

1 6 8 4

Classified E.O. 12356 Section 3.3/WND No. 785016

ACC

10000/142/765

INVEST
NOV. 194

5 INVESTIGATION OF WAR CRIMES & WAR CRIMINALS (POLICY)
NOV. 1943 - JAN. 1947

①
To Executive Committee

7.8.44

Ref conversation Brig Bush (A) 11/11/44.
This morning on responsibilities for atrocities you
will see from a perusal of 3050 & 602
that investigations into alleged war crimes
are dealt with by Army Commanders & reported
to AFHQ. ACE does not come into the
picture at all. I very strongly regret
therefore that ACE officers be not burdened
with the task of making investigations into
"atrocities" but that in accordance with the
directives referred to above the matter be left
entirely to the Army & District or Base Section
Commanders.

Specimen

②

Thank you. I agree. Could the letter be

sent to SCAGS: 6 & 8th Armies? ~~etc~~

not the whole
of the 8th Army

with the task of making investigations into "atrocities" but that in accordance with the directives referred to above the matter be left entirely to the Army & District or Base Section Commanders.

SPRY

(2)

Thank you. I agree. Could the letter be sent to SC40: 6' & 8' Armies? ~~and~~

61

RS/SP/44

To Legal.

Ref hint (2), I think all Wilson has already done this. SPRY

(3)

To Admin.

Yes. Better dates 8 Aug. (8th) Windsong at 1100
20/8/44

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL DIVISION

FILE

AC/4119/1/L

LT/ns
23 January 1947.

SUBJECT : War Crimes:Luigi AMORI.

TO : AFHQ : (Attn: JAG)

Enclosed herewith for onward transmission to the appropriate authorities is a copy of a letter from the Secretariat of State of the Holy See regarding Luigi Amori, a prisoner in the Caserma Regina Elena, Forte Pietralata, Rome.

For the Chief Commissioner :

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor.



Vatican City, December 19, 1946

N. 144862/SA

Dear Sirs,

The Secretariat of State of His Holiness would take the liberty to recommend for the kind consideration of the competent Authorities the request of Signora Esmeralda Amori, Comune di Marsciano, Provincia di Perugia, for intervention in favor of her husband, Luigi Amori who is held prisoner in the Caserma Regina Elena, Forte Pietralata, Rome.

Signora Amori state that she is the mother of two small children, of three years and eighteen months respectively, and that, due to sickness and the lack of any means of support, the conditions under which they must live are becoming progressively worse.

Thanking you for the consideration you may deem to give to this request, I am

Sincerely yours,

Walter S. Carroll

Rt. Rev. Mons. Walter S. Carroll
Secretariat of State of His Holiness

Legal Sub Commission
AC HQ
Via Veneto

Rome

65

4119/1/2

CONFIDENTIAL

HEADQUARTERS ALLIED COMMISSION
ATO 394
LEGAL SUB COMMISSION

AC/4119/7/L

MT/rs
20 May 1946.

SUBJECT : War Crimes:
Major Van Werden
Oberleutnant Dreyhaupt
Leutnant Zundorf
suspected of the murder of ten Italian
civilians on 24th June 1944.

TO : The Italian Central War Crimes Commission.

1. The attached file of documents have been received from Military Headquarters and constitute the proceedings of a Court of Inquiry held in December, 1944, for the purpose of recording evidence in connection with the killing of ten male Italian Civilians on 24th June 1944 near the village of Palazzo del Pero.

The enclosed file consists of the following documents:

Copy of Court of Inquiry Proceedings, original and one typed copy.
Original and copy list of exhibits
3 Italian documents (believed to be death certificates)
2 German documents
1 Plan (of Arezzo and district)
1 S.I.B. report and witnesses statements
Original proceedings of Court of Inquiry
25 photographs of persons implicated.

2. The file is now forwarded to the Commission for any eventual proceedings that may be taken against the above-mentioned suspected persons.

3. Kindly acknowledge receipt.

MUSGRAVE THOMAS,
Italian Branch,
for Chief Legal Advisor;

CONFIDENTIALSUBJECT :- Murder of Italian Civilians near AREZZOLEGAL
7330GHQ CMF.16200/5/A-3.17 May 46.HQ Allied Commission.Copy to :- DJAG., GHQ CMF.

1. The enclosed documents constitute the proceedings of a Court of Inquiry held in December 1944 for the purpose of recording evidence relating to the atrocity mentioned above. Various exhibits as enumerated in the attached schedule are also enclosed.
2. May these documents or such extracts as you may consider relevant please be passed to the appropriate Italian Authorities.
3. This file has only recently come into the possession of this branch, and it has therefore not yet been ascertained whether any of the Germans implicated namely, VAN WERDEN, DREYHAUPT and ZUNDORE, are in Allied Custody.

LEGAL SUBCOMMISSION

/hs

50 May 46

63
J. M. Jones
for Brigadier Captain
DAG.

SCHEDULE

Copy of Court of Inquiry Proceedings, *original and one typed copy*
 Original and copy of exhibits.
 3 Italian documents (believed to be death certificates)
 2 German documents.
 1 Plan (of AREZZO and district.)
 1 S.I.B. report and witnesses statements.
 Original proceedings of Court of Inquiry.
 25 photographs of persons implicated.

1693

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

785016

1100

1119

8 DEC 1945

29A

C A S C

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

- 7 DEC. 1945

G-5: 000.5-1

6 December 1945

SUBJECT: War Crimes - Trials

TO : Headquarters, Allied Commission,
APO 394.

1. Forwarded herewith is one copy of GHQ CMF Administrative Instruction #27, setting out the policy for the organization and preparation of War Crimes Trials in CMF.

2. It is requested that you contact the Italian authorities with a view to insure their assistance in connection with the tracing and location of witnesses.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:



A. L. Hamblen Col
A. L. HAMBLEN,
Brigadier General GSC,
Assistant Chief of Staff, G-5

Incl: as above

REG. SUBCOMMISSION	
CIO	<i>W</i>
DCLO	<i>W</i>
Chief Counsel	
CJO	
Italian Section	<i>W</i>
CL RKS	
8 DEC 1945	



ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 000.5-1

6 December 1945

SUBJECT: War Crimes - Trials

TO : Headquarters, Allied Commission,
APO 394.

1. Forwarded herewith is one copy of GHQ GMP Administrative Instruction #27, setting out the policy for the organization and preparation of War Crimes Trials in GMP.

2. It is requested that you contact the Italian authorities with a view to insure their assistance in connection with the tracing and location of witnesses.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. Hambley
A. L. HAMBLEY,
Brigadier General GSC,
Assistant Chief of Staff, G-5

Incl: as above



16000/A-3.
GHQ GTF ADMINISTRATIVE INSTRUCTION No 27.

The Organisation and Preparation of War Crimes Trials in GTF.

OBJECT.

1. The object of this instruction is to outline the procedure for the preparation for trial and trial of alleged war criminals before British Military Courts in GTF.

POLICY.

