

2.543

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

785016

ACC

10000/142/749

STATUS OF
DEC. 1943 - FE

2544

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

785016

STATUS OF ITALIAN WAR CRIMINALS AFTER ARMISTICE
DEC. 1943 - FEB. 1944

2/749

2545

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

785016

FILE CLOSED 22 February 1944

24

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REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4210/L.

26 February 1944

SUBJECT : Prisoners held for trial (Taborino and La Capra).
TO : HLO, Region V.

1. Your letter of 15 Feb 1944 has just been received.
2. It would seem to be proper under the facts submitted to try the two accused in an Allied Military Court.
3. ~~As to~~ The advisability of trying the accused would depend upon what if any additional facts can be ascertained and the availability of the witness a copy of whose short statement you have submitted.
4. If no further facts can be ascertained certainly Taborino should be released.
5. If the witness Capt. Young can be located and made available, there would appear to be a prima facie case against La Capra.
6. I suggest that an officer be designated to investigate the case thoroughly. It would seem that on investigation Capt. Young would be able to fill in some obviously missing details.
7. Furthermore it should be possible through the records of the Military Government officials in the neighbourhood to determine whether or not Proclamation No. 3 had been published at the time of the shooting.
8. Generally prisoners make statements to the Carabinieri and it may be that at least verbal statements have been made by the accused to the Carabinieri. This should be investigated.
9. If it then appears that a case can be made against the accused or either of them I should be advised and I will have a General Court convened.
10. If on the other hand Capt. Young can not be traced and made available and no substantial evidence is forthcoming from any other source, both accused should be released on order of a summary court, by which a proper record of release can be made.

GERALD R. UPJOHN.
Colonel,
Chief Legal Officer.

HEADQUARTERS REGION 5
ALLIED MILITARY GOVERNMENT

TO : C.I.O., A.C.C.

SUBJECT: Prisoners held for trial.

15 Febr. 1944

1. It is desired to bring again to your notice the case of the two Italians who are accused of firing at British Troops and whose legal status was considered at your HQ in Nov. or Dec. last. These two men, TAMBORINO Antonio and LA CAPRA Faustino, who are 19 years of age, are now in prison at Lucera having been held in custody since 2 Oct. 1943 pending a decision as to whether they are to be tried by Court Martial or by General Military Court. For the purpose of determination of the legal status of the two men the facts are that prior to the armistice they were members of the following Italian units:-

TAMBORINO - 84 Inf. Regt. 2 Bn 7 Coy Firenze
LA CAPRA - 26 Arty. Regt. 2 Bty Rimini

At the time of the armistice these units were disarmed by the Germans and given the option of being disbanded or being made prisoners of war. They **elect**ed disbandment and on the orders of their Officers all personnel of these units returned to their homes. At the time of the acts which are the subject of the present charge both men were living at home and carrying on their normal occupation of peasants. Tamborino was wearing military uniform but La Capra is understood to have been in civilian clothes.

3. On the basis of the foregoing it is submitted that neither of the accused was at the material time a member of the armed forces and that both are therefore subject to the jurisdiction of the AMG Courts.

4. The general facts of the case are set out in the statement of Capt. A.M. Young, a copy of which is attached, and which forms the only evidence available to the prosecution. It has not been possible to interview Capt. Young whose present location is unknown, but subject to this consideration it is submitted that:-
(a) there is no evidence against Tamborino of the commission of any offence since he had no weapon, was not seen to fire any shots, and cannot by his mere presence be said to have advised, assisted or conspired in the commission of a crime;
(b) there is some evidence against La Capra, although the base

- normal occupation of peasants. Tamborino was wearing military uniform but La Capra is understood to have been in civilian clothes.
3. On the basis of the foregoing it is submitted that neither of the accused was at the material time a member of the armed forces and that both are therefore subject to the jurisdiction of the AMG Courts.
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 (a) there is no evidence against Tamborino of the commission of any offence since he had no weapon, was not seen to fire any shots, and cannot by his mere presence be said to have advised, assisted or conspired in the commission of a crime;
 (b) there is some evidence against La Capra, although the bare statement of Capt. Young is not strong and unless amplified in court would not justify a conviction.
 5. It has not yet been ascertained whether any AMG Proclamation or orders had been posted in the area before 2 Oct. 1943 so that it cannot be stated whether La Capra has contravened Proc. 2 Art. I Para. 5, or whether both of the accused will have to be tried on the main offence, if at all, under general law.
 6. It would be appreciated if a decision could be taken as soon as possible on the following points:-
 1. Is the evidence against Tamborino sufficiently strong to justify his further detention?
 2. If you agree with para. 3 hereof will you constitute a German Military Court to try one or both of the accused? If so, will it be necessary for arrangements to be made to secure the attendance of Capt. Young and also to secure representation for them so that the date of trial and other details must be left in abeyance.
 3. If you do not agree with para. 3 hereof will you give the necessary instructions so that Court Martial Proceedings can be set in train forthwith?

