, but has, however, admitted the necessity that in the fulfillment of the above said precise request the principles of military honor and discipline be safeguarded at the utmost.

It has been agreed as follows:

1. The position of all members of the Italian Armed Forces, who have been or will be accused of having deserted such forces within the period July 18th - September 8th 1943 inclusive will be settled by the Italian authorities by the choice in each case of one of the following ways so that no punishment which is consequential to such desertion be undergone by the said members of the Italian Armed Forces:

- (a) Archiviazione degli atti ("nolle prosequi") according to Article 74, para 3, Italian Code of Penal Procedure.
- (b) Revoca dell'azione penale (revocation of criminal action), according to Article 245, para 4, Italian Military Penal Code of War.
- (c) Acquittal at any stage.
- (d) Conviction followed by "grazia" (pardon) or "condono" (general pardon).

2. In the case of members of the Italian Armed Forces who have deserted within the period July 18th - September 8th 1943 inclusive and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by Italian military authorities after September 8th 1943 and duly published, the desertion perpetrated between July 18th and September 8th 1943 inclusive shall not be punished as such and by itself but it shall be taken into account, if and whenever necessary so as to punish as crime of desertion the failure to answer the requests to return to the Italian Armed Forces included in ordinances or proclamations subsequent to September 8th 1943.

3. The above will not apply to those who deserted to the Germans or to other armies or military formations hostile to the Allied Forces.

Notes for Chd. on Subj. paras (a) & (b) of para 1 of memo 1-

- (a) Article 74 C.C.P. para 3. "Archiviazione degli atti"
This provides that when the P.M. in the pre-trial stage decides that the prosecution ought not to be proceeded with, he orders the papers in the case to be "transmitted to the archives". There appears to be no equivalent for this in C.C.P. American procedure, but the effect is similar to a "nolle prosequi".
However, if new facts subsequently come to light showing cause why the charge should be sustained, then the P.M. must recall the papers from the archives and re-institute ~~the~~ pre-trial proceedings.

- (b) Article 245, para 4, Ital. Mil. Pen. Code of War:
Provides that during the pre-trial proceedings, the Commander of the formation to which a military Tribunal is attached may decide that the exercise of penal action shall be suspended or revoked.

ayp.

CONFIDENTIAL

27/4/44

- That by letter dated February 13th 1944 the Allied Control Commission has requested that "members of the Italian Armed Forces who deserted between July 10th and September 8th 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion".

- That the Comando Supremo Italiano - though informing the Allied Control Commission to have already given instructions by circular letter of January 23rd 1944 to the effect that all proceedings for crimes perpetrated from July 25th up to the end of September 1943 be examined or revised in a spirit of wide indulgence - has stated the necessity not to leave unpunished, in any case and without discrimination, all deserters, and this in order to avoid the serious danger of impairing the sentiment of military honour, fundamental in any army, and of upsetting the disciplinary structure of the Armed Forces.

- That the Allied Control Commission, making appeal to unavoidable necessities of political order and on the basis of the additional clauses of armistice, has insisted that, in any case, all members of the Italian Armed Forces who deserted in the period July 10th - September 8th 1943 should be exempted from any punishment for the crime perpetrated, but has, however, admitted the necessity that in the fulfilment of the above said precise request the principles of military honour and discipline be safeguarded at the utmost.

It has been agreed as follows: *in each case*

1.- The position of all members of the Italian Armed Forces

X Agreed by
Plume 29/4/44
CWO

~~The this purpose the Italian authorities will avail themselves of~~

- 2 -

~~their choice and according to cases and circumstances, of the institutes of "archiviazione degli atti" (filing of the proceedings), of "revoca dell'azione penale" (revocation of the action), of "assoluzione in istruttoria" (acquittal during the preliminary proceeding), and, in case of conviction, of "sospensione dell'esecuzione della pena" (suspension of punishment), of "grazia" (grace), or of "condono" (pardon).~~

~~2. The above will not apply:~~

- ~~a) - to those who deserted to the Germans or to other hostile armies or military formations;~~
- ~~b) - to the deserters who requested to return to the Italian Armed Forces after September 8th 1943, have not answered such request within the date fixed by ordinances or proclamations issued to such purpose and duly published.~~
- ~~a) *archiviazione degli atti* according to Article 74, para 3, Italian Code of Penal Procedure.~~
- ~~b) *revoca dell'azione penale* (revocation of criminal action) according to Article 245, para 4, Italian Military Penal Code of War.~~
- ~~c) *acquittal* at any stage.~~
- ~~d) conviction followed by "grazia" (pardon) or "condono" (general pardon) x~~

69

(2) In the case of members of the Italian Armed Forces ^{who have deserted} within the period July 10th - September 8th 1943 and who have not answered subsequent requests to return to the Italian Armed Forces, included in ordinances or proclamations issued by Italian military authorities after September 8th 1943 and duly published, the desertion perpetrated between July 10th and September 8th 1943 shall not be punished as such and by itself but it shall be taken into account, if and whenever necessary, ^{so as} to punish as crime of desertion the failure to answer the requests to return to the Italian Armed Forces included in ordinances or proclamations subsequent to September 8th 1943.

3.- The above will not apply to those who deserted to the Germans or to other hostile armies or military formations *Engl. It. to the Allied Forces*

28/1/44

To CHO.

If you agree we will
write to confirm, if there
are still points at issue will
phone Captaino Cerulli. 67

ag.

A.P.T.

I agree so far as agreement with
Cerulli is concerned but matter with
Coke to be submitted to CC. for final
decision. See advice of single member.
Get fair copy made

246

64

AFG/inf

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

25 April 1944.

ACG/4086/1/L

SUBJECT: Italian Deserters.

TO : Comando Supremo Italiano.
(For the attention of General Infanti).

1. Some few days ago an assurance was conveyed to me by telephone (Major Thackrah-Capitano Cerulli) to the effect that the arrangements concluded between General Infanti and myself tending to a solution of this question had been reduced to writing and only awaited the approval of the General before communication to this Subcommittee.

2. In view of the fact that the interview with General Infanti took place prior to 5 April 44 on which date the officer c/o Italian Liaison Office, AFG was informed of the position of these negotiations, I am not a little apprehensive of the effect of these protracted delays.

3. Unless General Infanti's awaited confirmation can reach me within the next 48 hours, it is to be feared that a report on the situation will have to be made to the Chief Commissioner, and I am very loath to have to admit a negative result to negotiations which held out so much promise of a satisfactory solution.

G. R. WILSON. 68
Colonel
Chief Legal Officer.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

ART/ap

ACC/4086/1/L

5 April 1944

SUBJECT : Italian Deserters.

TO : Officer i/c Italian Liaison Office A.M.G.
Prefettura, Naples.

1. In reply to your letter of 1 April 1944 kindly forwarding to this office a letter from General Basso on the subject of the trial of Italian deserters between 10 July and 8 September 1943, General Infanti and Colonel Upjohn, the Chief Legal Officer, are at present engaged in working out a formula with the object of solving this question.

2. Meanwhile, I am to ask you to please note that the instructions issued by the Allied authorities to the effect that no such trials shall be proceeded with still remains in effect.

deg.
A. R. TEACRAH
Major
for, Chief Legal Officer

65

2/4/44.

I

note: Italian Deserter.

Capt Cerulli (Phone Cava 109-) Commands Supremo, absent - phone Tuesday at 9.30 hrs to inform him that the text of arrangement is agreed with the General. That it is assumed that no publicity will be made re this decision, but that if such is contemplated then the nature of such must be previously agreed upon between Acc & Commands Supremo.

Accp. Major

4/5/44

II

Above agreed with Capt. Cerulli by phone.

Accp.
Major.

III

By phone. Capt Cerulli confirms Genl Dupont's agreement and states text to be submitted to Marshal Badoglio. Suggests a change of signatures Mac Farlane - Badoglio on agreed text.

4/5/44.

Accp. Major.

ARMED FORCES OF CAMPANIA
LIAISON OFFICE A.M.G.
PREFETTURA

3 APR 1944

2669

62

Naples Ist. April 1944

SUBJECT : Italian Deserters

TO : C.A.O. Legal Subcommittee A.C.C. SALERNO

28

Referring to your letter of Feb. the 2nd ACC/4086/L I enclose
General A. Basso, Commanding FFAA Campania, answer.

F. M. del Monte

F.M. del Monte
Colonel
Liaison Officer

Guy
A positive letter saying that 403
General Basso + myself are working out an
order but in the meantime the present
instruction stands

Guy

Subject: Italian deserters.

Ref. your letter dated 11 February 1944.

1. The provision concerning the trial of the Italian soldiers, who deserted between 10 July and 8 September 1943, may be rescinded or not be granted. The dependent Military Tribunal has followed this procedure even before the Ministry of War issued instructions thereon.

2. I am of the opinion that those, who failed to return to the Italian Armed Forces after 6 October 1943, should be tried not for failure to return, but, on the contrary for the original desertion, i.e. for the non-authorized departure from their Units between 10 July and 8 September.

The soldier's failure to return to their Units after 6 September 1943, and their failure to report to Italian HQ, would suggest not to adopt the provision of rescinding, (or not ^{to} grant) the order to try them.

Practically it would depend from the subsequent ⁶²return to the Armed Forces on the part of deserters, and from the consequent confirmation of their military status.

3. No cases have been tried contrary to your instructions.

s/

A. BASSO
Lt. General, I.A.,
Commanding

GS/

Ri/pt

Traduzione

COMANDO FORZE ARMATE DELLA CAMPANIA
Ufficio Personale

Nr. 1351/st.pers.prot.

P.M. 120, 27 marzo 1944

OGGETTO : disertori italiani.

AL COMANDO A. M. G.