2. A warrant has been issued to the Supreme Allied Commander to convene Military Courts for the trial of any persons under or within the limits of his command charged with any war crime and to confirm the findings of such Courts.
3. The Supreme Allied Commander has issued warrants under cover of this HQ letter 16000/A-3 dated 13 Nov 45 delegating such authority, with certain reservations, to the following :-

- | | |
|-----|-------------------------------|
| (a) | GOC-in-C BPA, |
| (b) | Commander 13 Corps, |
| (c) | Commander Land Forces Greece, |
| (d) | Commander No 2 District, |
| (e) | Commander No 3 District. |

4. The regulations governing the trial of war criminals are set out in Army Order 61/45, a copy of which is at Appendix "A" to this instruction.
5. In general, war crimes trials will be held in a few suitable locations throughout the theatre and the responsibility for the organisation and conduct of the trial will normally be delegated to the most convenient formation. No person will however be brought to trial before British Military Courts as war criminals except on the authority of GHQ GTF.

PREPARATION OF CASE FOR TRIAL.

6. The Convening Officer will receive the following from "A" Branch, GHQ GTF when a case is transmitted for trial :-

- | | |
|-----|-----------------------|
| (a) | Draft Charge Sheet, |
| (b) | Abstract of Evidence, |

- (c) GOC-in-C BTA,
- (d) Commander 13 Corps,
- (e) Commander Land Forces Germany,
- (f) Commander No 2 District,
- (g) Commander No 3 District.

4. The regulations governing the trial of war criminals are set out in Army Order 81/45, a copy of which is at annex A to this instruction.

5. In general, war crimes trials will be held in a few suitable locations throughout the theatre and the responsibility for the organization and conduct of the trial will normally be delegated to the most convenient formation. No person will however be brought to trial before British military courts as war criminals except on the authority of GHQ GPF.

PREPARATION OF CASE FOR TRIAL.

6. The GPF Officer will receive the following from "A" Branch, GHQ GPF when a case is transmitted for trial:-

- (a) Draft Charge Sheet,
- (b) Abstract of Evidence,
- (c) Necessary Exhibits,
- (d) Copy of or extract from JAG's pre-trial advice minute,
- (e) Location of accused and witnesses.

Unless otherwise directed therefore by GHQ GPF, an abstract or summary of evidence will be prepared by the CO of the British unit to which the accused will be attached.

7. The CO of the British unit mentioned above will be responsible for the safe custody of the accused and will be deemed to be his CO for all matters preliminary and relating to the trial and punishment of the accused.

8. The proceedings of a British Military Court will be recorded, on AF 1.4 (adapted from AF 1.3) a specimen of which is at appendix "B". Summaries of AF 1.4 will be forwarded to formations as required by AF 1.5, GHQ GPF.

COMPOSITION OF THE COURT.

9. The rules for the composition of the Court are set out in Regulation 5 of Army Order 81/45.

- 2 -

The Convening Officer will request DTAG, GHO GEF to nominate either a Judge Advocate or a Legal Member.

FORMAL CHARGE AND FACILITIES FOR THE DEFENCE.

10. A senior officer of the British unit to which the accused is attached will visit the accused and will

- (a) Formally charge him
- (b) Give him a copy of the Charge Sheet, Abstract of Evidence, and exhibits (where applicable) explaining their implications if necessary
- (c) Request the accused to state in writing whether he wishes to be defended by a British Officer or by a national of his own country.

Defending Officer or Counsel.

11. If the accused wishes to be represented by a British Defending Officer, the CO will immediately notify the Convening Officer and the Formation concerned who will be responsible for appointing a suitable officer (wherever possible with legal qualifications) who will be relieved as soon as is necessary of all other duties in order to prepare the defence.

12. The accused may, if he wishes, be defended at his own expense by a national of his own country who need not be legally qualified. The accused's CO will, in this case, immediately notify the appropriate Formation who will be responsible for obtaining a suitable defending Counsel as quickly as possible. If, however, the accused is a German, the Formation will signal A-3, GHO GEF who will arrange for a German defending Counsel to be made available from Sfr or PV without cost to the accused.

The Convening Officer will however (if required by the accused) detail a British officer with knowledge of British Military Law and Procedure to assist the defence.

13. Civilian Counsel for the defence will be permitted to see the accused at all reasonable times for the purpose of preparation of the defence. The CO will detail a representative (who should, if possible, be the British officer appointed to assist the defence in accordance with para 12) to be present at all interviews in order to ensure that nothing is improperly passed to or from the accused. Such interviews will be treated

relieved as soon as is necessary of all other duties in order to prepare the defence.

12. The accused may, if he wishes, be defended at his own expense by a national of his own country who need not be legally qualified. The accused's OC will, in this case, immediately notify the appropriate formation who will be responsible for obtaining a suitable defending Counsel as quickly as possible. If, however, the accused is a detainee, the formation will assign a C.F. who will arrange for a detainee defending Counsel to be made available from JEF or PF without cost to the accused.

The Convening Officer will however (if required by the accused) detail a British officer with knowledge of British military law and procedure to assist the defence.

13. Civilian Counsel for the defence will be permitted to see the accused at all reasonable times for the purpose of preparation of the defence. The OC will detail a representative (who should, if possible, be the British officer appointed to assist the defence in accordance with para 12) to be present at all interviews in order to ensure that nothing is improperly passed to or from the accused. Such interviews will be treated as strictly confidential.

14. Civilian Counsel may, as appropriate cases be accommodated and passed on repayment in British Military Hotels or, if considered necessary, by the unit to which the accused is attached without charge.

Interpreter for the Accused.

15. The appropriate formation will be responsible for providing the accused free of charge with the services of a civilian interpreter to enable him and his Counsel (whether British or civilian) to understand the charges and to prepare the defence. This interpreter will be in addition to the official Court interpreter who will be provided at the trial.

Witnesses for the defence.

16. All reasonable assistance will be granted to the accused to obtain witnesses required by him and to prepare his defence. He will be required to submit in writing to the Convening Officer a full list of the witnesses required by him as soon as possible. Delivinq tactics, however, such as the summoning of witnesses from unwaranted places will not be permitted.

17. If it appears likely to the Convening Officer that the date fixed for the commencement of the trial will have to be postponed in order to obtain the attendance of witnesses requested by the defense, he will require the accused to state in writing the reasons why the attendance of such witnesses is necessary. Unless he considers those reasons to be satisfactory, he will warn the accused that the trial will not be postponed for the purpose of obtaining their attendance. If he has any doubt he will refer the matter to DAG, GJK CF.

PLACE OF TRIAL.

18. The formation to which the transportation and conduct of the trial is delegated by GJK CF will be responsible for selecting the most convenient place of trial but it will rarely be practicable for the trial to take place in the exact locality in which the crime was committed.

The following are the principal considerations to be taken into account in deciding the location of the trial :-

- (a) Suitable facilities for hearing the case
- (b) Location and number of witnesses
- (c) Accommodation etc facilities for the Court, witnesses, press, etc.
- (d) Location of the war crimes
- (e) Suits to holding facilities for accused
- (f) Necessity for security arrangements.

DATE OF TRIAL.

19. The date of trial will be arranged by the Convening Officer in conjunction with DAG, GJK CF to ensure the availability of the Prosecutor, Judge Advocates or Legal Member and, in appropriate cases, official shorthand writer.

ADMINISTRATIVE PERSONNEL.