A.O.

W.E. Behrens, Lt. Col.
R.C.L.O., Region

(21)

STATEMENT OF EVIDENCE OF CAPT A.M. YOUNG, 52 A/TK REGT, RA, in

THE CASE OF :

TAMBORINO Antonio di Giuseppe and)	) both of <u>VAGLIO LUCANO.</u>
LA CAPRA Faustino di Cagno)	
)	

I am Bty Capt of 303 Bty, 52 A/TK Regt, RA, stationed near POTENZA at pt 593I.

At about 1630 hrs on 2 Oct 43 several shots were reported to me have been fired on the rd POTENZA - VAGLIO LUCANO near where my unit is stationed. On walking down the rd to investigate where the shots were coming from I could hear the bullets passing me as soon as a car was seen to be on the rd.

I went up the side of the hill, and when I reached the top I could see down in a small depression three soldiers standing against a stone wall. Two had rifles and were firing on to the rd. I crawled to within about 20 yards of them, and was then seen by one of the soldiers, who immediately ran off down the embankment. I grabbed another, LA CAPRA Faustino di Cagno, of VAGLIO LUCANO, who was still holding a rifle, and struck him in the face. I then ran and caught the third, TAMBORINO Antonio di Giuseppe, of VAGLIO LUCANO. This man was NOT in possession of a rifle.

785016

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67
41

I took the two soldiers to HQ 5 DIV.

FIELD

2 oct. 1943

Signed. AM. Young Capt RA

Firma di Foggia
per il progresso antichario dell'agricoltura italiana
(eretta in Ente Morale con R.D. 14 Aprile 1929 All. n. 271)

A. M. P. B. Allegato

Regio o nota R. del

OGGETTO

Foggia, li

Il sottoscritto, in nome e per conto della
Firma di Foggia, per il progresso antichario
dell'agricoltura italiana, ha l'onore di
avvisare che, in esecuzione del
Decreto del 14 Aprile 1929, All. n. 271,
è stato istituito l'Ente Morale
per il progresso antichario dell'agricoltura
italiana, con sede in Foggia, e che
il medesimo Ente ha per oggetto
lo studio, la conservazione e
l'attuazione delle antiche
tecniche agricole, nonché
l'organizzazione di corsi
e conferenze, e l'acquisto
di libri, documenti e
oggetti d'arte e di storia
agricola.

FARGO - 1068

20

SEARS FOR FARGO

7th December 1943

SECRET

PRIORITY

MURDER FOR MRS. RETD. FLEET FOR AND FOR HOME

SOLDIER IN CIVILIAN DRESS NOT ENTITLED TO STATUS AS PRISONER OF WAR AND SHOULD BE TRIED BEFORE ALLIED MILITARY COURT X ORDER TO PREPARE FOR MRS. RETD. FLEET FOR AND FOR HOME FROM SEARS FOR FARGO FLEET SIGNAL F A THREE SEVEN SIX DATED FOUR DECEMBER HOURS CITE FARGO ONE HOUR/SIX EIGHT PAGES X UNDER FACTS AS STATED IN FLEET'S SIGNAL FROM FACTS CASE ESTABLISHED FOR TRIAL IN ALLIED MILITARY COURT OF SOLDIER IN PARTIAL UNIFORM WHERE QUESTION OF RIGHT TO BE TRIED AS PRISONER OF WAR CAN BE RAISED X WE HAVE CONSIDERED ONLY QUESTION OF FORM AND HAVE NOT ATTEMPTED TO DETERMINE MATTER OF WHEN FLEET TO BE TRIED IN SUCH CASE

NOTE: The above cable was approved by Lt. Col. Cripps - 7th December 1943

Major
Major.
acty chief counsel

Originator: Richard H. Wilmer,
A/D.C.L.C.
Legal Sub-Commission.