Region 3

Apv 394

-risp.to senza numero data 11.2.44-

In merito al foglio in riferimento, comunico:

- 1)- L'ordine a procedere si può revocare o non concederlo nei confronti dei militari desertori dal 10 luglio all'1° settembre 1943. A tale criterio si è ispirato il dipendente tribunale, anche prima che fossero emanate in proposito direttive del ministero della guerra;
- 2)- per coloro i quali non siano rientrati alle armi dopo il 6 ottobre 1943, sono del parere che si dovrebbe procedere per diserzione, non già per mancato rientro, ma si bene per il fatto originale, cioè l'allontanamento dal corpo, iniziavosi nel periodo 10 luglio - 6 settembre. **61**
Il mancato rientro dei militari al corpo dopo il 6 ottobre 1943 e la mancata presentazione consiglierebbe di non adottare il criterio di benevolenza di revoca o di concessione dell'ordine a procedere.
Cio sarebbe subordinato in pratica alla successiva presentazione alle armi ed alla conseguente regolarizzazione, da parte del disertore, della propria posizione militare.
3)- Nessun giudicato è stato pronunciato dal Tribunale militare di Napoli in contrasto con i desideri formulati da questo Comando.

IL GENERALE DI CORPO D'ARMATA

A. M. G. CAMPANIA

-Antonio Dessu-

OGGETTO : disertori italiani.

AL COMANDO A. M. G.

Region 3

Apr 394

-risp. 1° senza numero data 14.2.44-

in merito al foglio in riferimento, comunico :

1)- l'ordine a procedere si può revocare o non concederlo nei confronti dei militari desertori dal 10 luglio all'1° settembre 1943. - A tale criterio si è ispirato il dipendente tribunale, anche prima che fossero emanate in proposito direttive del ministero della guerra;

2)- per coloro i quali, non siano rientrati alle armi dopo il 6 ottobre 1943, sono del parere che si dovrebbe procedere per disenzione, non già per mancato rientro, ma siccome per il fatto originale, cioè l'allontanamento dal corpo, iniziatosi nel periodo 10 luglio - 6 settembre. - **61**

Al mancato rientro dei militari al corpo dopo il 6 ottobre 1943 e la mancata presentazione consiglierebbe di non adottare il criterio di benevolenza di revoca o di concessione dell'ordine a procedere.

Cio sarebbe subordinato in pratica alla successiva presentazione alle armi ed alla conseguente regolarizzazione, da parte del disertore, della propria posizione militare.

3)- Nessun giudizio è stato pronunciato dal tribunale militare di Napoli in contrasto con i desideri formulati da questo Comando. -

IL GENERALE DI CORPO D'ARMATA

GIUSEPPE DI NUNZIO

-AMMIRAGLIO PASQUA-

4086/1
✓
3/14/44
(59)
TRANSLATION

File No. 218/RP

APO 151/A, 21 March 1944

COMANDO SUPREMO

Chief of the Supreme General Staff

My dear General MacFarlane,

Thanks for your letter of March 18 relative to proceedings concerning Italian deserters.

After careful and considered study of the whole problem, I have come to the conclusion to submit the entire matter to the Chief of the Government, in view of the fact that the decisions which are to be taken in the matter entail an interest which exceeds the purely military scope, to assume politico-social aspects and considerations of national interest.

Meanwhile, I have issued instructions to the effect that the military Prosecutors suspend all trials in connection with crimes of desertion committed between July 10th and September 8th, 1943, by Italian military personnel belonging to operational units.

Very cordially yours,

/s/ MARSHAL G. MESSE

To Lieutenant-General
N.M. MacFarlane
Chief of Allied Control Commission
APO 394

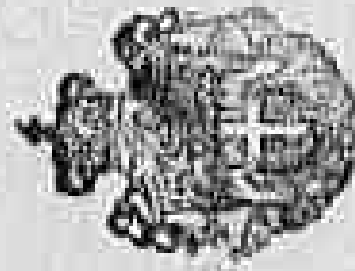
Legal Subcommission
h m 21

(59)

From
Marshal MESSE
To Gen. MACFARLANE.

24 Mar 44

218/RP
218/RP



COMANDO SUPREMO

IL CAPO DI S. M. GENERALE

Caro Generale Mac Farlane,

grazie della lettera del 18 marzo relativa al problema
mentì e carico dei disertari italiani.

Dopo attento e ponderato riesame dell'intera questione
sono venute nella determinazione di sottoporre l'intero proble-
ma al Capo del Governo dato che le decisioni che dovranno esse-
re prese in argomento rivestono un interesse che esula dal cam-
po puramente militare per assumere aspetti e riflessi politico-
sociali di interesse nazionale.

In attesa, ho impartito disposizioni⁵⁹ affinché i Troops
tari militari sospendano tutti i processi riguardanti i reati
di diserzione, commessi tra il 10 luglio e l'8 settembre 1942,
da militari italiani appartenenti a unità operanti.

Con viva cordialità

M. Llo *Chesser*

Al luogotenente generale
N. M. MAC FARLANE
capo della commissione alleata di controllo

Caro generale Mas Parlane,

grazie della lettera del 10 marzo relativa ai procedimenti a carico dei disertori italiani.

Dopo attento e ponderato riesame dell'intera questione sono venute nelle determinazioni di sottoporre l'intero problema al Capo del Governo info che le decisioni che dovranno essere prese in proposito rivestono un interesse che esula dal campo puramente militare per assumere aspetti e riflessi politico-sociali di interesse nazionale.

In attesa, ho impartito disposizioni affinché i procedimenti militari sospendano tutti i processi riguardanti i reati di diserzione, commessi tra il 10 luglio e 1° settembre 1942, da militari italiani appartenenti a unità operanti.

Con viva cordialità

M.ello *Cherassi*

Al luogotenente generale

N.M. MAS PARLANE

capo della commissione alleata di controllo

A.P.O. 304

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

/gmf

57

ACC/4086/1/L

19 March 1944.

SUBJECT: Trial of Italian Deserters.

TO : Major R.E. Doe, Secretary General, HQ ACC.

Thank you for sending me a copy of the Chief Commissioner's letter to Marshal Messe on the above subject (CC/091.711 of 18 March 44).

For your information the file number of this Subcommittee for this subject is ACC/4086/1/L.

58

G. R. UPJOHN, Colonel
Chief Legal Officer.

Legal Sub-Comm.

Copy of letter prepared by legal sub-commission for Chief Commissioner's
signature:

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

DSH 367
19 MAR 1944

(56)

CG/091.711

18 March 1944

Dear Marshal Messe,

Thank you for your letter of the 5th March in regard to the trial of Italian deserters.

I have again given careful consideration to the matters to which you have drawn attention.

I am firmly convinced that the best justice will be done to deserters who deserted in response to Allied appeals and at the same time the discipline of the Italian Army will be fully upheld if the regulations which I proposed in my letter of the 13th February are adhered to. These regulations you will recall are as follows:

"...members of the Italian Armed Forces who deserted between July 10 and September 8, 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion."

I must ask you to give me your early assurance that you are giving the necessary instructions to the above effect to the appropriate military authorities in both occupied and unoccupied territory and no trials in contravention thereof have already taken place.

Yours very sincerely,

/s/ Noel Mason MacFarlane
Lieutenant-General,
Chief Commissioner.

Note: File no. added by this
office. Ltr. dispatched
1100 hrs, 18 Mar 44.

18 MAR 1944

HQ ACC, APO 394
Sgt. Gen.

Sgt. Morrison

(55)

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

18 March 1944

Dear Marshal Mesue,

Thank you for your letter of the 5th March in regard to the trial of Italian deserters.

I have again given careful consideration to the matters to which you have drawn attention.

I am firmly convinced that the best justice will be done to deserters who deserted in response to Allied appeals and at the same time the discipline of the Italian Army will be fully upheld if the regulations which I proposed in my letter of the 13th February are adhered to. These regulations you will recall are as follows:

"....members of the Italian Armed Forces who deserted between July 10 and September 8, 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserters may be tried and punished for failure to return and not for the original desertion."

I must ask you to give me your early assurance that you are giving the necessary instructions to the above effect to the appropriate military authorities in both occupied and unoccupied territory and no trials in contravention thereof have already taken place.

L. H. Hasbanc
Lieutenant-General.
Chief Commissioner.

To Mr. [unclear] [unclear] [unclear]

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

54

10th March, 1944.

REFERENCE : ACC/4086/1/L.
SUBJECT : Italian Deserters.
TO : Chief Commissioner.

1. Your memo of 8th March, 1944 directed to Colonel Upjohn has been received in his absence.

2. The proposal of Marshal Messe appears to be substantially along the same lines that have been taken heretofore by the Italians, namely, that they should be allowed to try deserters during the period 10 July to 8 September 1943, showing clemency in proper cases. Incidentally I notice that Marshal Messe refers to this period as from 25 July through September 1943.

3. As illustrative of the attitude that has been constantly taken up by the Italians I am enclosing a copy of a memo received by the Deputy President of the Allied Control Commission dated 21 December 1943 from Colonel Rossi as representing General Orlando.

4. Early in January I understand Colonel Rossi again took up with Major Theckreh of the Legal Sub-Commission at Brindisi the arguments already advanced by Marshall Messe and also mentioned that the number of cases would be relatively small. It was then suggested that an enquiry in order to ascertain the number of such cases should be undertaken with a view to testing the importance of the policy. Statistics were never received or made available.

5. On 6 January 1944 Brigadier General Taylor sent a cable to A.F.M.Q. a copy of which is attached. As there was no reply to this cable you wrote a letter to Marshal Messe on 13 February, 1944, which set forth the policy adhered to thus far.

6. In final analysis the whole situation seems to be one of policy namely : Whether it is better from the standpoint of Italian military discipline to allow the Italians to try these deserters where we will from all practical standpoints have no control whatever or by denying Marshal Messe's latest request and adhering to the former policy, give such protection as we can to those men who actually deserted at our instance along with others who merely went home because they were tired of the war.

RICHARD H. WILMER.

Lieut. Colonel C.A.C.
Deputy Chief Legal Officer

CW/P/123 (250)

HEADQUARTERS ALLIED CONTROL COMMISSION
Office of the Deputy President

(53)

4084/1

FIRM/rj

8th. March, 1944.