20. The necessary Court interpreter, administrative personnel, guards, etc., will be provided under arrangements made by the Formation responsible for organizing the trial.

21. A prosecutor and, in more important cases, an official shorthand writer will be made available by DAG, GJK CF on application.

22. A Court interpreter will be required to translate the proceedings to the Court and to enable the evidence of the accused

DATE OF TRIAL.

19. The date of trial will be arranged by the Convening Officer in conjunction with DMAG, GIK QF to ensure the availability of the Prosecutor, Judge Advocate or legal member and, in appropriate cases, official shorthand writer.

ADMINISTRATIVE PERSONNEL.

20. The necessary Court Interpreter, administrative personnel, guards, etc., will be provided under arrangements made by the Formation responsible for organizing the trial.

21. A prosecutor and, in more important cases, an official shorthand writer will be made available by DMAG, GIK QF on application.

22. A Court interpreter will be required to translate the proceedings to the accused or to the Court and to enable the evidence of the accused and witnesses to be taken. Particular care must therefore be taken in the selection of this interpreter and a relief will always be kept available.

ATTENDANCE OF WITNESSES.

23. The Convening Officer will be responsible for the attendance of witnesses both for the prosecution and defense. If the attendance of certain witnesses cannot be obtained, DMAG, GIK QF should be consulted as to whether or not the trial can proceed without them.

24. The Convening Officer will take such steps as he considers necessary (in conjunction with the appropriate Formation and the Civil Authorities) to ensure that available witnesses are warned that they will be required to give evidence and that they are in fact made available. If necessary, the Convening Officer may order that a civilian witness be taken into protective custody either for his own protection or to ensure his attendance at the trial. In case of doubt this matter should be referred through the appropriate Formation to 3-3, GIK QF.

ACCOMMODATION OF CIVILIAN WITNESSES AND INTERPRETERS.

25. Civilian witnesses may, where necessary, be transported, accommodated and fed without charge under Army arrangements. Interpreters will normally be required to pay for accommodation and feeding and the appropriate deduction will be made from their remuneration (see para. 27 below).

EXPENSES OF CIVILIAN WITNESSES AND INTERPRETERS.

26. Claims for civilian witnesses will be dealt with in accordance with Appendix "C" to this instruction.

27. Civilian interpreters, whether provided for the accused or for the Court, will be paid in accordance with "Regulations for the Employment of Civilian Labour in Italy, Sicily and Sardinia 1943" or similar regulations as applicable in GREECE or AUSTRIA.

PROCEDURE AFTER TRIAL.Sentences.

28. The sentence will be announced in open Court unless instructions to the contrary are issued by A-3, CHQ CEF.

Petitions.

29. Notice of intention to petition against the finding or sentence, or both, in accordance with Regulation 10 of Army Order 81/45 will be given in the form shown at Appendix "D". The petition itself will be forwarded through the usual channels to the Confirming Authority for consideration.

Pre-confirmation advice.

30. All cases will be referred to DMG, CHQ CEF for pre-confirmation advice.

Pronouncement.

31. The proceedings will be pronounced as follows :-

(a) Notification to the accused of the finding and sentence when confirmed.

29. The sentence will be unreviewed in such cases unless instructions to the contrary are issued by A-3, GAO GIP.

Petition.

29. Notice of Intention to petition against the finding or sentence, or both, in accordance with Regulation 10 of my Order 81/45 will be given in the form shown at Appendix "B". The petition itself will be forwarded through the usual channels to the Dordrecht Authority for consideration.

Pre-confirmation review.

30. All cases will be referred to A-3, GAO GIP for pre-confirmation review.

Examination.

31. The proceedings will be conducted as follows :-

- (a) Petition to the Board of the finding and sentence when confirmed
- (b) Copy sent of A-3.

Instructions will be issued by A-3, GAO GIP to each case in which a finding of guilty is confirmed requiring the disposal of the accused.

Press and Publicity.

32. Particulars of the case contained in the Charge Sheet, together with the time and place of trial will be forwarded as soon as possible by the Convening Officer to the Public Relations, GAO (copy to the Press). If Public Relations, GAO will be responsible for co-ordinating all Press arrangements and will notify the Convening Officer of the approximate number of Allied and local correspondents who will be attending the trial.

33. Allied correspondents will, where necessary, be allowed accommodation and traveling facilities in or near the Hotel on request. Local correspondents will make their own arrangements.

34. No photographs will be permitted inside the Court.

ACCOMMODATION OF CIVILIAN WITNESSES AND INTERPRETERS.

25. Civilian witnesses may, where necessary, be transported, accommodated and fed without charge under any arrangements. Interpreters will normally be required to pay for accommodation and feeding and the appropriate reduction will be made from their remuneration (see para 27 below).

EXPENSES OF CIVILIAN WITNESSES AND INTERPRETERS.

26. Claims for civilian witnesses will be dealt with in accordance with Appendix "C" to this Instruction.
27. Civilian interpreters, where provided for the accused or for the Court, will be paid in accordance with "Regulations for the Employment of Civilian Labour in Italy, Sicily and Sardinia 1943" or similar regulations as applicable in GREECE or AUSTRIA.

PROCEDURE AFTER TRIAL.

Sentence.

28. The sentence will be announced in open Court unless instructions to the contrary are issued by A-3, GHQ GEF.

Petition.

29. Notice of intention to petition against the finding or sentence, or both, in accordance with Regulation 10 of Army Order 81/45 will be given in the form shown at Appendix "D". The petition itself will be forwarded through the usual channels to the confirming authority for consideration.

Pre-confirmation advice.

30. All cases will be referred to BMO, GHQ GEF for pre-confirmation advice.

Pronouncement.

31. The proceedings will be promulgated as follows :-

(a) Notification to the accused of the finding and sentence

Sentence.

28. The sentence will be announced in open Court unless instructions to the contrary are issued by A-3, GHQ GIP.

Petition.

29. Notice of intention to petition against the finding or sentence, or both, in accordance with Regulation 10 of Army Order 81/45 will be given in the form shown at Appendix "D". The petition itself will be forwarded through the usual channels to the Confirming Authority for consideration.

Pre-confirmation advice.

30. All cases will be referred to D340, GHQ GIP for pre-confirmation advice.

Pronouncement.

31. The proceedings will be promulgated as follows :-

- (a) Notification to the accused of the finding and sentence when confirmed
- (b) Completion of A2 A 4.

Instructions will be issued by A-3, GHQ GIP in each case in which a finding of guilty is confirmed regarding the disposal of the accused.

PRESS AND PUBLICITY.

32. Particulars of the case contained in the Charge Sheet, together with the time and place of trial will be forwarded as soon as possible by the Convening Officer to HQ Public Relations, GIP (copy to HQ PRUSA), HQ Public Relations. GIP will be responsible for co-ordinating all Press arrangements and will notify the Convening Officer of the approximate number of Allied and Local Correspondents who will be attending the trial.

33. Allied Correspondents will, where necessary, be allowed accommodation and meeting facilities in British Military Hotels on request. Local Correspondents will make their own arrangements.

34. No photographs will be permitted inside the Court.

- 5 -

ADMITTANCE TO COURT.