HQ 7th ARMY OFFICIAL BUSINESS

FARGO-1088

OUTGOING MESSAGE

Office of origin SEARS FOR FARGO -1088 Date 6 DECEMBER 1943
 (section) Initials Of
 Classification SECRET Precedence PRIORITY
 (Restricted - Confidential - Secret) (Routine - Priority - Urgent)

To: FREEDOM FOR MGS RPTD FILPOT FOR AMG FOR ROWE
 SOLDIER IN CIVILIAN DRESS AND WITHOUT FIXED DISTINCTIVE EMBLEM

NOT A LAWFUL BELLIGERENT AND THEREFORE NOT ENTITLED TO STATUS OF PRISONER
 OF WAR x PAREN FROM SEARS FOR FARGO TO FREEDOM FOR MGS RPTD FILPOT FOR
 AMG FOR ROWE REFERENCE FILPOT SIGNAL F A THREE SEVEN SIX DATED FOUR
 DECEMBER CITE FARGO ~~CITE NAUGHT SEA FIGHT~~ PAREN HE SHOULD BE CHARGED AS
 WAR CRIMINAL AND MAY BE TRIED BEFORE ALLIED MILITARY COURT x FACTS NOT
 SUFFICIENT FOR DETERMINATION WHETHER SOLDIER IN PARTIAL UNIFORM MET
 SEVERAL CONDITIONS NECESSARY TO QUALIFY HIM AS LAWFUL BELLIGERENT x
 HOWEVER EVEN IF LAWFUL BELLIGERENT WITHIN MEANING OF DEFINITION THEREOF
 NOT ENTITLED TO BE TREATED AS PRISONER OF WAR IF HE COMMITTED WAR CRIME
 UNLESS ORDERED TO PERFORM ACT BY HIS GOVERNMENT OR COMMANDER x ON FACTS
 STATED HIS ACT IN OUR OPINION AFTER ARMISTICE CONSTITUTED WAR CRIME AND
 THEREFORE IN ABSENCE OF SUCH ORDER CMA EVEN THOUGH OTHERWISE A LAWFUL
 BELLIGERENT CMA HE IS NOT ENTITLED TO BE TREATED AS PRISONER OF WAR AND
 MAY BE CHARGED AS WAR CRIMINAL BEFORE ALLIED MILITARY

Time Signed:

Content and classification

authenticated by

13

PAGE NO. 2
HQ 7th ARMY OFFICIAL BUSINESS

FARGO-1068

OUTGOING MESSAGE

18

Office of origin _____ Date _____
 (section) _____ Initials Of _____
 Classification _____ Precedence _____ (Originating officer)
 (Restricted - Confidential - Secret) (Routine - Priority - Urgent)

To:

COURT CMA WHERE RIGHT TO BE TREATED AS PRISONER OF
 WAR MAY BE RAISED ON ADDITIONAL FACTS NOT STATED IN
 TELEGRAM x WE HAVE CONSIDERED ONLY LEGAL QUESTIONS
 OF STATUS OF ACCUSED AND HAVE NOT ATTEMPTED TO
 DETERMINE ANY MATTER OF HIGH POLICY TO BE PURSUED IN
 SUCH CASES x

Time Signed:

Content and classification

authenticated by _____

18

1358

SECRET

SECRET

EQUALS BUTTER NOT SECRET AND SECRET

ER: 433

17

ADDRESSED FOR ACTION TO: FREEDOM FOR MGS
FARGO FOR UPJOHN

INFORMATION TO :

FROM :

: FILMOP FROM JMC FROM RJWE

IN REPLY REFER TO :

: FA 376

IBSF : 4843

TIME SENT : 041000A

TIME RECD : 041730A

PRECEDENCE: PRIORITY

2 soldiers Italian Army arrested in EIGHTH ARMY area on charges sniping at British Troops. Understand evidence is that one dressed as civilian and other wearing part Italian uniform. Defence likely to be that accused were shooting at sheep. Question arises whether accused should be tried by Court Martial as POW with protecting power present or whether trial should be by Allied Military Court. Am of opinion Italian soldiers at large can not claim benefits Geneva Convention for acts committed after Armistice. Policy may be to allow these benefits. Request your direction. Fargo please comment to FREEDOM and repeat here.

DISTRIBUTION:

AGC(ACTION)

CO

FA

17

SECRET

EQUALS BUTTER NOT SECRET AND SECRET

I

The case of the Italian sold a dressed
as a Cuban presents no difficulties. (b)

I It is not a lawful belligerent under
the American rule since he did
not have a fixed distinctive emblem
recognizable at a distance"
Rule of Land Warfare
Chapt 2. 189 Section 2.