MEMORANDUM:

TO: Colonel Upjohn,
Legal Sub-Commission.

I enclose a letter just received from Marshal Messe. It seems to me that Messe's contentions and proposals are acceptable. I would be grateful for your comments.

Noel MacFarlane 56
NOEL MACON MACFARLANE,
Lieutenant-General,
Chief Commissioner.

101472/AW

P.M. 151/A, 5 March 1944

RG ACC, APO 374

7 Mar 1944

By

Dear General MacFarlane:

With reference to your letter of February 13th, I inform you that by means of my circular of January 29, 1944, and sent to the Ministries of War, the Navy and Aeronautics, I imparted directives with the purpose of examining and reviewing with wide measures of leniency the penal military trials for crimes committed from July 25 through September, 1943 and informed the Archive Institutes of the annulment of penal action and of his Majesty's reprieves in cases worthy of particular leniency.

It will thus be possible, even for desertions under special circumstances, to judge with greatest moderation, to condone or reduce the sentences, or not to bring trials to a finish, when it is opportune to do so.

I believe that this is the best principle to follow, inasmuch as while it favors those who do not deserve the severe penalties inflicted for crimes committed under circumstances which do not lessen the responsibility, it allows us, on the other hand, to separate those military personnel who have demonstrated their duty as soldiers even under the most difficult conditions from those who instead deserted, be it from difficulties caused by a complex of material and moral factors.

The above mentioned measures, in addition, prevent the serious danger of minimizing the sentiment of military honor and the upsetting of the disciplinary internal structure of the armed forces, as would have occurred in every case and without discrimination, if the deserters would have gone unpunished.

Certainly, this will not make a good impression on the wounded, the crippled and on the many families, a group which constitutes the greater part of the Italian population, who have had family members die in their fulfillment of duty.

At any rate, I agree on the necessity of examining with the utmost of leniency the military crimes committed during the period immediately preceding the Armistice and will renew encouraging the Italian Military Courts to judge with benevolent impartiality even those who deserted between the period of July 25th and the ending of September, 1943, punishing instead to the maximum those who went over to the German Army or any other hostile army, and those who did not present themselves to the Army after September, 1943, in spite of the appeal made by the Italian Military Authorities.

Sincerely yours,

The Marshall of Italy
Chief of Staff
Giovanni Messe

Lieut. Col. Todd, Officer for Civil Affairs in Calabria:

1. I understand that orders have been issued to the effect of instituting Court Martials intended to judge cases of desertion, previous to 8th September 1943. It is my opinion that these absentees have acted according to instruction given to them by Allied Authorities by radio, leaflets, etc. Consequently they are entitled to protection from AMG within the territories under its jurisdiction.

It is further my opinion although this is a question for the Officials of the Italian Administration, that the soldiers who have deserted as a consequence of Allied encouragement have acquired civilian status, as far as we are concerned, and are therefore excluded from your jurisdiction. I must therefore ask you to withdraw at once the orders.

2. I further understand that orders have been issued to the effect that severe disciplinary measures are to be taken against the men who deserted between 8th September and 6th October 1943, the latter being the date on which the military proclamation of 23rd September was published. These disciplinary measures are probably intended to replace the Court Martial procedure considered by the armistice.

What has been said above for para N. 1 serves as well for such cases. While I cannot order you to cancel the disciplinary measures decided for the units under your command, I must inform you that I consider them as an infraction to the Armistice spirit and, if my point of view is supported by AMG legal officers, I will give them protection claiming civilian status for them. In the meanwhile I would suggest that these discipline measures be modified. "

General Orlando begs to point out:

- with reference to para N. 1: It does not seem probable that troops who had deserted their duty post before the 8th September, date on which Armistice was announced, should have performed this action as a consequence of the appeals spread by Anglo-American Propaganda.

It is far more creditable that ^{they} deserted intentionally owing to

conscience, thus betraying the military honour. Moreover there is evidence that the Allies appreciated the gallant behaviour of their adversaries. As an instance of this, after the Tunisian campaign, Anglo-American authorities decided to keep the prisoners who belonged to the 1st Italian Army and had gone through hard fighting, separated from those coming from Sicily, granting better treatment to the former.

To abolish penalties for absentees would destroy military prestige and discipline which must sustain the soldiers, and would further be an injustice to other soldiers, loyal to their service.

It is suggested that the trials follow their own course and that afterwards, in collaboration with the Allies, an act of clemency be considered and promulgated in favour of the ex-prisoners.

With reference to para N. 2: the disciplinary measures concerned with enlisted men who had deserted after the Armistice was signed, between 8th September and 6th October (a proclamation was made ordering absentees to return before the 6th of October).

Even in peacetime, absence without leave is an infringement of discipline and, beyond a certain time is a serious offence.

Much more is it therefore necessary, in time of war, to punish the absentees with at least a form of detention, for reasons of justice and to emphasize the cooperation between absentees and those soldiers who, by remaining with their units, made possible an immediate collaboration with Anglo-American forces.

UFFICIO COLLEGAMENTO

Il Capo dell'Ufficio

(Col. Edo. Rossi)

Anglo-American Authorities decided to keep the prisoners who belonged to the 1st Italian Army and had gone through hard fighting, separated from those coming from Sicily, granting better treatment to the former.

To abolish penalties for absentees would destroy military prestige and discipline which must punish the slackers, and would further be an injustice to other soldiers, loyal to their service.

It is suggested that the trials follow their own course and that afterwards, in collaboration with the Allies, an act of clemency be considered and promulgated in favour of the ex-prisoners.

With reference to para N. 2: the disciplinary measures concerned with enlisted men who had deserted after the Armistice was signed, between 8th September and 6th October (a proclamation was made ordering absentees to return before the 6th of October).

Even in peacetime, absence without leave is an infringement of discipline and, beyond a certain time is a serious offence.

Much more is it therefore necessary, in time of war, to punish the absentees with at least a form of detention, for reason of justice and to emphasize the comparison between absentees and those soldiers who, by remaining with their units, made possible an immediate collaboration with Anglo-American Forces.

UFFICIO COLLEGAMENTO

Il Capo dell'Ufficio

(Col. Edo Nossel)

Edo Nossel

copy

SECRET annale British SECRET

Rules for a establishment of Italian Military Tribunal

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

- (a) Italian Military Tribunal may try cases in respect of offences whether committed before or after the commencement of occupation.
- (b) No ordinary civilians, except prisoners of war, members of the Police Forces, Carabinieri or civilians employed by the Military, Naval or Air Forces Authorities shall be charged before any Italian Military Court 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 Tribunal will follow the procedure set forth in Book 4 of the Military Penal Code for War. Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (f) The Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute, the sentence or order a new trial.
- (i) (1) Where the offence charged is also an offence against any Proclamation or Order issued or to be issued by the Military Governor or under his authority, OR,
(ii) is also an offence against the laws and usages of war, OR
(iii) is also an offence triable under the provisions of the Italian Penal Code then in such cases the name and rank of the accused, the offence with which he is charged and short particulars of the facts supporting such charge shall be submitted to the Military Governor at least 14 days before the date fixed for trial.
- (j) No sentence 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.

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 3 days of such arrest charges shall be served on such person and a copy thereof shall be transmitted to the Military Governor. If such person is not brought to trial within 28 days from the date of service of such charges a report setting forth the reasons for such delay shall be transmitted to the Military Governor.
- (d) The Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order that such case shall be heard and determined by such Tribunal as he may direct.
- (e) Italian Military Tribunals will follow the procedure set forth in Book 4 of the Military Penal Code for war. Any amendment affecting this procedure as may have been from time to time promulgated in various decrees issued after the date of publication of the Code will not be enforced.
- (f) The Military Governor may appoint any or more officers of the Allied Forces to sit on any Italian Military Tribunal.
- (g) Until it is possible to constitute the Tribunale Supremo Militare all appeals from an Italian Military Tribunal shall be addressed to the Military Governor who may set aside any conviction or suspend, reduce or commute the sentence or order a new trial.
- (h) The Italian Military Tribunal shall within 7 days of the imposition of sentence forward to the Military Governor the record of every trial and the Military Governor may set aside any conviction or suspend, reduce or commute, the sentence or order a new trial.
- (i) (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,
(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 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.
- (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 repeal, suspend or amend any of these rules.

SUBJECT: Discipline - Military Tribunals

H. Allied Control Commission

Copy to: HQ 71 Sub Area
(ref 47/23/A of 15 Jan 44)

Army Sub Commission A.C.C.
Rear H.Q. (MMA)
LEUILLE (LCCCE)
AQ/6
8 Feb 44

4018

Ref att letter from Comd 71 Sub Area.

As this matter affects Naval and other personnel, besides Army, it would seem that it is beyond the scope of this HQ. 19

Commission requested.

ABC

16
2
54

Rafuchanaaibunlop
18 Col
Brigadier,
Army Sub Comm A.C.C.

Subject: - Discipline.

104
H.Q. 71 Sub Area.
47/23/A.
13 Jan 44.

Military Mission to Italian Army.

The question of punishments awarded to Italian Naval, Military and Civilian personnel accused of pilferage, improper possession of W.D. property, assaults on members of Allied Forces and other disorders, has been taken up with Admiral Rubartelli.

The Admiral has replied at length, stating that some are dealt with summarily and others are handed over to the Military Tribunal.

The Tribunal, he states, has not yet tried any of the accused owing to pressure of work. This is considered inadequate, as it is only by the prompt and stern dealing with offenders of this class, that the crimes can be stopped.

May representations please be made to the responsible authorities that these offenders are dealt with promptly and that sentences awarded are notified to this HQ.

15/1 Ad/b

[Signature]
48
Colonel,
Commanding 71 Sub Area.

HEAD HEADQUARTERS
ALLIED CONTROL COMMISSION
14001. SUB-EXHIBITION
APR 394

25th February, 1944.

REFERENCE :

ACC/10000/VL.

SUBJECT :

Trial of Italian Deserters.