35. Formations responsible for the Administrative arrangements in connection with the Court will take such steps as they consider necessary to exclude undesirable persons and to search civilians wishing to attend the trial for weapons, etc. All persons attending the Court will have their credentials checked before admittance.

CHQ. CTF.3 Dec 65.

HGH.

1706

APPENDIX "A"
OFFICIAL COPY

Crown Copyright Reserved

SPECIAL ARMY ORDER

THE WAR OFFICE,
9th August, 1945

ROYAL WARRANT

6166/2498

A.O. 127/1945

Regulations for the Trial of War Criminals

GEORGE VI

WHEREAS We deem it expedient to amend the Regulations for the Trial of War Criminals attached to Our Warrant dated the 14th day of June, 1945*;

OUR WILL AND PLEASURE is that the amendments set out in the Schedule to this Our Warrant shall be made to the said Regulations.

Given at Our Court at St. James's, this 9th day of August, 1945, in the 9th year of Our Reign.

By His Majesty's Command,

56 J. LAWSON.

* Army Order 51 of 1945.

1707

785016

A.O. 127/1945—*contd.*

SCHEDULE

Regulations for the Trial of War Criminals
(See Army Order 81 of 1945)

AMENDMENTS No. 1

1. Regulation 3, line 12. After "34" insert "35 (D) "
2. Regulation 8 (ii). Add at end:—

"In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court."

By Command of the Army Council,

L. Dismore

PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased directly from H.M. STATIONERY OFFICE at the following addresses:
York House, Kingsway, London, W.C.2. 31 Castle Street, Edinburgh 2.
19-21 King Street, Manchester 2. 1-3, Andrew's Crescent, Cardiff.
40, Chichester Street, Belfast 1.
or through any bookseller.

1945

Price 1d. net

(83155) W. - 8/15 W.O.P. Gp. 139

57-9999

OFFICIAL COPY

Crown Copyright Reserved

SPECIAL ARMY ORDER

THE WAR OFFICE,
18th June, 1945

ROYAL WARRANT

0160/2498

A.O. 81/1945

Regulations for the Trial of War Criminals

GEORGE R.I.

WHEREAS We deem it expedient to make provision for the trial and punishment of violations of the laws and usages of war committed during any war in which We have been or may be engaged at any time after the second day of September, nineteen hundred and thirty-nine;

Our Will and Pleasure is that the custody, trial and punishment of persons charged with such violation of the laws and usages of war as aforesaid shall be governed by the Regulations attached to this Our Warrant.

Given at Our Court at St. James's, this 14th day of June, 1945, in the 9th year of Our Reign.

By His Majesty's Command,

P. J. GRIGG.

Regulations for the Trial of War Criminals

1. In these Regulations if not inconsistent with the context and subject to any express provision to the contrary the following expressions have the following meanings namely:—

"War Crime" means a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September, 1939. Any expression used in these Regulations has the same meaning as in the Army Act or the Rules of Procedure made pursuant thereto. "Military Court" means a Military Court constituted and held under these Regulations.

A.O. 815945

2. (a) The following officers shall have power to convene Military Courts for the trial of persons charged with having committed war crimes and to confirm the findings and sentences of such Courts namely:—

- (i) Any officers authorized so to do by His Majesty under His Warrant.
- (ii) Any officers authorized so to do by delegation under the Warrant of any officer referred to under (i) above whom His Majesty has authorized to make such delegation by His Warrant.

(b) Any such Warrants may be addressed to an officer by name or by designation of an office and may be subject to such restrictions, reservations, exceptions and conditions as may seem meet to His Majesty or any such delegating officer as aforesaid.

(c) An officer having authority to confirm the finding and sentence of a Military Court may reserve confirmation of the finding and sentence or of the sentence to any superior authority competent to confirm the findings and sentences of the like kind of military court convened under these Regulations.

3. Except in so far as herein otherwise provided expressly or by implication the provisions of the Army Act and the Rules of Procedure made pursuant thereto so far as they relate to Field General Courts-Martial and to any matters preliminary or incidental thereto or consequential thereon shall apply so far as applicable to Military Courts under these Regulations and any matters preliminary or incidental thereto or consequential thereon in like manner as if the Military Courts were Field General Courts-Martial and the accused were persons subject to military law charged with having committed offences on active service.

Sections 49, 51, 54 (1) (d) and (7) and 57 (2) and (4) and 57A of the Army Act, and Rules of Procedure 3, 34, 56, 119, 118(A) and (B), 119 (B) and 126 (C), (D) and (E) made pursuant thereto shall not apply.

4. If it appears to an officer authorized under the Regulations to convene a Military Court that a person then within the limits of his command has, at any place whether within or without such limits, committed a war crime he may direct that such person if not already in military custody shall be taken into and kept in such custody pending trial in such manner and in the charge of such military unit as he may direct. The commanding officer of the unit having charge of the accused shall be deemed to be the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments. But such commanding officer shall have no power to dismiss the charge or deal with the accused summarily for a war crime. He shall without any such preliminary hearing as is referred to in Rule of

3

A.O. 81/1945

Procedure 3 either cause a Summary of Evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the Convening Officer may direct. The accused shall not have the right of having a Summary taken or of demanding that the evidence at the Summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the Summary.

5. A Military Court shall consist of not less than two officers in addition to the President, who shall be appointed by name, but no officer, whether sitting as President or as a member, need have held his commission for any special length of time. If the accused is an officer of the naval, military or air force of an enemy or ex-enemy Power the Convening Officer should, so far as practicable, but shall be under no obligation so to do, appoint or detail as many officers as possible of equal or superior relative rank to the accused. If the accused belongs to the naval or air force of an enemy or ex-enemy Power the Convening Officer should appoint or detail, if available, at least one naval officer or one air force officer as a member of the Court, as the case may be.

The Convening Officer should normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93 (B) as President or as a member of the Court. But if no such officer is appointed, and in default of a person deputed by H.M. Judge Advocate General to act as Judge Advocate, the Convening Officer shall by order appoint a person having one of the said legal qualifications to act as Judge Advocate at the trial.

Notwithstanding anything in these Regulations the Convening Officer may, in a case where he considers it desirable so to do, appoint as a member of the Court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose, provided that the number of such officers so appointed shall not comprise more than half the members of the Court, excluding the President.

6. The accused shall not be entitled to object to the President or any member of the Court or the Judge Advocate or to offer any special plea to the jurisdiction of the Court.

7. Counsel may appear on behalf of the Prosecutor and accused in like manner as if the Military Court were a General Court Martial, and Rules of Procedure 88-93 shall in such cases apply accordingly.

In addition to the persons deemed to be properly qualified as Counsel under Rule of Procedure 93 any person qualified to appear before the Courts of the Country of the accused and any person approved by the Convening Officer of the Court shall be deemed to be properly qualified as Counsel for the Defence.