II

It is not a member of the
Armed Forces under the British
rule for the same reason. Law
Manual of International Law
1929 Amendments (no 12)
Chap XIV - 20 (11)(b)

III

It is a war criminal, ~~being~~
~~taken up arms and being~~
~~committed hostilities~~
and liable to punishment as
such, having taken up arms
and having committed hostilities
without having complied with the
conditions prescribed by the Law
of War for recognition as a
belligerent. 27-10 Chap II; 348.
Manual Law. Chap XIV, 444^u
of Military

Chap XIX - 20 (3)

III He is a war criminal, ~~being~~
~~taken up arms and being~~
~~committed hostile~~
 and liable to punishment as
 such, having taken up arms
 and having committed hostilities
 without having complied with the
 conditions prescribed by the laws
 of war for recognition as a
 belligerent. 27-10 Chap II; 348.

Manual Law. Chap XIX, 446
 of military

IV ~~is~~ Not being a lawful
 belligerent he is not entitled to
 be treated as a prisoner of
 war 27-10 Chap II, 351.

V He may be tried by such
 courts as the belligerent concerned
 may determine. 27-10 Chap II; 351
 Manual of military law Chap XIX, 449

II

It is not

VI It may be held by an
allied Military Court as a war criminal
Proclamation No 2

II

THE No case of the Italian soldier
wearing part Italian uniform is
distinguishable only if the ~~latter~~ same
was so ~~distinctive~~ as to include
a fixed distinctive emblem. If not,
he falls within the same category as
the soldier dressed as a civilian.
The facts are insufficient ~~for~~ a
determination in this connection. Nor
does it appear whether he met the
other condition entitling him to
the status of a Law full belligerent—

~~as for (B) whether he was commanded~~
as for example! Whether he carried
arms openly (2) whether he was ~~then~~ a
member of a force commanded by a
person in authority.

2 5 5 9
he falls within the same
the soldier dressed as a civilian.
The facts are unimportant for a
determination in this connection. Nor
does it appear whether he met the
other conditions entitling him to
the status of a law full belligerent--

~~as for (B) whether he was commanded~~

as for example: (1) whether he carried
arms openly (2) whether he was then a
member of a force commanded by a
person responsible for his subordination.
(3) whether the operation was in accordance with the laws
and customs of war.
If he failed to meet all of these
apparent conditions he is not
a law full belligerent and according
is not entitled to be treated as
a prisoner of war.

II

3III

(14)
 Assuming that he met all the
 aforesaid conditions, the question
 still could be raised as to whether
 under the Terms of Surrender and
 the status of co-Belligerency, members
 of the Italian Army continued as
 lawful belligerents. If not he ceased
 to be a lawful belligerent upon the
 expiration of the terms of surrender
 and would accordingly not be
 entitled to be treated as a ~~prisoner~~
 prisoner of war.

IV

It would seem clear that the
 act complained of constituted a
 war crime.

(1) Surrendering after an armistice or
 surrender is manifestly not
 in accordance with the laws
 and customs of war.

(2) It is an act of perfidy.
 Manual of Military Law
 Chap XIV, 148.

(3) It is an act of treachery.

prisoner of war.

It would seem clear that the act complained of constituted a war crime.

(1) Surrendering after an armistice or surrender is manifestly not in accordance with the laws and customs of war.

(2) It is an act of perfidy.

Manual of Military Law
Chap XIV, 148

(3) It is an act of treachery;

Manual of Military Law.
(4) ~~It is~~

A war criminal who a member of the armed forces is not entitled to the status of a prisoner of war. Manual of Military Law
Chap XIV 56(a)

V

4

VI The ~~proprietor~~ The Contingent (13)
would be true only if the
war crime were committed
by order of order of the
Commander, in which event
the individual soldier would
not be regarded as a war
criminal, and cannot be
punished as such by the
Enemy Manual of Military Law

Ch XII 443

As a lawful belligerent he would
be entitled to the status of
a prisoner of war.

VII The foregoing undoubted
of plans ~~the~~ 27-10- 270
XIV-- 300

VIII The facts would indicate an
independent interpretation on the part
of the Italian soldiers. The cable
of the Italian soldiers at the

As a lawful belligerent he would be entitled to the status of a prisoner of war.

VII The foregoing ~~the~~ undoubted
 explains ~~the~~ 27-10- 270
 XIV-- 300

VIII The facts would indicate an independent ⁱⁿ ~~in~~ the part of the Italian soldiers. The cable speaks of "Italian soldiers, ~~at the~~ ⁱⁿ ~~Cage~~".