TO :

Acting Chief, Military Government Section, A.P.M.C.

1. Reference your WGC. 013.37 dated 21 Feb 44.

2. I am enclosing a copy of a letter dated 13 February 1944 from the Chief Commissioner to General Messe. I regret not having let you know about this situation earlier.

GERALD E. WISDOM
Colonel,
Chief Legal Officer.

/s/

4086/1

Legal SC (45)
D-195ALLIED FORCE HEADQUARTERS
Military Government Section

ATM/HDW/gww

21 February 1944

MGS: 013.37

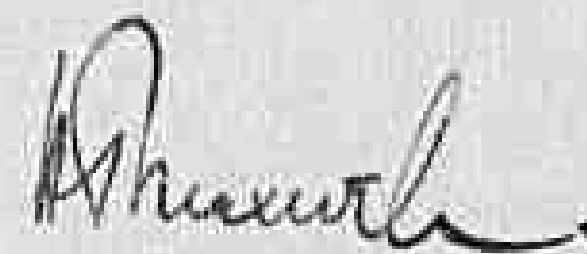
SUBJECT: Trial of Italian Deserters

TO : Headquarters, A. C. C.

(33)

1. Reference letter this Headquarters, dated 26 January 1944, same subject.

2. This Headquarters is awaiting advice of decision taken by the GOC in C, ACMF in this matter. Action on another matter is being held in suspense pending your reply.

A. T. MAXWELL,
Colonel, Acting Chief,
Military Government Section

46

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ACTION SHEET

Date

Suspense

FROM

C.G., A.M.G.

C. of Staff

D.C. of Staff for (D&SI)

D.C. of Staff Admin.

Industrial Plan

Mil. Sec.

Ecl. Sec.

Economic Admin. Sec.

Communications Sec.

Economic Director

Administrative Dir.

Executive Off. Admin.

G-1

G-4

Adjutant General

Personnel

Publications

Miscellaneous

Supply Officer

Billeting Officer

Transportation Off.

Hq Commandant

Camp Commandant

Message Center

Sub-Commission on:

For: Signature

Recommendation

Information

Approval or Disapp.

Appropriate Action

Investig. & Report

File

Return to Cent. Files

Transmission

Remarks:

Only signed by Gen.
Rachman

copy to
Rachman

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

13 February 1944

Dear Marshal Messe,

Your representations to Brigadier General Taylor concerning the trial by Italian Military Tribunals in occupied territory of deserters from the Italian armed forces have been given careful consideration. I have come to the conclusion that members of the Italian armed forces who deserted between 10 July and 8 September, 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian armed forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instances deserters may be tried and punished for failure to return and not for the original desertion.

An instruction to the above effect has been sent to my officers in territory occupied by the Allied Forces and I ask you to inform Italian Commanders stationed therein of this ruling for their guidance.

I will also ask you to give me your assurance that the foregoing will be applied in occupied territory.

(sgd) N. M. Whitelaw.

Lieutenant-General,
Chief Commissioner,
Hq. Allied Control Commission.

TO: Marshal G. Messe,
Chief of General Staff,
R. Army

SUBJECT Italian Deserter

To U.P. Admin.

Referring to the Chief Commissioning
decision in the above matter the attached
letter has been prepared for consideration
+ if approved signature by the Com.

[Signature]
AL

approved

Stansgate

43

10 244

High Sub. Comm.

For information

[Signature]

HEADQUARTERS
ALLIED CONTROL COMMISSION
APO 394

408611

Dear Marshal Messe,

Your representations to Brigadier General Taylor concerning the trial by Italian Military Tribunals in occupied territory of deserters from the Italian Armed Forces have been given careful consideration. I have come to the conclusion that members of the Italian Armed Forces who deserted between 10 July and 8 September, 1943, inclusive, should not be tried or punished for desertion except those who deserted to the German or other hostile army. This, however, does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned for their failure to return to the Italian Armed Forces after some fixed date subsequent to the Armistice provided they were given due and proper notice to return by that date. In the latter instance deserter may be tried and punished for failure to return and not for the original desertion.

An instruction to the above effect has been sent to my officers in territory occupied by the Allied Forces and I ask you to inform Italian Commanders stationed therein of this ruling for their guidance.

I will also ask you to give me your assurance that the foregoing will be applied in unoccupied territory.

42
Lieutenant-General,
Chief Commissioner,
Hq. Allied Control Commission.

70: Marshal G. Messe,
Chief of General Staff,
R. Army.

TO : Chief Commissioner.

That authority should be given for the immediate validation with retrospective effect, of document "A" flagged X.

Stansgate - 61

STANSFATE.

Vice President, Administrative Section.

2 February 1944.

σ_2 и σ_3 .

Neil MacDonell
L.P. Chief Const.

39

The 10th cable is dated 7 Jan 45 and has not yet been dealt with!

It contains the recommendation that trials of Italian deserters should be allowed! and that there should be a subsequent act of clemency. The argument is maintenance of discipline. It is submitted

1. We offend inducements to the Italians to desert those who complied should not be permitted to be punished for so doing, as it will be said that we deserted them.
2. There is only a difference in degree between the ranker deserter and the senior officials who negotiated the Armistice there should be no difference in principle in their treatment.
3. If we permit punishment the German propaganda machines can point out, not only to the soldiers of the satellite armies but, to its own soldiers that if they desert to us we will not protect them from future punishment.
4. As far as the individual is concerned there is this difference between trial and pardon and indemnification without trial - that there is a permanent record of the conviction on the man's papers which might or might not lead to future victimization.

For these reasons it is recommended that the Italian Government should be asked to issue a decree indemnifying pro-armistice deserters who returned the colours within the specified time.

para 4 flag B. - Brig Richmond suggests that such deserters should be treated as POW and also that in order to call Society any destruction of the GOC - C will be requested.

Intervention - Law - Public Safety Man been consulted these views are ~~inconsistent~~ consistent with the above recommendation.

HEADQUARTERS
ALLIED CONTROL COMMISSION
(SALERNO DETACHMENT)
LEGAL SUB-COMMISSION

AWO/4086/L

29th January 1944

SUBJECT : Italian Deserters

TO : Vice President Administrative Section

1. A question has arisen, originally in Region 2, with regard to the punishment of deserters from the Italian army who deserted before the Armistice when fighting against the Allies.

2. In view of the fact that Italian soldiers were invited, by Allied appeals, made by radio and dropping leaflets, to desert to the Allies the view was originally taken that the Italian army authorities should be prohibited from trying by Court Martial deserters from the Italian army between 10 July (invasion of SICILY) and the date of the armistice and a directive was sent out to Region 1 and 2 (See Document "A" attached). It will be noted that there was carefully preserved to the Italian Army the right to court martial soldiers who failed to rejoin after certain notices were issued by the Army authorities at the beginning of October.

3. The Italian Minister of War complained of this directive to Brig. Gen. Taylor and the Italian view is set out in a signal to AFHQ (See Document "B" attached).

4. The directive (Document "A") was approved by General Alexander and Brigadier Lush, but General Alexander thought the matter should be referred to AFHQ, hence Document "B" was sent and Brig. Gen. Taylor ordered Document "A" to be cancelled pending receipt of instructions from AFHQ. No reply has yet been received to Doc A.

5. With great respect to the recommendation at the foot of Document "B" it hardly seems sound. It must be doubtful as to what effect would be given to Italian Courts to evidence of Allied Propaganda as a "mitigating circumstance" nor can ACC watch the "sentences closely", for it is understood that there are a very large number of such cases.

6. It is desirable that on this issue policy should be clear cut and that either a) such Courts Martial should be prohibited and Document "A" restored or b) the matter left entirely to the Italian Government. - It is submitted that the former view is correct.

7. This matter is raised because no answer has yet been received to Document "B" and the matter is urgent. In view of the reorganization of A.C.M.F it is submitted that this decision can be taken locally without reference to AFHQ and that Document "B" can be cancelled and Document "A" restored.

8. The question also arises with regard to Courts Martial of

- 2 -

deserters in unoccupied territory and it is submitted that the Italian Government should be requested to carry out Document "A" even in unoccupied territory after the restoration. In this connection it may be noted that there is reason to believe that soldiers in occupied territory have been removed for trial to APULIA possibly to escape the consequences of Document "A".

Gerald R. Upjohn

GERALD RUPJOHN,
Colonel
Chief Legal Officer

28

COPY.

Document "A"

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

30 December 1943

In reply
refer to : ACC/L/101

SUBJECT : Italian Deserters.

TO : Chief Legal Officers, Regions 1 & 2.

Members of the Italian Armed Forces who deserted between 10 July and 8 September 1943, inclusive, shall not be punished for desertion except those who deserted to the German or other hostile army.

However, the foregoing does not preclude trial and punishment by an Italian Military Tribunal of those who so deserted between the dates above mentioned, for their failure to return to the Italian Armed Forces after October 6 1943, provided they were given due and proper notice to return by that date. In such cases the deserters may be tried and punished for failure to return and not for the original desertion.

The Italian Commanders in your region should be advised accordingly.

Colonel
Chief Legal Officer, ACC

Copy to AMG HQ 15th Army Gp.

37

U.S. SECRET
equals British SECRET

C O P Y .