(12711)

A.O. 81 1945

8. (i) At any hearing before a Military Court convened under these Regulations the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a Field General Court-Martial, and without prejudice to the generality of the foregoing in particular:—

(a) If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the Court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness;

(b) any document purporting to have been signed or issued officially by any member of any Allied or enemy force or by any official or agency of any Allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof;

(c) the Court may receive as evidence of the facts therein stated any report of the "Comite International de la Croix-Rouge" or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a "man of confidence" (*homme de confiance*), or by any other person whom the Court may consider was acting in the course of his duty when making the report;

(d) the Court may receive as evidence of the facts therein stated any depositions or any record of any military Court of Inquiry or (any Summary) of any examination made by any officer detailed for the purpose by any military authority;

(e) the Court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;

(f) if any original document cannot be produced or, in the opinion of the Court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;

It shall be the duty of the Court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible.

(ii) Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as *prima facie* evidence of the responsibility of each member of that unit or group for that crime.

(iii) The Court shall take judicial notice of the laws and usages of war.

(iv) Unless the Convening Officer otherwise directs a finding of guilty and the sentence shall be announced in Open Court by the President, who shall at the same time state that such finding and sentence are subject to confirmation. If such announcement is not made in Open Court the President shall notify the accused of the finding and sentence under sealed cover at the termination of the Proceedings and record in the Proceedings that this has been done. A finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised and shall be pronounced at once in Open Court, but the Court shall not thereupon release the accused, unless otherwise entitled to be released.

(v) The sittings of Military Courts will ordinarily be open to the public so far as accommodation permits. But the Court may, on the ground that it is expedient so to do in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally, or otherwise, by order prohibit the publication of any evidence to be given or of any statement to be made in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normally take place in Open Court, except during the announcement of the finding and sentence pursuant to paragraph (iv) above.

(vi) A record shall be made of the Proceedings of every Military Court.

9. A person found guilty by a Military Court of a war crime may be sentenced to and shall be liable to suffer any one or more of the following punishments, namely:—

- (i) Death (either by hanging or by shooting);
- (ii) Imprisonment for life or for any less term;
- (iii) Forfeiture;
- (iv) A fine.

In a case where the war crime consists wholly or partly of the taking, distribution or destruction of money or other property the Court may as part of the sentence order the restitution of such money or other property and in default of complete restitution award a penalty equal in value to that which has been so taken, distributed or destroyed or not restored.

Sentence of death shall not be passed on any person by a Military Court without the concurrence of all those serving on the Court if the Court consists of not more than three members, including the President, or without the concurrence of at least two-thirds of those serving on the Court if the Court consists of more than three members, including the President.

10. The accused may within 14 days of the termination of the Proceedings in Court submit a Petition to the Confirming Officer against the finding or sentence or both provided that he gives notice to the Confirming Officer within 48 hours of such termination of his intention to submit such a Petition. The accused shall have no right to submit any Petition otherwise than as aforesaid.

A.O. 81/1945

Provided that if such Petition is against the finding it shall be referred by the Confirming Officer, together with the Proceedings of the trial, to His Majesty's Judge Advocate General or to any Deputy of his approved by him for that purpose in the Command overseas where the trial took place for advice and report thereon.

11. The finding and any sentence which the Court had jurisdiction to pass may be confirmed and, if confirmed, shall be valid, notwithstanding any deviation from these Regulations, or the Rules of Procedure or any defect or objection, technical or other, unless it appears that a substantial miscarriage of justice has actually occurred.

12. When a sentence passed by a Military Court has been confirmed the Secretary of State, or any officer not below the rank of Major-General authorized by him, shall have power to mitigate or remit the punishment thereby awarded or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said Court: Provided that this power shall not be exercised by an officer holding a Command or rank inferior to that of the officer who confirmed the sentence.

13. In any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice.

By Command of the Army Council,

L. Darnley.

LONDON:
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE
To be purchased direct from H.M. STATIONERY OFFICE at the following addresses:
York House, Kingsway, London, W.C.2; 13, Cockspur Street, Edinburgh 2;
19-21, King Street, Manchester 2; 1, St. Andrew's Crescent, Cardiff;
25, Chancery Street, Bristol;
or through any bookseller

1945

Price 1d. net

(22711) Wt. — 6/45 W.O.P. Gp-339

37-9000

APPENDIX "B"

Army Form A-4
(Army Order 81/1945).

FORM FOR ASSEMBLY AND PROCEEDINGS OF MILITARY
COURT FOR TRIAL OF WAR CRIMINALS

PROCEEDINGS

Whereas it appears to me, the undersigned, an officer authorised under ^{A.} Order convening the the Regulations for the trial of War Criminals to convene a Military Court, court, that the persons named in the annexed Schedule have committed the War Crimes in the said Schedule mentioned.

I hereby on this _____ day
of _____ 19____ convene a Military Court to
try the said persons to consist of the officers hereunder named.

[illegible]

	*Members.	
Rank.	Name.	Regiment.

* A "legal member" must be appointed if no

Crimes in the said Schedule mentioned.

I hereby on this day
of 19 convene a Military Court to
try the said persons to consist of the officers hereunder named.

Rank.	Name.	President.	Regiment.
-------	-------	------------	-----------

Rank.	Name.	*Members.	Regiment.
-------	-------	-----------	-----------

*A "legal member" must be appointed if no Judge Advocate is deputed or appointed (See Regulation 5).

Judge Advocate (if any).

Waiting Member.

†Signed

Commanding Convening Officer.

†Must be signed personally by the Convening Officer and all alterations in the composition of the Court to be initiated by him.

51

SCHEDULE.

[illegible]

(Signed)..... (Signed).....

Commanding..... Convening Officer (c)..... President,

- (a) Recommendation to mercy, if any, to be inserted in this column.
- (b) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
- (c) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialed by him.

3

I certify that the above Court assembled on the _____ day of _____, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

B.
Certificate
of President
is to

I also certify that

1. The members of the Court
 - *2. The Judge Advocate (if any)
 3. The witnesses
 - *4. The interpreter
 - *5. The Shorthand Writer
- were duly sworn.

*Omit if not applicable.

Signed this _____ day of _____ 19 _____

Judge Advocate (if any) _____ President of the Military Court.

I have dealt with the findings and sentences in the manner stated in the _____ last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Signed this _____ day of _____ 19 _____

Confirming Officer.

Judge Advocate (if any)

President of the Military Court.

I have dealt with the findings and sentences in the manner stated in the ^{C.} Confirmation, last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Signed this

day of

19

53

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

Dated (Signed)

(a) When several cases are promulgated simultaneously the Officer need only sign once.

APPENDIX "C" TO GCM OF ADMINISTRATIVE INSTRUCTION No 27.

CLAIMS FOR CIVILIAN WITNESSES.

- 1. Expenses may be paid to civilian witnesses as specified in para 4 of this Appendix provided that :-
 - (a) payment is authorised by the President of the Court
 - (b) the witness has been put to expense or lost paid working time or otherwise suffered hardship.
- 2. In the case of a witness who requires another person to accompany him because of the witness' youthful age or physical disability, compensation in accordance with the scale is admissible for both persons.
- 3. The Convening Officer will ensure that any payments authorised under this Appendix are made not later than the conclusion of the trial. The President of the Court will issue a certificate in the form set out in para 5 which shall be authority to any payment holder detailed by the Convening Officer to make the payment to the witness. The payment holder will retain the certificate and will submit it in the normal way to support the payment from his account.
- 4. The following scale of expenses will apply and in deciding the amount to be paid the President will take into account the actual expenses incurred and loss of earnings of the witness :-

Category	Allowance	Remarks
(a) Normal Scale	Not exceeding 5/-d per day	Normal workers and those in similar circumstances may receive compensation even if they have suffered no loss.
(b) Expert Witnesses	Can be decided at the discretion of the Court not exceeding £1 per day	Based on usual earnings; expenses of preparation are also admissible.