VIII Even granting the are soldier the status of a lawful belligerent, and assuming that he was acting in ~~the~~ his own, he ~~was~~ is charged with committing a war crime, and is ~~therefore~~ not entitled to the status of a prisoner of war.

5
 (17)
 If not a prisoner of war, he
 need not be tried by court martial,
 but is properly liable by an
 allied military court as a war
 criminal.

X
 If it be claimed that he
 was member of Italian forces
 now allied with Germany -
 army and therefore not
 bound by terms of armistice,
~~it extends to the fact that his~~
 with the result that
 a war act of
 bullying,

e
e
 If it be claimed that he
 did not war crimes because
 If it be claimed ~~that~~ he was
 member of Italian forces now ^{dead}
 army of Germany

army and therefore not
bound by terms of armistice,
~~it was the result~~ his
with the result that
act was one of law
bullying,

~~If it be claimed that his
act was a crime because~~
If it be claimed ~~that~~ he was
member of Italian forces now
allied with Germany army ^{dead}
not bound by armistice - with
result that his act was not
war crime but act of lawful
bullying, fact need be
determined whether he met
conditions finally known as
lawful sufficient with respect
to United Nations.

Wearing of civilian dress required
 Soldier of ~~such~~ status of
 In no case could soldier wear
 Civilian dress

Wearing of purplish dress / ~~disproportionate~~
 Soldier of such status of Law Belligent

Soldier in civilian dress and
 without a fixed distinctive emblem
 not a Law Belligent and therefore
 not entitled to status of prisoner
 of war. Should be charged as
 war criminal before actual
 Military Court.

~~Other~~ Facts not sufficient for
 determination whether ~~other~~ Soldier
 in partial uniform met several
 conditions necessary to qualify him
 as Lawful Belligent. ~~According~~
~~however the fact to be such~~
 If not same disposition as ~~other~~
 first Soldier. If Lawful Belligent
~~within meaning of definition~~
~~So~~ However even if Lawful
 Belligent within meaning of
 definition not entitled to the
 status of ~~war~~ prisoner of

~~was if he committed war crime~~
~~having~~ ~~on~~ ~~if~~

was ~~to~~ if he committed
 was ~~criminal~~ unless ordered

to perform it by the government or
 commander. In absence of

such order, ~~such soldier altho~~

~~member of armed force~~
~~soldier altho otherwise lawful~~
~~to soldier~~ ~~criminal~~ war crime

perpetrated ~~as a~~ ~~lawyer~~ ~~and~~
 but not entitled to treatment
 as ~~perpetrator~~ of war and

accused may be charged
 as ~~war~~ ~~criminal~~ before

allied military court.

6. Two copies of all such orders of appointment will be forwarded to this Headquarters directed to the attention of the Chief Legal Officer.

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

AMCOT
 15 Army Group.

1. If it be claimed that he was⁶
a member of the Italian Forces
now allied with the German
army and not bound by the
terms of the armistice with
the result that his act was
not a war crime but an
act of belligerency, fact must
be determined whether he
met conditions necessary
to qualify him as lawful
belligerent ~~not~~ as against
United Nations.

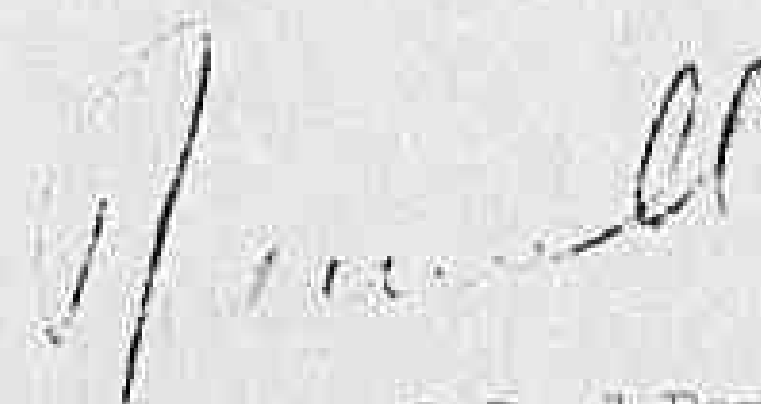
Subject: - Constitution of Allied Military Courts

AMCOT/4002/L

10 Aug 43

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

AMCOT
15 Army Group.