Document "B"

Jan 1944

O U T G O I N G

MDT/hjp

SECRET

PRIORITY

FATIMA

FREEDOM REPT FILPOT RPT FARCO

THE UNDERSECRETARY FOR WAR REPORTS THAT AMG ~~XXXXXXXXXX~~ OFFICIALS IN CALABRIA HAVE DIRECTED THAT ITALIAN SOLDIERS WHO DESERTED I N THE PERIOD JULY TENTH DASH SEPTEMBER EIGHT BE NOT REPEAT NOT TRIED FOR DESERTION BY ITALIAN ARMY COURTS MARTIAL PD PAREN TO FREEDOM RPT FILPOT FOR AMG RPT FARCO FOR S POFFORD FROM FATIMA SIGNED JOYCE PAREN THE ATTITUDE TAKEN BY AME IS THAT THESE MEN MAY HAVE DESERTED AS A CONSEQUENCE OF ENCOURAGEMENT GIVEN THEM BY ALLIED RADIO AND LEAFLETS PD AMG FIFTEENTH ARMY GROUP CONCURS IN THIS VIEWPOINT PD GOC FIFTEEN ARMY GROUP CONSIDERS THAT IT IS A QUESTION FOR DECISION BY THE COMMANDER IN CHIEF PD THE ITALIAN ATTITUDE IS THAT FEW IF ANY DESERTED IN THE PERIOD IN QUESTION FOR REASONS OTHER THAN COWARDICE FOR WHICH THEY SHOULD BE AMENABLE TO MILITARY JUSTICE PD THE WAR MINISTRY CONSIDERS THAT FAILURE TO PUNISH THESE MEN WILL DESTROY MILITARY PRESTIGE AND DISCIPLINE PD T HE WAR MINISTRY SUGGESTS THAT TRIAL BE PERMITTED AND THAT SUBSEQUENTLY AN ACT OF CLE MENCY BE CONSIDERED AND BE PROMULGATED IN FAVOR OF THE CULPRITS PD THE ALLIED CONTROL COMMISSION FORWARDS THIS MATTER FOR YOUR DECISION WITH THE RECOMMENDATION THAT THE TRIALS FOR DESERTION BE AUTHORIZED PERMITTING THE DEFENDANTS TO ADDUCE THE EFFECT OF ALLIED PROPAGANDA IN EVIDENCE AS A MITIGATING CIRCUMSTANCE PD WE CAN WATCH THE SENTENCES CLOSELY AND ENCOURAGE A LIBERAL POLICY OF CLEMENCY

AUTHENTICATED

Distribution:
2 - AG Files
1 - Diary

MAXWELL D. TAYLOR
Brigadier General, USA

SECRET

(Equals British MOST SECRET)

ALLIED FORCE HEADQUARTERS
Military Government Section

33

26 January 1944

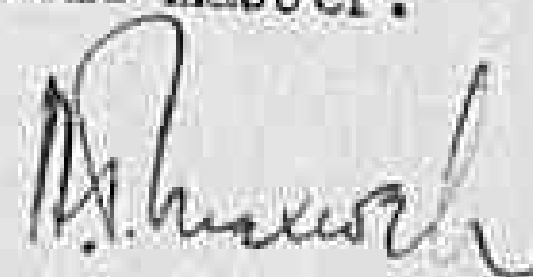
Subject: Trial of Italian Deserters.

To : Headquarters, A.C.C.

1. Attention is drawn to your message 1856 of 6 January, raising the question what attitude should be taken on a problem raised by the Italian Undersecretary of War, namely, what policy the Italian Government is to be permitted to apply to Italian soldiers charged with deserting the Italian Army prior to the Armistice but at a time when Allied propaganda was directed toward inducing such desertion. While the matter was under consideration at this Headquarters, AFHQ GO No. 5 of 24 January was issued, expressing the policy that the GO C in C ACOMF should act for the President of the ACC in such matters as shall be delegated to him. It is believed that the instant case presents a matter which should be decided within the ACOMF, it is accordingly remitted to Hq. ACC for consideration and action.

2. The identical question has been presented to the JA, AFHQ, by a communication coming up through other channels. The JA has coordinated his reply with MGS this Headquarters, and a copy of his recommendation is inclosed, for information.

3. It is requested that this Headquarters be advised of the decision taken by the GO C in C, ACOMF, in this matter.

A. T. MAXWELL,
Colonel,
Acting Chief, Military Government Section. 35

Incls: As above.

SECRET

(Equals British MOST SECRET)

U. S. CONFIDENTIAL
 Equals British CONFIDENTIAL
 INFORMAL ROUTING SLIP

32
 A1358
 JA 5474

PW CI

14 January 1944

Status of Italian Soldiers.

1. G-2 G-1 14
 NATO NATO Jan
 1944

For comment and return.

/s/ Lawrence Collins
 /t/ LAWRENCE COLLINS
 Lt Colonel, GSC,
 Executive.

2 G-1 JAG 15 Jan

For comment

/1/ BMS

3 JA G-1 25 Jan

1. The disposition to be made of deserters from 1944 the Italian army between the dates 10 July and 8 September has been raised by ACC in message 1356 of 6 January. The Military Government Section, AFHQ has that message and proposed to return the matter to Gen. Alexander for disposition, in view of the latter's status of Representative of General Wilson as head of ACC and the policy of AFHQ of passing on only matters of the highest concern at AFHQ. Gen. Alexander is not in favor of trying such persons before Italian courts for desertion in view of inducements made by the allies by radio and leaflets to desert.

2. Message 1356, signed by Joyce, recommends trial for desertion with privilege accorded defendants to adduce the effect of allied propaganda as a mitigating circumstance and then encourage a liberal policy of clemency.

3. Italian War Office believes that if such persons are not punished military discipline and prestige will be destroyed.

4. In talking the matter over with Col. Fairman I have suggested that trial should not be permitted and that prestige and discipline in Italian army can be preserved by requiring the Italian Government to surrender these men to the Allied Forces and that they thereafter be accorded the status of prisoners of war and put to work under the new agreement with the Italian Government.

5. What is to be done with these persons obviously should be determined in such a way that the decision may be applied to all Italian forces. It is true that Sicily is not under ACC at this time. It is, however, under the military command of Gen. Alexander, and Gen. Alexander is heading

U. S. CONFIDENTIAL
 - 1 Equals British CONFIDENTIAL

U. S. CONFIDENTIAL
Equals British CONFIDENTIAL

JA 5474

PW CI

31
25 January 1944

Status of Italian Soldiers.

- 3 JA G-1 (Cont.) both ACC and the military command. It would be advisable, therefore, to have Gen. Alexander's decision with respect to the situation reported in the Joyce message 1856 made applicable to the situation reported by the Intelligence Officer, IBS. The Military Government Section, AFHQ, is returning the Joyce message to Gen. Alexander to let him make the decision. It is suggested that MGS be requested to obtain this decision when made, so that it may be passed on to our forces in Sicily, Sardinia and Corsica.

ADAM RICHMOND

1 Incl: Ltr from Int. Off. IBS,
to A.C. of S., G-2, NATOUSA,
11 Jan 44.

ADAM RICHMOND
BRIGADIER GENERAL U. S. ARMY
JUDGE ADVOCATE

U. S. CONFIDENTIAL
Equals British CONFIDENTIAL

U. S. CONFIDENTIAL
Equals British CONFIDENTIAL

HEADQUARTERS ISLAND BASE SECTION
OFFICE OF THE INTELLIGENCE OFFICER
APO #550 U.S. ARMY

11 January 1944

SUBJECT: Status of Italian Soldiers.

TO : A.C. of S., G-2, NATOUSA, APO 534, U.S. ARMY.

1. Information is requested regarding the status of Italian military personnel who deserted from the Italian army during the Allied occupation of Sicily.
2. During the Sicilian campaign numerous Italian officers and men deserted from their organizations and hid on the island without turning themselves in as PWs to Allied authorities. When such personnel reach the end of their financial resources, they find it difficult to obtain gainful employment and food without possession of documents showing their release from Allied authorities.
3. Many of these deserters, especially officers, are now wearing their uniforms again.
4. Should these men be picked up as Prisoners of War? Should they be given papers showing that they reported to Allied Authorities and been released?

/s/ Franklin W. Fish
/t/ FRANKLIN W. FISH
Lt Col., R. C.,
Intelligence Officer.

32

U. S. CONFIDENTIAL
Equals British CONFIDENTIAL

HEADQUARTERS
 UNITED STATES ARMY
 (SOUTH PACIFIC AREA)
 COMUSMACV
 2-3 374

29B

2 February 1944

ACC/4086/L

SUBJECT: Italian Discoveries.

TO: Chief Legal Officers, Regions I and II (THRU HQAGS).

1. Referring to my letters of 29 December 1943 and 21 January 1944, the Deputy Chief Counsel advised that the rules for the trial of Italian war criminals had been issued by my letter of 30th December 1943 and are to be followed. A copy of the last mentioned letter is enclosed.

2. If you know of any cases which have been previously tried pursuant to these rules please advise me.

WILLIAM A. T. JOHN,
 Colonel,
 Chief Legal Officer.

31

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

2 February 1944.

In reply
refer to: ACC/4086/L

SUBJECT: Italian Deserters.
TO : ACIOs, Region III and IV (THRU: ACIOs).

Members of the Italian Armed Forces who deserted between 10 July and 8 September 1943, inclusive, shall not be punished for desertion except those who deserted to the German or other hostile army.

However, the foregoing does not preclude trial and punishment by an Italian Military Tribunal of those who so deserted between the dates above mentioned, for their failure to return to the Italian Armed Forces after 6 October 1943, provided they were given due and proper notice to return by that date. In such cases the deserters may be tried and punished for failure to return and not for the original desertion.

The Italian Commanders in your Region should be advised accordingly.

If you know of any cases which have been previously tried running counter to these rules you should advise us.

Gerald Upjohn

GERALD UPJOHN
Colonel
Chief Legal Officer.

4086/1

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

29
2 February 1944

~~Ref 115~~
SUBJECT : Italian Naval Deserters.

TO : Vice President, Admin. Section.

1. Reference your No. T.A. 1027/58.
2. The attached case seems fairly clear on the surface: the deserter should be dealt with (when found) by the Italian authorities.
3. It would seem desirable to know however, under what circumstances he joined the "Yugoslav Command" whatever that means and whether such Command desires to claim any jurisdiction over him and as I have no information as to the existence of this Command, I recommend that the file be passed to the Political Directors.

GERALD R. W. JOHN,
Colonel,
Chief Legal Officer.

29

HEADQUARTERS
ALLIED CONTROL COMMISSION
(SALERNO DETACHMENT)
LEGAL SUB-COMMISSION

28
2 February 1944

In reply
refer to: ACC/4086/L

SUBJECT : Italian Deserters.