5. MILITARY COURT held at.....19.....

Claim for compensation for civilian witnesses.

will retain the certificate and the payment from his account.

4. The following mode of expenses will apply and in deciding the amount to be paid the President will take into account the actual expenses incurred and loss of earnings of the witness :-

Category	Allowance	Remarks
(a) Normal Scale	Not exceeding 5/-d per day	Normal persons and those in similar circumstances may receive compensation even if they have suffered no loss.
(b) Expert Witnesses	Sum to be decided at the discretion of the Court not exceeding 21 per day	Based on usual earnings; expenses of preparation are also reimbursable.

5. MILITARY COURT held at..... 19 **52**
Claim for compensation for civilian witnesses.

I hereby certify that..... a national
of.....
(a) attended the above Court as a witness and was away from his/her normal location from..... to.....
(b) is an expert witness entitled to allowances at the following rates.....
.....
and is entitled to expenses in accordance with GIG 13F Administrative Instruction No 27 amounting to.....
.....

* Delete paragraph if not applicable.
Signed.....
President of Court.....
RECEIVED the sum of..... in respect of my attendance at the above Court.
Signed.....

1722

APPENDIX "D" to GPO OF ADMINISTRATIVE INSTRUCTIONS No. 27.

Notification of Intention to Petition against
the Finding and/or Sentence of a Military Court.

To:- Confirming Officer.

I having been
(Name)
convicted by a Military Court on the day of
and sentenced to hereby give notice that it
(sentence)
is my intention to submit a petition against the finding and/or
sentence.

Date

.....
(Signature)

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

PTH/vsw

G-5: 000.5-11

25 September 1945

SUBJECT: War Crimes Committed by Germans in Venezia Region.

TO : Headquarters, Allied Commission, APO 394.

1. Reference is to your 4/29.5/N/CA of 6 September 1945 concerning this subject.

2. The investigation of War Crimes by Germans against Italians is now the responsibility of the Italian Government subject to certain exceptions not presently involved.

3. If the Italian authorities require German personnel traced, sufficient details to identify them and a short statement of the evidence against them should be submitted to this HQ, translated into English with a request that the whereabouts of the accused may be ascertained. If the details supplied are sufficient for this purpose the names will be circulated in an endeavor to trace the wanted persons.

4. The Italian authorities will be notified when wanted persons have been traced and requests for handing over will be considered in accordance with the terms of CCS instructions.

5. Requests by the Italian Government in such matters should be addressed to you for transmission by you to this HQ for G-1(B) and JA through G-5.

For Asst. Chief of Staff, G-5:

Inlosures to your reference
letter returned for handling
as indicated.

F. T. HAMMOND, JR.,
Colonel, C.S.C.

Agut *att. papers*
Please pass to Italian Govt for their info
as may be appropriate.
Please note instructions now in regard to
future cases will be passed to you
and you inform as above

21 SEP 1945

2 - 50
4203
HWA

RESTRICTED

DCM/g.m

27A

HEADQUARTERS
MEDITERRANEAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 512

LEGAL 51

CIRCULAR)

NUMBER 114)

23 September 1945

REGULATIONS FOR THE TRIAL OF WAR CRIMES

1. As used in these regulations the expression "war crime" means a violation of the laws or customs of war.
2. Military commissions appointed by the Theater Commander or by other commanders under authority delegated to them by the Theater Commander, shall have jurisdiction to try all cases referred to them of persons accused of committing war crimes.
3. A military commission shall consist of not less than three officers, the senior present at any trial being president. For each military commission there shall be appointed a judge advocate and a defense counsel with such assistants as may be required, whose duties shall be similar to those of like officers before general courts-martial.
4. The president of a military commission is empowered to appoint court reporters and interpreters who shall be entitled to such compensation as may be authorized by law and regulation.
5. A formal charge and investigation as provided for court-martial procedure is not required for military commissions. The charge may state the offense by its legal name or may describe it in terms of international law. The specification may in non-legal terms set forth the details of the act constituting the offense. It should also include expressions to enable the commission to determine its jurisdiction both in respect of the offense and the accused. The charges should be subscribed by any person subject to military law but need not be under oath.
6. Members of a military commission may be challenged for cause either by the accused or by the judge advocate, but they shall not be subject to removal upon a peremptory challenge.
7. The oaths prescribed by Article of War 19 for courts-martial shall be applied to military commissions, judge advocates, interpreters and witnesses with such modification as to make them appropriate to military commissions.
8. Military commissions may conduct their proceedings as may be deemed necessary for a full and fair trial, having regard for but not being bound by, the rules of procedure prescribed for general courts-martial.
9. The fact that an accused acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the commission determines that justice so requires.

RESTRICTED

R E S T R I C T E D

Hq. HTOUSA Circular Number 114 (cont'd).

10. The technical rules of evidence shall not be applied but any evidence shall be admitted which, in the opinion of the president of the commission, has any probative value to a reasonable man. Without limiting the scope of the above rule the following in particular will apply:

a. If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the president of the commission, unable to attend without undue delay, the commission may receive secondary evidence of statements made by or attributed to such witness.

b. Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any official or agency of any allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof.

c. Any report by any person when it appears to the president of the commission that the person in making the report was acting within the scope of his duty may be admitted in evidence.

d. Any deposition or record of any military tribunal may be admitted in evidence.

e. Any diary, letter or other document may be received in evidence as to the facts therein stated.

f. If any original document cannot be produced or, in the opinion of the president of the commission, cannot be produced without undue delay, a copy or translated copy of such document or other secondary evidence of its contents may be received in evidence. A translation of any document will be presumed to be a correct translation until the contrary is shown.

g. Photographs, printed and mimeographed matter, and true copies of papers are admissible without proof.

h. Confessions are admissible without proof of circumstances or that they were voluntarily made. The circumstances surrounding the taking of a confession may be shown by the accused and such showing may be considered in respect of the weight to be accorded it, but not in respect of its admissibility.

11. A military commission shall record its proceedings as nearly as practicable as prescribed for a general court-martial.

12. Convictions and sentences shall be determined by the concurrence of at least two-thirds of the members present at the time the vote is taken.

13. Appropriate sentences imposed by a military commission are:

- a. Death (by hanging or shooting)
- b. Confinement for life or a lesser term
- c. Fine

RESTRICTED

HAYDOUSA Circular Number 114 (cont'd).

14. No sentence imposed by a military commission shall be carried into execution until it shall have been approved by the appointing authority.

15. No sentence of death shall be carried into execution until it shall have been confirmed by the Theater Commander, but where the military commission that imposed the death sentence was appointed by the Theater Commander and he has acted on the sentence as approving authority, no additional confirmation by him is necessary.