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

(Furt S in Cuban clothes.
not a lawful belligerent

Had no fixed sign recognizable at
 distance. Manual of Military Law 1929
 Amendments No 12 ch XIV

I ii (b)

Rules of Land Warfare ^{Set}
 FM 27-10 Chapt 2-9-2.

" It is expressly forbidden by the
 Hague rules to kill or wound
 by treachery individuals belonging to the
 hostile nation or

independent
 independence

Subject:- Constitution of Allied Military Courts

1-507/1432/5

14 Jan 48

1. Each Senior Civil Officer shall be appointed to appoint, by special order, any Senior Officer who may deem necessary, to hear and determine any case which arises in the districts of his command, in accordance with the provisions of the Allied Military Courts.
2. All Senior Civil Officers shall be appointed as Senior Officers of the Allied Military Courts.
3. All Officers of the Allied Military Courts are hereby designated as Senior Officers of the Allied Military Courts.
4. No officer not assigned to the Allied Military Courts shall be designated as a Senior Officer.
5. Civil and Police Officers shall be designated as Senior Officers of the Allied Military Courts.
6. The copies of all orders and instructions issued by the Chief Legal Officer shall be forwarded to the Chief Legal Officer of the Allied Military Courts.

AMCC
15 Army Group

Chief Legal Officer of the Allied Military Courts

Rank of Belliguit1st Soldier

- I To be commander of person responsible for his subordinates
- II To have fixed distinctive emblem recognizable at a distance
- III To carry arms openly.
- IV To conduct operations in accordance with laws and usages of war.

Persons in arms

S347 27-10

Use of civilian clothing to conceal their military character during battle.

Individuals of armed forces will not be punished for these offenses in case they are committed under orders or sanction of their government or commanders.

S348 27-10

~~Not~~ Persons who take up arms and commit hostilities without complying with conditions prescribed by laws of war - liable to punishment as war criminals.

Subject:- Constitution of Allied Military Courts.

22/53/37/2/3

2/2/53

1. Each Senior Civil Authority shall be empowered to appoint, by special order, any person who may deem necessary, to hear and determine any cases which may arise in the districts and regions under his jurisdiction in accordance with the provisions of the Constitution.
2. All Senior Civil Authorities shall be deemed to be as a Summary Military Court and as a Military Court.
3. All Officers of AMCF who are in the service of the Government are hereby designated as Judicial Officers for the purpose of the Proclamation No. 1.
4. No officer not designated as a Judicial Officer shall be a member of an Allied Military Court.
5. Civil Affairs Police Officers shall be designated as members of Allied Military Courts.
6. Two copies of all orders and decisions of the Allied Military Courts shall be forwarded to the Chief Legal Officer of the Government.

1/30/53
15 Army Group.

1/30/53
15 Army Group.

If they joined Fascist or Germans.

Deserters and subjects of a Belligerent fighting in the enemy's ranks are traitors to their country, and are when captured to penalty for treason they cannot be regarded as enemies in the military sense of the term and cannot claim the privileges of members of the armed force of the enemy, but terms may specially made for them
 Manual of Military Law 1929
 Amendments (no 12)
 Ch XIV 36.

No falling can claim to be treated as prisoners of war if they fall into the hands of the enemy.
 (a) Any member of the armed forces, unless he has committed a war crime

Ch XIV 56 (a)

It is a principle of the Hague
rules to kill or wound by treachery
individuals belonging to the hostile
nation or army

XIV 143

To demand a suspension of
arms and break it by surprise
or violate a safe conduct or any
other agreement in order to obtain
an advantage is an act of
perfidy and as such is forbidden

XIV 148

Soldiers captured in the act of
breaking an armistice must be
treated as prisoners of war since
the responsibility for such a violation
lies not with them but with the
Commander. Should an individual
soldier be captured ^{who} without
orders committed a hostile
act during an armistice, he
may ~~be~~ ^{be} ~~consequently~~ ^{be} handed
over to his commander for
punishment