TO : G2Os, 5th Army and 8th Army.

Members of the Italian Armed Forces who deserted between 10 July and 3 September 1943, inclusive, shall not be punished for desertion except those who deserted to the German or other hostile army.

However, the foregoing does not preclude trial and punishment by an Italian Military Tribunal of those who deserted between the dates above mentioned, for their failure to return to the Italian Armed Forces after 6 October 1943, provided they were given due and proper notice to return by that date. In such cases the deserters may be tried and punished for failure to return and not for the original desertion.

The Italian Commanders in your Area should be advised accordingly.

If you know of any cases which have been previously tried running counter to these rules you should advise us.

GUYARD R. UPJOHN,
Colonel
Chief Legal Officer.

28

SUMMARY

27

Col. Cropper

1. (London) War Office reports that AMG officials in Calabria have directed that Italian deserters in the period 10/7 to 13/9 be NOT tried for desertion by Italian Army courts martial: that AMG asserts these men were encouraged to desert by propaganda to desert, and XV Army Group concurs.

2. XV Army Group considers, however, this is a point for decision by C-in-C.

3. The Italian Army view, knowing their own people, is that fear of any required encouragement to desert — they just ran from cowardice — and failure to punish them will impair prestige and discipline. They suggest a compromise of trial with technical conviction and subsequent pardon by the King as an act of clemency.

4. The Allied Control Commission recommends that trials be authorized, permitting accused to plead the influence of Allied propaganda as grounds for reduced sentences; and AMG can watch sentences and encourage a policy of leniency. [Note: This request is possible everywhere.]

5. Col. KIRK, Public Safety, regards the question as very important that the C-in-C should decide it: points out that desertion is always condoned by the Army to which they are made, and trials would create an awkward precedent (Badoglio downwards, and all the FREE French, Polish, Norwegians, Czechs, etc) and go directly contrary to British Policy in trying to make the German soldier submit — which he will NOT do if he is to be punished for it afterwards.

6. Lt. Col. STICKER Interior, concurs with this view.

Conclusion. In view of (1) XV Army Group's support of AMG officials' action (2) Col. Kirk's almost unanswerable argument (3) our own view of Italian "prestige-discipline", our course is obvious. But it requires the sanction of C-in-C, now that the point has been raised.

HEADQUARTERS
ALLIED CONTROL COMMISSION
(SALERNO DETACHMENT)
LEGAL SUB-COMMISSION

AMG/4695/L

29th January 1944

SUBJECT : Italian Deserters

TO : Vice President Administrative Section

1. A question has arisen, originally in Region 2, with regard to the punishment of deserters from the Italian army who deserted before the Armistice when fighting against the Allies.

2. In view of the fact that Italian soldiers were invited, by Allied appeals, made by radio and dropping leaflets, to desert to the Allies the view was originally taken that the Italian army authorities should be prohibited from trying by Court Martial deserters from the Italian army between 10 July (Invasion of SICILY) and the date of the armistice and a directive was sent out to Region 1 and 2 (See Document "A" attached). It will be noted that there was carefully preserved to the Italian Army the right to court martial soldiers who failed to rejoin after certain notices were issued by the Army authorities at the beginning of October.

3. The Italian Minister of War complained of this directive to Brig. Gen. Taylor and the Italian view is set out in a signal to AFHQ (See Document "B" attached).

4. The directive (Document "A") was approved by General Alexander and Brigadier Lush, but General Alexander thought the matter should be referred to AFHQ, hence Document "B" was sent and Brig. Gen. Taylor ordered Document "A" to be cancelled pending receipt of instructions from AFHQ. No reply has yet been received.

5. With great respect to the recommendation at the foot of Document "B" it hardly seems sound. It must be doubtful as to what effect would be given to Italian Courts to evidence of Allied Propaganda as a "mitigating circumstance" nor can ACC watch the sentences closely, for it is understood that there are a very large number of such cases.

6. It is desirable that on this issue policy should be clear out and that either a) such Courts Martial should be prohibited and Document "A" restored or b) the matter left entirely to the Italian Government. It is submitted that the former view is correct.

7. This matter is raised because no answer has yet been received to Document "B" and the matter is urgent. In view of the reorganization of A.C.M.F it is submitted that this decision can be taken locally without reference to AFHQ and that Document "B" can be cancelled and Document "A" restored.

8. The question also arises with regard to Courts Martial of

deserters in unoccupied territory and it is submitted that the Italian Government should be requested to carry out Document "A" even in unoccupied territory after the restoration. In this connection it may be noted that there is reason to believe that soldiers in occupied territory have been removed for trial to APULIA possibly to escape the consequences of Document "A".

GERHARD A. UPJOHN,
Colonel
Chief Legal Officer

U.S. SECRET
BRITISH SECRET

C O P Y .

Document "B"

6 Jan 1944

O UTGOING

MDT/hjp

SECRET

PRIORITY

PATINA

FREEDOM REPT FILPOT RPT FARGO

THE UNDERSECRETARY FOR WAR REPORTS THAT AMO KERRIKKKE OFFICIALS IN CALABRIA HAVE DIRECTED THAT ITALIAN SOLDIERS WHO DESERTED IN THE PERIOD JULY TENTH DASH SEPTEMBER EIGHT BE NOT REPAT NOT TRIED FOR DESEPTION BY ITALIAN ARMY COURTS MARTIAL PD PAREN TO FREEDOM REPT FILPOT FOR AMO RPT FARGO FOR S DOTTORD FROM PATINA SIGNED JOYCE PAREN THE ATTITUDE TAKEN BY AMO IS THAT THESE MEN MAY HAVE DESERTED AS A CONSEQUENCE OF ENCOURAGEMENT GIVEN THEM BY ALLIED RADIO AND LEAFLETS PD AMO FIFTEENTH ARMY GROUP CONCURS IN THIS VIEWPOINT PD GOC FIFTEENTH ARMY GROUP CONSIDERS THAT IT IS A QUESTION FOR DECISION BY THE COMMANDER IN CHIEF PD THE ITALIAN ATTITUDE IS THAT FEW IF ANY DESERTED IN THE PERIOD IN QUESTION FOR REASONS OTHER THAN COWARDICE FOR WHICH THEY SHOULD BE AMENABLE TO MILITARY JUSTICE PD THE WAR MINISTRY CONSIDERS THAT FAILURE TO PUNISH THESE MEN WILL DESTROY MILITARY PRESTIGE AND DISCIPLINE PD THE WAR MINISTRY SUGGESTS THAT TRIAL BE PERMITTED AND THAT SUBSEQUENTLY AN ACT OF CLEMENCY BE CONSIDERED AND BE PROMULGATED IN FAVOR OF THE CULPRITS PD THE ALLIED CONTROL COMMISSION FORWARDS THIS MATTER FOR YOUR DECISION WITH THE RECOMMENDATION THAT THE TRIALS FOR DESEPTION BE AUTHORIZED PERMITTING THE DEFENDANTS TO ADDUCE THE EFFECT OF ALLIED PROPAGANDA IN EVIDENCE AS A MITIGATING CIRCUMSTANCE PD WE CAN WATCH THE SENTENCES CLOSELY AND ENCOURAGE A LIBERAL POLICY OF CLEMENCY

AUTHENTICATED

Distribution:
2 - AG Files
1 - Diary

MAXWELL D. TAYLOR
Brigadier General, USA

24

HEADQUARTERS
ALLIED CONTROL COMMISSION

ADMINISTRATIVE DIRECTORATE
INTER-OFFICE BUCK SLIP

16-1-41
Date

FROM	TO	INIT
Lt. Col. W. C. Chanler		
Lt. Col. R. R. Cripps	✓	
Major R. A. Persell		
Capt. F. DiGiacomo		
Capt. L. H. Van Dusen Jr.		
✓ Capt. J. H. Keane		
Chief Clerk		

FOR:

- ☒ Information
☒ Necessary Action
☐ File
☐ Dispatch

REMARKS HIGH LEVEL decision required. Photo
 of Group AHS view is supported by Pub. Safety against
 Italian War Ministry opinion. The latter may know their own
 people best, but action in that case would be in protest against

ARMED MILITARY GOVERNMENT
ACTION SHEET

Draft cable

Date: 6-17-1954

Suspense

FROM	TO
C.G., A.H.G.	
C. of Staff	
D.C. of Staff for (C&SI)	/
D.C. of Staff Admin.	
Industrial Plan	
Mil. Sec.	
Pol. Sec.	
Econ & Admin. Sec.	
Communications Sec.	
Economic Director	
Administrative Dir.	/
Executive Off. Admin.	
G-1	
G-2	
Adjutant General	
Personnel	
Publishings	
Miscellaneous	
Supply Officer	
Billing Officer	
Transportation Off.	
Hq Commandant	
Camp Commandant	
Message Center	
Sub-Commission on:	

For: Signature _____
Recommendation _____
Information _____
Approval or Disapp. _____
Appropriate Action _____
Investig. & Report _____
File _____
Return to Cent. Files _____
Transmission _____

Remarks: Forwarded to you in the
mail. Not original copy, as
indicated by Jax.
Do you want a small note
on it? R.D. Ely

Col Spofford

20

It seems to me that in
respect of desertion between
10 JULY and 18 SEPT. it
would be difficult to prove
that one man deserted for
cowardice and another deserted
as a result of either his
own sincere convictions or
our propaganda.

Rather than clemency after
trial and a ~~proof~~^{verdict} of guilty
there should be an Act of
Indemnity passed by the
new Italian Govt.

21

Continuance in mil. service
could be a condition of the
Act.

F. W. B. have possibly thought of
this in their plans of campaign.

and there are no precedents ¹⁹¹⁸
from the last war when we
tried ~~to~~ (and partially succeeded) to
to get numbers of Germans,
Australians, Bulgars & Turks
to desert to us.

Should we ask FATIMA
to modify their cable rather
than send a conflicting one
of our own?

WJG 12 JAN

Decision:

Assist ruling from AFHQ on
FATIMA cable.