BY COMMAND OF GENERAL MCNARNEY:

OFFICIAL:

M. G. WHITE
Major General, GSC
Acting Chief of Staff

C. W. Christenberry
C. W. CHRISTENBERRY
Colonel, AGV
Adjutant General

DISTRIBUTION:

Z

DISCUSSION	
1.0	
2.0	
3.0	
4.0	
5.0	
6.0	
7.0	
8.0	
9.0	
10.0	
11.0	
12.0	
13.0	
14.0	
15.0	
16.0	
17.0	
18.0	
19.0	
20.0	
21.0	
22.0	
23.0	
24.0	
25.0	
26.0	
27.0	
28.0	
29.0	
30.0	
31.0	
32.0	
33.0	
34.0	
35.0	
36.0	
37.0	
38.0	
39.0	
40.0	
41.0	
42.0	
43.0	
44.0	
45.0	
46.0	
47.0	
48.0	
49.0	
50.0	
51.0	
52.0	
53.0	
54.0	
55.0	
56.0	
57.0	
58.0	
59.0	
60.0	
61.0	
62.0	
63.0	
64.0	
65.0	
66.0	
67.0	
68.0	
69.0	
70.0	
71.0	
72.0	
73.0	
74.0	
75.0	
76.0	
77.0	
78.0	
79.0	
80.0	
81.0	
82.0	
83.0	
84.0	
85.0	
86.0	
87.0	
88.0	
89.0	
90.0	
91.0	
92.0	
93.0	
94.0	
95.0	
96.0	
97.0	
98.0	
99.0	
100.0	

21 SEP 55

48

RESTRICTED

1727

4119

26A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Ref 1/29 A/GA

24 August 45

SUBJECT : War Crimes

TO : Tolad (2)
IF & R S/C
Legal S/C
PS S/C
Finance S/C
Establishment Sec.

- 1 Will you please detail an officer to attend a conference upon the arrangements for a Yugoslav Mission to investigate "War Crimes committed in Italy" which will be held in the room of the VP Civil Affairs Section at 1100 hrs on Monday 27 Aug.
- 2 The papers relating to the Meeting will be circulated shortly.

[Handwritten signature]

S.H. WHITE
Lt Colonel,
for VP CA Section

Copy to : VP CA Section

→	CLO	
	DCLO	
	Chief Counsel	
	CJO	
<i>[Handwritten mark]</i>	Italian Section	
	CLK	
	24 AUG 1945	

[Handwritten mark]

The 7 of All will require to occupy center part of 1st
The location of room will be indicated by UN. It to
withstand use etc.

Jugoslav Mission to Investigate War Crimes

Summary of position

2 Oct 44

In Sep 44 the Yugoslav Mission approached Polad, with a view to obtaining leave to investigate War Crimes; this was forwarded to AFHQ on 2 Oct with the comment that it was considered that the matter was one for AFHQ to staff and organize and further that AG had not the requisite staff. The application in question made no reference to any particular allegation but sought permission in the broadest terms "to obtain evidence which may later be useful" and for that purpose to be granted facilities to interrogate displaced Yugoslavs and to inspect camps and prisons and to "investigate" the Italian authorities concerned, i.e. ministries, prefects, chiefs of police, questori, etc.

This wide request was amplified by an 8 foolscap page pre-memorandum specifying by name 102 camps it desired to visit and reserving the right to visit others. Mentioning by name 91 prisons it desired to visit and reserving the right to add others. Stating that Yugoslavs were ordered to reside in confine in certain remote villages. The number of such villages is estimated at from 500-700, that so far it has only been possible to identify the 146 villages there specified. The document then referred to forced labour battalions (into which it is stated 60,000 Yugoslavs had been impressed) and to Prisoners of War camps all of which it was desired to investigate. The scope of the enquiry is frankly stated to be to ascertain the names of politically persecuted persons, the damage suffered by them and to ascertain the names of those responsible for "intentionally causing the death of so many thousands". This letter was forwarded to AFHQ on 4 Oct with the comment "you will observe that the investigation proposed is extremely detailed and broad in its scope".

17 Dec 44

On 17 Dec AGWAR cabled AFHQ that "the request of Yugoslav Government to investigate suspected War crimes"...."should be approved". This telegram refers specifically to the request but does not appear to appreciate that the request was not to investigate any particular facts which could properly be described as "suspected war crimes"; the request was for a general investigation to see if facts could be found from which war crimes might be deduced.

On 3 Mar (TAM 413) OCS cabled to the same effect (the cable of 17 Dec was strictly speaking US view only) namely that the request to investigate suspected War crimes should be granted. The cable said that the investigation should be under the aegis of the Allied Military Authority or, if for military reasons an investigation by the Yugoslav Mission was undesirable, it should be undertaken by AFHQ.

17 Dec 44

had been impressed) and to Prisoner of War camps all of which it was desired to investigate. The scope of the enquiry is frankly stated to be to ascertain the names of politically persecuted persons, the damage suffered by them and to ascertain the names of those responsible for "intentionally causing the death of so many thousands". This letter was forwarded to AFHQ on 4 Oct with the comment "you will observe that the investigation proposed is extremely detailed and broad in its scope".

On 17 Dec AGWAR cabled AFHQ that "the request of Yugoslav Government to investigate suspected War crimes"...."should be approved". This telegram refers specifically to the request but does not appear to appreciate that the request was not to investigate any particular facts which could properly be described as "suspected war crimes"; the request was for a general investigation to see if facts could be found from which war crimes might be deduced.

On 3 Mar (TAM 413) COS cabled to the same effect (the cable of 17 Dec was strictly speaking US view only) namely that the request to investigate suspected War crimes should be granted. The cable said that the investigation should be under the aegis of the Allied Military Authority or, if for military reasons an investigation by the Yugoslav Mission was undesirable, it should be undertaken by AFHQ.

It also stated that a directive on the general question was in preparation.

30 Mar 45

On 30 Mar 45 AFHQ wrote AC that the Yugoslav Government was to be permitted "to investigate War Crimes" (the word "suspected" has been dropped, but the phrase still implies an investigation into definite allegations and not an investigation to see if any War Crimes have been committed). The letter went on to say that the investigation would be supervised by the AC and that before any further steps were taken, the Yugoslav Government would submit detailed proposals with regard to their mission and its tasks.

AC was informed that it would be asked to send a representative to the next meeting to determine procedure.

25 Jul 45

On 25 Jul the Yugoslav Government submitted its detailed proposals as to its mission and its tasks. The proposals are in the widest possible terms. They were forwarded without any essential adverse comment to AFHQ on 28 Jul and there was therefore an implication that this HQ had no objection thereto.

20 Aug 45

On 20 Aug an AFHQ Staff Study with drafts of the proposed action was sent to this HQ for approval.

The study accepts the Yugoslav proposals and attached are drafts of letters proposed to be sent out to enable the proposals to be carried out.

Among the draft letters for approval is one to AG stating

- a) that the Yugoslav proposals are approved;
- b) that the consent to them of the Italian Govt shall be obtained;
- c) that AG will supervise and accommodate the Mission - and impliedly provide staff and cars.

The following comment is made on the above:

The protest of AG that AFHQ should be responsible and that AG has no staff available has not been specifically dealt with.