XV 300

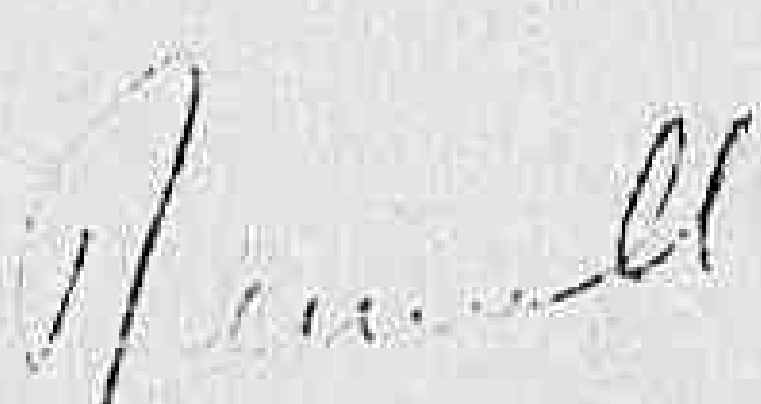
Subject:- Constitution of Allied Military Courts

AMCOT/4002/L

10 Aug 43

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

AMCOT
15 Army Group.


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

Enemy soldiers captured
in the act of breaking an article
are treated by their captors as
prisoners of war. If acting upon
their own initiative alone
they may be tried and
punished for the offense
but not otherwise.

27-10 - 270

Subject:- Constitution of Allied Military Courts

AFMOT/4002/L

10 Aug 45

1. Each Senior Civil Affairs Officer will be authorized to appoint, by special order, such personnel and personnel as may deem necessary, to hear and determine cases as may arise in the districts and provinces under his command in accordance with the provisions of the Proclamation No. 1.
2. All Senior Civil Affairs Officers will be authorized to sit as a Summary Military Court or as a District or Regional Military Court.
3. All Officers of AFMOT who are hereinafter designated are hereby designated as Judicial Officers within the meaning of Proclamation No. 1.
4. No officer not assigned to AFMOT will be appointed to an Allied Military Court without the consent of the Chief Legal Officer.
5. Civil Affairs Police Officers will not be authorized to sit as Allied Military Courts.
6. Two copies of all such orders will be forwarded to this Headquarters and one copy will be forwarded to the Chief Legal Officer.

AMOT
35 Army Group.

[Signature]
Major General John Russell of Todd,
Chief Legal Officer.

(4)
 members of armed forces who commit
 war crimes as ordered by their
 Gov or by their commander are not
 war criminals and cannot be
 punished by the enemy.

British War Manual Ch XIV 443

~~448~~ Fourth class of war criminals
 consist of marauders. These are
 individuals, either civilians or soldiers
 who have left their corps, who follow
 armies on the march and appear as
 battle furies either singly or in
 bands in quest of booty and rob
 malheur or murder, plunder and
 wounded and pilloage the dead.

Ch XIV 448

Charges of war crimes may be
 dealt with by military courts or
 by such courts as the belligerent
 concerned may determine

Ch XIV

449

A sentence shall only be pronounced
 on a prisoner of the same nationality
 and in accordance with the same
 procedure as in the case of persons
 belonging to the armed forces of the
 detaining power. 107 a (Ch XIV)

Subject:- Constitution of Allied Military Court

2200/4002/4

10.000.03

1. Each Senior Civil Officer of the District is empowered to appoint, by special order, such persons as may be deemed necessary to hear and determine any cases which may arise in the District and to exercise the powers of the Court in accordance with the provisions of the Constitution of the Court.
2. All Senior Civil Officers of the District are hereby designated as a Senior Military Officer of the District and as a Member of the Allied Military Court.
3. All Officers of the District who are designated as a Senior Military Officer are hereby designated as a Member of the Allied Military Court in accordance with Proclamation No. 1.
4. No officer not assigned to the District will be permitted to sit on the Allied Military Court without the sanction of the District Officer.
5. Civil Officer Police District will act as a Member of the Allied Military Court.
6. Two copies of the Constitution of the Allied Military Court are forwarded to the District Officer for the District and the Chief Legal Officer.

2200/4002/4
15 Army Council

2200/4002/4 of Redd,
District Officer.

27-10-

It would be an anti-apartheid
act of propaganda for either party
to resume hostilities without
any day period of an
amnesty.

Subject:- Constitution of Allied Military Courts

AMCOT/4002/L

10 Apr 45

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

AMCOT
15 Army Group

[Signature]
Major General J. H. Darnall of Rodé,
Chief Civil Affairs Officer.

• irregular - S -

Such individuals
as take up arms
or commit hostile acts
single and several
leave to be treated
as war criminals and
shot

War crime
includes

Violations of recognized
rules of warfare committed
by members of armed forces

454 Oppenheimer
N/A a principle member of
armed forces bound to obey
lawful orders only and
cannot escape liability if in
obedience to command
which both violates
unchallenged rules of
warfare and outrage
Sentiment of humanity.