(given by D/C of S. 26 JAN)

WJG 20

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
INTERIOR SUB-COMMISSION

18

January 12, 1944

SUBJECT: Trial of Italian Soldiers

TO : Admin. Director

1. I do not know that this matter rightly concerns me, but since it has been passed to me for recommendation, I have no hesitation in stating that I concur entirely with the opinion of Colonel Kirk.



R.G.B. SPICER
Lt. Col.
Acting Director
Interior Sub-Commission

19

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
Public Safety Division

13 January 1944

MEMO/14058/PB

MEMO TO: Admin. Directorate.

REFERENCE: Trial of Italian Soldiers for Desertion by Italian Army
Courts Martial.

I am of the opinion that the question is of such basic importance that it should, as G-3 15 Army Group says, be determined finally by G-in-C. While the point of view of the Italian War Ministry is readily understood, the fact is that these men, whether prompted by our propaganda or not, deserted to us, and made the advance of our forces as much the easier. How then can we condone their trial? It is our government here still, and for that government to permit men to be tried for doing what we wished them to do, and tried to induce them to do, would be strange indeed. Is the position of the Italian soldier such different, if at all, from that of Marshal Badoglio himself?

While clemency after conviction is a consideration, I am not greatly impressed by it. It is not inconceivable that the record of conviction, even if followed by clemency, would be used against the soldier in his civil life, or for example, denying him the right to hold any office, however humble, under the Italian government hereafter.

Consideration should also be given to the effect upon future operations of permitting these trials. If we seek by propaganda to induce the German soldier to desert or lay down his arms, Herr Goebbels will have a fine stroke of counter-propaganda in threatening them that should they do so, they will stand trial by German Military Courts for desertion, even if the Allies win, because Italians who deserted are standing trial for the same act with the acquiescence of Allied Military Government!

PAUL G. AIRY,
Colonel, Infantry,
Chief, Public Safety Division. 18

SECRET

HEADQUARTERS
PENINSULAR BASE SECTION
Office of the Commanding General
AFG 782

8 January 1964

MEMORANDUM TO: C.G. AGO/AMG

SUBJECT: Arrest of Italian deserters

1. Inclosed are letters from and to General Basso, commander of Italian Forces in Compañia.
2. I am informed that you have taken the matter up with Commander in Chief AFHQ by radio RA525VC 684.
3. Request advice of policy you recommend to be pursued in cases in which my command may be involved.

A. W. PRICE
Brigadier General, AGO
Commanding

AWP:js

2 inc's

- Incl. 1. Ltr fr Gen. Basso to CG
Incl. 2. Ltr fr CG to Gen. Basso

SECRET

SECRET *chifo Adm (2)*

584

PENINSULAR BASE SECTION
SIGNAL MESSAGE CENTER

7 JANUARY 1944

SECRET

OPERATIONAL PRIORITY

FREEDOM, FILPOT FOR AMG, CG PBS(FOR FARGO FOR SPOTFORD)

NONE

FATIMA SIGNED JOYCE

061755A

071553A

R452 SVC 684

NONE

(PARAPHRASE BY CRYPTO FATIMA OF OUR MESSAGE 1856 DTG 061755A CITING YOUR
SERVICE 6548)

THE UNDERSECRETARY FOR WAR REPORTS THAT AMG OFFICIALS IN CALABRIA HAVE DIRECTED THAT ITALIAN SOLDIERS WHO DESERTED IN THE PERIOD JULY 10TH-SEPTEMBER 18TH BE NOT TRIED FOR DESERTION BY ITALIAN ARMY COURTS MARTIAL. THE ATTITUDE TAKEN BY AMG IS THAT THESE MEN MAY HAVE DESERTED AS A CONSEQUENCE OF ENCOURAGEMENT GIVEN THEM BY ALLIED RADIO AND LEAFLETS. AMG FIFTEENTH ARMY GROUP CONCURS IN THIS VIEW POINT. GOC FIFTEEN ARMY GROUP CONSIDERS THAT IT IS A QUESTION FOR DECISION BY COMMANDER IN CHIEF. THE ITALIAN ATTITUDE IS THAT FEW IF ANY DESERTED IN THE PERIOD IN QUESTION FOR REASONS OTHER THAN COWARDICE FOR WHICH THEY SHOULD BE AMENABLE TO MILITARY JUSTICE. THE WAR MINISTRY CONSIDERS FAILURE TO PUNISH THESE MEN WILL DESTROY MILITARY PRESTIGE AND DISCIPLINE. THE WAR MINISTRY SUGGESTS THAT TRIAL BE PERMITTED AND THAT SUBSEQUENTLY AN ACT OF CLEMENCY BE CONSIDERED

SECRET

Orig: D.C. 75. 0517

940

SECRET

584

14

AND BE PROMULGATED IN FAVOR OF THE CULPRITS. THE ALLIED CONTROL COMMISSION FORWARDS THIS MATTER FOR YOUR DECISION WITH THE RECOMMENDATION THAT TRIALS FOR DESERTION BE AUTHORIZED PERMITTING THE DEFENDANTS TO ADDUCE THE EFFECT OF ALLIED PROPAGANDA IN EVIDENCE AS A MITIGATING CIRCUMSTANCE. WE CAN WATCH THE SENTENCES CLOSELY AND ENCOURAGE A LIBERAL POLICY OF CLEMENCY.

15

8253

SECRET

HEADQUARTERS
ALLIED COMAND COMMISSION
Legal Subcommission

GHL/gat

13

7 January 1944.

In reply.
refer to: AGC/1/100.

SUBJECT: Italian Deserters.

TO : Chief Legal Officers, Regions 1 & 2.

Referring to my AGC/1/101 dated 30 Dec. 43 laying down
rules with regard to the Court Martial of Italian soldiers who de-
serted between 10 July and 8 Sept. 43 it has now been decided to
refer the matter to AFHQ for a decision.

You will therefore regard my above-mentioned letter
as withdrawn pending further instructions.

G. R. H. P. W. T. M.
G. R. H. P. W. T. M., Colonel
Chief Legal Officer, AGC.

Copy to: AGC HQ
AGC HQ 15 Army Gp.

Doc A

12A

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

30 December 1943.

In reply
refer to: ACC/1/101.

SUBJECT: Italian Deserters.

TO : Chief Legal Officers, Regions 1 & 2.

Members of the Italian Armed Forces who deserted between 10 July and 8 September 1943, inclusive, shall not be punished for desertion except those who deserted to the German or other hostile army.

However, the foregoing does not preclude trial and punishment by an Italian Military Tribunal of those who so deserted between the dates above mentioned, for their failure to return to the Italian Armed Forces after 6 October 1943, provided they were given due and proper notice to return by that date. In such cases the deserters may be tried and punished for failure to return and not for the original desertion.

The Italian Commanders in your Region should be advised accordingly.

See 29B

Colonel
Chief Legal Officer, ACC

13

Copy to AMG HQ 15th Army Gp.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

RDM/gmf

(12)

23 December 1943.

In reply
refer to: ACC/L/304.

SUBJECT: Discipline of Italian Deserters.

TO : Regional Chief Legal Officer, Region 2.

1. Ref. your letter 2201/11/33 dated 16 Dec. 43.
2. I find that under date of 14 December 1943 Col. Upjohn sent you a letter covering the question of Italian deserters, which seems to answer fully your letter of 16 December 1943.

RICHARD H. WILMER, Lt. Col. GAO
Deputy Chief Legal Officer,
ACC.

AMS HQ.
Region Two

16 Dec 43

Ref: 2201/14/33

Subject: Discipline of Italian Deserters

To: Chief Legal Officer
Legal Sub-Commission
ACS

(9)
For your information I enclose herewith a copy of a recent communication from the recently removed Commander of the XXII Corps concerning the claim of Italian Military Tribunals of jurisdiction over soldiers who deserted from the Italian Army at a time when the Allies were urging them to take that action.

Ward J. W. Howe
Ward J. W. Howe, Major, AMS,
EJLO, Region 2

P.M. 114, Nov. 25, 1943

Command XXI Army Corps
Personnel Office

To the Officer in Charge of
Civilian Affairs for Calabria

File No. 05/187

Subject: Disciplinary action against Italian deserters

In reply to your note of the 20.11.43 of
this month

- 1) According to the Italian criminal and military law there are no Martial Courts Martial but only Military Courts, either ordinary or extraordinary Extraordinary Military Courts meet in exceptional cases only, ~~is the~~ according to the set forth by the Military Criminal Courts of the Proclamation No. 1 of the 4.10.43 of October the Supreme Command of the Royal Army.
- The Army Corps has no authority whatsoever to ~~modify~~ orders ~~given~~ issued by the Sup. Command of the Royal Army. ~~I~~ ~~as~~ handed to matter over to the Supreme Command.

Desertions that have taken place prior to 8.11.43 of Sept. 1943, in the Territory of the Catanzaro and Cosenza provinces, are crimes to be regarded as crime punishable by law.

Subject: Disciplinary action against Italian deserters

In reply to your note of the 20. th of
this month

1) According to the Italian criminal and military law there are no Martial Courts Martial but only Military Courts, either ordinary or extraordinary. Extraordinary Military Courts meet in exceptional cases only, ~~in the~~ according to the rules set forth by the Military Criminal Courts in the Proclamation No. 1 of the 4. th of October the Supreme Command of the Royal Army.

The Army Corps has no authority whatsoever to ~~with~~ ~~with~~ orders ~~given~~ issued by the Supreme Command of the Royal Army. I ~~am~~ handed the matter over to the Supreme Command.

Desertions that have taken place prior to 8. th of Sept. 1943, in the territory of the Catanzaro and Cosenza provinces, are crimes to be regarded as crime punishable by law.

~~For~~ Desertions that have taken place ^{from Sept. 3 to Oct. 20} in the Reggio Calabria province ~~do not~~ are not punishable by according to criminal law. orders have been issued in this sense.

2) Any action that is to be taken against those who, without authorization from their superiors, absented themselves from their units.

has a more disciplinary character, not criminal,
and ~~is~~ ^{must be taken according to} ~~allowed by~~ ^{our} discipline regulations.
These regulations are of a more internal sort.
They have nothing in common with criminal
sanctions, let alone ~~as~~ court martial proceed-
ings. -

The General Commanding
the Army Corps
(Signed: Camillo Mercalli.)

Translated by R. Sacerdote.

--GOPIA--

P.M.114, 11 25 novembre 1943

COMANDO XXI CORPO D'ARMATA
Ufficio personale

ALL'UFFICIALE SUPERIORE AGLI
AFFARI CIVILI PER LA CALABRIA

SUA SEDE

Prot. N.05/187 /R.P.

OGGETTO: Misure disciplinari per i disertori italiani.--

Rispondo al vostro foglio del 20 c.m.

1°) - La legislazione penale e militare italiana non ha Corti Marziali, sibbene Tribunali Militari ordinari e straordinari. Quest'ultimi sono convocati soltanto in casi eccezionali secondo le norme fissate dal Cod.pen.Mil. e dal Bando n.1 del 4 ottobre u.s. del Comando Supremo R.E.

Comunque qualsiasi provvedimento di revoca delle disposizioni impartite dal Comando Supremo R.E. non rientra nella competenza del C.A. Ho investito della cosa il Comando Superiore.

Mentre le diserzioni anteriori all'8 sett. 1943, verificatesi nel territorio delle province di Catanzaro e Cosenza, costituiscono reato punibile a norma di legge, per le diserzioni invece verificatesi nella provincia di Reggio Calabria dal 3 settembre al 20 ottobre non sono da attuare sanzioni penali ed in tal senso è stato disposto.

2°) - Le disposizioni da adottare per i militari i quali hanno, senza autorizzazione dai loro superiori diretti, abbandonato i reparti rivestono pramamente carattere disciplinare e non penale e sono fra quelle consentite dal nostro regolamento di disciplina. Esse pongono in essere delle semplici norme di carattere interno che non tengono il luogo delle sanzioni penali e tanto meno, quindi, della procedura della corte marziale.--

IL GENERALE DI C.A.COMANDANTE
- Camillo Mercalli -

U.S. SECRET Equals British MC SECRET

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

AMG/4085/1.

SUBJECT:- Discipline of Italian Deserters.

TO 1- Colonel G. Spjelm,
H.Q., A.C.G. Brindisi.

7th December 1945

1. Enclosed are, (a) communication dated 29 Nov. 45 received from Major Howe, R.C.I.C., Region II, together with a copy of a letter from Lt. Col. Ross, S.A.S., Calabria, therein referred to, and, (b) communication dated 29 Nov. 45 reference 2201/41/26 from Major Howe.

2. Under date of 31st November 1945 you forwarded R.C.I.C. Region II a directive containing rules under which Italian Military Tribunals may function.

3. The first mentioned enclosure seems to assume that all Italian desertions were at solicitation of United Nations, which would appear doubtful. It would seem that if the Italian Army is to be an effective instrument of co-belligerency it must retain power to punish deserters. Accordingly a question of high policy may be involved.

4. The second mentioned enclosure deals with the question of delegation of duties of review which we have previously discussed as well as a matter of policy to be pursued.

5. For above reasons and because of your prior conversation at Brindisi the enclosures are sent to you for your disposition and instructions.

RICHARD H. WILSON,

Lieutenant-Colonel,
Acting Deputy Chief Legal Officer.

U.S. SECRET Equals British MOST SECRET

U.S. SECRET Equals British MOST SECRET

SECRET

Subject: Discipline of Italian Deserters.

To: Deputy Chief Legal Officer,
Legal Sub-Commission,
H.Q. A.M.C.29 Nov. 45.
A.M.C. H.Q.
Region 2.
Ref: 2201/14/29

1. There is enclosed herewith a copy of a communication which the SCAG for Calabria has recently addressed to the Commanding General of 31 Corps.
2. The undersigned has informally advised the SCAG that in his opinion the views expressed in the letter and the action taken by the SCAG are entirely proper. This was done without the benefit of knowledge of the terms of the Armistice, but it seemed evident that the policies of A.M.C. would be clearly circumvented if the Italian Military authorities are permitted to follow the course which the SCAG has been informed they are following.
3. If this matter has not already been brought to your attention it would be appreciated if you could give it your attention in order that the SCAG may know what course to pursue in any future situation which may involve this problem.

(sgd) Mark. Dell. Howe.

Major. AUS
SCAG, Region 2.

U.S. SECRET Equals British MOST SECRET

U.S. SECRET Equals British MOST SECRET

COPY

Subject:- Disciplinary Measures for Italian Deserters.

To: General Officer Commanding 31 Corps, Italian Army.
(copies for inf. to RCAF Region 2; L.O. BMD)

20 Nov. 43.

I am informed that instructions have been issued to units under your command to institute courts martial to try cases of desertion prior to 8 Sep 43. I take the view that these deserters acted on the instructions issued to them by the Allied authorities by radio, leaflets and other means, and are consequently entitled to the protection of the Allied Military Government in the territories under its jurisdiction. It is moreover, my view, though this is a matter for ruling by the Legal Officers of the Administration, that soldiers who deserted at the invitation of the Allies have acquired, as far as we are concerned, civilian status, and consequently are excluded from your jurisdiction. I must therefore request you to cancel this instruction forthwith.

2. I am further informed that instructions have been issued to take severe disciplinary measures against men who deserted between the 8 Sep 43 and the 6 Oct 43, the date of the publication of the military proclamation of the 23 Sep 43. These disciplinary measures are presumably in lieu of the court martial procedure which is banned under the armistice. Exactly the same considerations as are mentioned in paragraph 1 above, apply to these cases. While I cannot order you to cancel instructions of a disciplinary nature to units under your command, I am bound to say that I regard them as an infraction of the spirit of the armistice provision, and, if I am supported in my view by the Legal Officers of A.M.G., I shall afford them protection by claiming civilian status on their behalf. In the meantime I would suggest that these disciplinary instructions be modified.

(sgd) F. Rodd. Lt. Col.

Senior Civil Affairs Officer, Calabria.

6

U.S. SECRET Equals British MOST SECRET

COPY/

Subject:- Review of Judgments of
Italian Military Courts.

29th November 1943
A.M.G. H.Q.
Region 2.
Ref: 2201/14/26

To: Deputy Chief Legal Officer
Legal Sub-Commission,
H.Q. A.M.G.

1. In Paragraph (f) of the recently promulgated Rules for Establishment of Italian Military Tribunals it is provided that until it is impossible (sic) to constitute the Tribunale 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 offence 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.

(sgd) Mark De.W. Howe.
Major, AUS.
R.C.A.L.O. Region 2.

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

AMG/1056/L

SUBJECT: Discipline of Italian Deserters.

TO : R.C.L.G. (thru HQAC) Region II.

7th December 1943

(3)
Your letter of 23 November 1943, reference no. 2201/14/25 and your letter of the same date reference no. 2201/14/29 arrived in the absence of Colonel Upjohn who is on the mainland.

In view of his familiarity with, and his prior conversation at BRINDISI on the subject of Italian Military Tribunals we are forwarding your communication to him for his consideration.

REYNOLD H. WILKIN,

Lieutenant-Colonel,
Acting Deputy Chief Legal Officer.

SECRET

Subject: Discipline of Italian
Deserters

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

29 Nov. 43
AMC HQ
Region 2
Ref:2201/14/29

(1-2)

1. There is enclosed herewith a copy of a communication which the SCAO for Calabria has recently addressed to the Commanding General of 31 Corps.
2. The undersigned has informally advised the SCAO that in his opinion the views expressed in the letter and the action taken by the SCAO are entirely proper. This was done without the benefit of knowledge of the terms of the Armistice, but it seemed evident that the policies of AMC would be clearly circumvented if the Italian Military authorities are permitted to follow the course which the SCAO has been informed they are following.
3. If this matter has not already been brought to your attention it would be appreciated if you could give it your ~~at~~ attention in order that the SCAO may know what course to pursue in any future situation which may involve this problem.

Mark D.W. Howe

Mark D.W. Howe, Major, AUS,
RCLO, Region 2

U.S. SECRET Equals British MOST SECRET

M O S T S E C R E T
C O P Y

20 Nov. 43

Subject: Disciplinary Measures for
Italian Deserters

To: General Officer Commanding 31 Corps,
Italian Army
(Copies for inf. to ECAO, Region 2
L.O., P.M.N.)

I am informed that instructions have been issued to units under your command to institute courts martial to try cases of desertion prior to 8 Sep 43. I take the view that these deserters acted on the instructions issued to them by the Allied authorities by radio, leaflets and other means, and are consequently entitled to the protection of the Allied Military Government in the territories under its jurisdiction. It is moreover my view, though this is a matter for ruling by the Legal Officers of the Administration, that soldiers who deserted at the invitation of the Allies have acquired as far as we are concerned civilian status, and consequently are excluded from your jurisdiction. I must therefore request you to cancel this instruction forthwith.

2. I am further informed that instructions have been issued to take severe disciplinary measures against men who deserted between the 8 Sep 43 and the 9 Oct 43. The date of the publication of the military proclamation of the 23 Sep 43. These disciplinary measures are presumably in lieu of the court martial procedure which is banned under the armistice. Exactly the same considerations as are mentioned in paragraph 1 above, apply to these cases. While I cannot order you to cancel instructions of a

M O S T S E C R E T

M O S T S E C R E T

①

2. ~~1~~

disciplinary nature to units under your command, I am bound to say that I regard them as an infraction of the spirit of the armistice provision, and, if I am supported in my view by the Legal Officers of A.E.G., I shall afford them protection by claiming civilian status on their behalf. In the meantime I would suggest that these disciplinary instructions be modified.

(Sgd.) P. Rodd, Lt. Col.
Senior Civil Affairs Officer,
Calabria

M O S T S E C R E T

0350