Subject:- Constitution of Allied Military Courts

100/1002/1

12 May 42

1. Each Senior Civil Officer is authorized to appoint, by special order, such persons as he may deem necessary, to hear and determine any case arising in the Districts of the Allied Military Courts in accordance with the provisions of the Allied Military Court.
2. All Senior Civil Officers of the Allied Military Courts are hereby designated as Special Officers of the Allied Military Courts.
3. All Officers of the Allied Military Courts are hereby designated as Special Officers of the Allied Military Courts.
4. No officer not assigned to the Allied Military Courts is authorized to act as a Special Officer of the Allied Military Courts.
5. Civil Officers of the Allied Military Courts are hereby designated as Special Officers of the Allied Military Courts.
6. The copies of this order are forwarded to the Chief of Staff of the Allied Military Courts.

15 Army Group

Chief of Staff of 15 Army Group
Allied Military Courts

①
Offense committed by POW. before
 parole are limited only by Courts Martial
 provisions.
 After parole may be tried by AWSC

Tribunal of Courts martial for all acts
 done while in confinement - § military Cts
 for all acts done before they were taken
 into custody

Article 27-10 11/13/36
 Article 63-

Sentences may be pronounced against
 them only by same Cts and according
 to same procedure as armed forces
 of detaining power.

Prisoner of war charged with
 with act punishable by military law
 Subject to trial of General C.M.

B155 p 37

Prisoner of war liberated on parole
 and recaptured leaving arms against
 the government and the United States

when and by same etc and according
to same procedure as armed forces
of detainee.

Prisoner of war charged with
with act punishment by military law
subject to trial of General C. N.

§155 P 37
Prisoner of war liberated on parole
and recaptured leaving arms against
the government a all forfeit rights to be
treated as prisoner of war as can be
subject to treatment etc.

§1270 P 373
Enemy Soldier captured in act of
treachery armistice and treated by the
captain as prisoner of war. If a spy
upon their own initiative alone they may
be tried and punished for the offense
but not otherwise. Subordinate officers
who upon their own initiative order
Soldiers to commit a crime in
violation of law, Armistice and
new hopes for peace.

ANNEXURE

HEADQUARTERS
ALLIED MILITARY COMMAND
AFRIC
AFRIC

4 November 1943

MEMORANDUM FOR THE RECORD

SUBJECT

71

1. In order to secure coordination of all activities pertaining to the food supply of Italy there is hereby ordered within this headquarters the office of Food Coordinator.

2. The functions of the Food Coordinator will be as follows:

a. He will serve as Chairman of the Food Committee and HQ.

b. He will be responsible for coordinating all action of the Sub-Committees relating to civilian food supply, including overall requirements, production, imports, exports, transport, agricultural development, processing, and all other matters pertaining to the availability of food supply for civilian requirements.

3. The various Sub-Committees will provide the Food Coordinator with such statistics and other information as he shall require. Action of Sub-Committees involving questions of program, policy affecting any of the matters specified in paragraph 2b, will be coordinated with the Food Coordinator.

4. The Food Coordinator and his staff will be attached to the staff of the Commanding General. The Food Coordinator will be free, however, to communicate directly with Chiefs of any of the Sub-Committees or other sections which oversee any functions pertaining to the food supply.

5. Lt. Colonel JOSEPH T. HARRISON (4) is designated as the Food Coordinator under paragraph 1 above.

By order of Brigadier General HARRISON:

2. He will be responsible for coordinating all action of the Sub-Committee on Civilian Food Supply, including overall requirements, requisitioning, supply, transport, agricultural development, processing, and all other matters pertaining to the availability of food supply for civilian requirements.

3. The various sub-committees will provide the Food Coordinator with such statistical and other information as he shall require. Action of Sub-Committees involving questions of program or policy affecting any of the matters specified in paragraph 2a, will be coordinated with the Food Coordinator.

4. The Food Coordinator and his staff will be attached to the staff of the Executive Director. The Food Coordinator will be free, however, to communicate directly with Chiefs of any of the sub-committees of other Sections which exercise any functions pertinent to the Food Supply.

5. At 11:00 AM, 1, 1945 (A) is designated as the Food Coordinator under paragraph 1 above.

By command of Brigadier General [Signature]

E. BRIDGEMAN
Brigadier
Acting Chief of Staff

ORIGINAL:

E. J. [Signature]

E. J. GORDON
Lt Col. [Signature]
Adjutant General

11/11/45

RECEIVED