TAM 413 definitely says that supervision should be by the Allied Military Authority (or AFHQ).

That no general directive has been received.

That there is no evidence on the file that the meeting to consider procedures was ever called.

AGENDA

To consider:

- 1 The procedure to be followed (an outline of a possible procedure is attached).
- 2 Whether any objection shall be made to the Yugoslav proposals (the proposals and the possible objections are attached).
- 3 Whether AG shall object to being made responsible for supervising the mission.

Until 30 Mar it was consistently recognized that the subject of War Crimes was primarily an Army matter. It is submitted that the responsibility should be AFHQ's. AG is the vehicle for supervising Italy. The enquiry is not concerned with the government of Italy but is concerned with the collection of evidence on the subject of War Crimes, a matter which AFHQ has consistently kept

That no general directive has been received.

That there is no evidence on the file that the meeting to consider procedure was ever called.

AGENDA

To consider:

- 1 The procedure to be followed (an outline of a possible procedure is attached).
- 2 Whether any objection shall be made to the Jugoslav proposals (the proposals and the possible objections are attached).
- 3 Whether AG shall object to being made responsible for supervising the mission.

Until 30 Mar it was consistently recognized that the subject of War Crimes was primarily an Army matter. It is submitted that the responsibility should be ANM's. AG is the vehicle for governing Italy. The enquiry is not concerned with the government of Italy but is concerned with the collection of evidence on the subject of War Crimes, a matter which ANM has consistently kept under its own hands. AG is merely being used as a convenience to avoid a little donkey work. The practical arguments against AG being responsible are not, now that hostilities have ceased, so strong as they formerly were. There are also advantages in having an AG officer as a buffer between the Mission and Italian Officials and for arranging for the attendance of witnesses etc. It may be felt that these advantages outweigh the fact that AG is stepping out of its normal sphere. Further AG, by not repeating its objections, has to some extent acquiesced on the position; on the other hand ANM has never specifically answered those objections. If AG steps out of its proper sphere it may create a precedent for an unknown number of other missions possibly also on other subjects.
- 4 If AG is to be responsible, what arrangements should be made as to staff, accommodation, transport, etc.

C.A.S.
20 AUG 1945

Suggested Procedure

The enquiry should be divided into two stages.

- 1 In the first stage members of the Mission should be permitted to interview freely their own nationals. There should be no necessity to visit at this stage the many camps and villages mentioned by name the presumption is that all Yugoslavs will have left or will shortly be leaving. DHR will arrange for these interviews to take place at convenient camps. No Allied officer need be present unless thought desirable in which case arrangements could probably be made that such interviews shall take place only in presence of a DHR officer. This may be desirable to protect the Yugoslav from having evidence suggested to them and from threats.
- 2 The Italian Government should be given the opportunity of being present at all interviews, they should be satisfied that the persons have not been previously prompted and their evidence suggested to them. This right of the Italian Government to be present should apply to all interviews not merely of displaced persons they should also have the right to question in order to lead out explanations or to lead to rebutting evidence.
- 3 DHR should be prepared to satisfy the Mission that substantially all displaced persons have been cleared or made available for interview. It may be assumed that Yugoslavs who desire to continue to reside where they are and avoid being treated as displaced persons have no desire to claim to be victims of a war crime.
- 4 With regard to Prisons Public Safety should arrange to obtain lists of Yugoslavs imprisoned and make arrangements for simple interview as above. PS should be prepared to satisfy the Mission that the list is complete and that no person is deliberately being concealed alternatively the Mission should have facilities to satisfy itself.
- 5 At this stage the examination should be confined to the prisoner and the Italian Government should be represented.
- 6 At the end of this stage the Mission should formulate allegations defining the principal facts complained of complete with names places and dates and where possible (by name or description) the witnesses which they desire to examine.
- 7 The supervising authority will then make arrangements for the second stage namely necessary particular enquiries which will, when desirable, be held locally.

- 3 DHR should be prepared to satisfy the Mission that substantially all displaced persons have been cleared or made available for interview. It may be assumed that Yugoslavs who desire to continue to reside where they are and avoid being treated as displaced persons have no desire to claim to be victims of a war crime.
- 4 With regard to Prisons Public Safety should arrange to obtain lists of Yugoslavs imprisoned and make arrangements for simple interview as above. PS should be prepared to satisfy the Mission that the list is complete and that no person is deliberately being concealed alternatively the Mission should have facilities to satisfy itself.
- 5 At this stage the examination should be confined to the prisoner and the Italian Government should be represented.
- 6 At the end of this stage the Mission should formulate allegations defining the principal facts complained of complete with names places and dates and where possible (by name or description) the witnesses which they desire to examine.
- 7 The supervising authority will then make arrangements for the second stage namely necessary particular enquiries which will, when desirable, be held locally.

CA SECTION
24 Aug 45

JUGOSLAV PROPOSALS

I

The Government of Democratic Federative Yugoslavia express their satisfaction about the decision taken by the Allied Commission, permitting to send in Italy a Yugoslav Mission for investigation of war crimes.

The Yugoslav Government have the intention to form, as soon as possible the respective mission to be sent to Italy, kindly requesting the Allied Commission to effect that this mission might arrive in Italy to start with its work.

At the same time the Yugoslav Government have the honour, with reference to the Appendix 'A' of said letter, to give the respective information:

1 The function of the Mission is to investigate: the archives where might be found evidence about war crimes committed upon the Nations of Yugoslavia; the camps where Yugoslav internees and prisoners have been located, and the examination of witnesses and suspect Italians and Yugoslavs about crimes committed by Italians and their accomplices. Further to take necessary steps to find out proved Italian criminals and their accomplices and to hand them over to Yugoslav tribunals; to inspect camps and jails where war criminals and traitors of Yugoslav people are located and to collect evidence of their crimes.

2 The Mission will consist of ten persons, four officers and six civilians. The Mission will arrive at Bari by air, and proceed by cars. The Allied Commission is kindly requested to put at the disposal of the Mission 3 cars. The interpreters will be provided by the same Mission.

3 The Headquarters of the Mission would be at the Yugoslav Delegation to the Advisory Council for Italy in Rome and would have a Representative to Allied Force Headquarters at Caserta. Financial means would be furnished on charge of expenditures for the occupation according the Armistice terms with Italy.

4 The Mission will investigate written evidence, taking away documents from Italians archives or making photographs; examining suspect people and witnesses in presence of two members of the Mission. In order to get hold of the people in question the Mission will apply to competent military authorities.

5 The Mission would have to investigate several thousand cases wherever archives, camps, jails and persons wanted for examination might be found.

6 Several groups of the said Mission are supposed to investigate simultaneously in different areas.

7 It is presumed that the investigations will take several months. 43

8 The Mission will request Allied Military Authorities to keep arrested the proved war criminals and traitors, either until a definite decision of the Interallied Commission for war crimes, or until their extradition to the Yugoslav

YUGOSLAV PROPOSALS

I

The Government of Democratic Federative Yugoslavia express their satisfaction about the decision taken by the Allied Commission, permitting to send in Italy a Yugoslav Mission for investigation of war crimes.

The Yugoslav Government have the intention to form, as soon as possible the respective mission to be sent in Italy, kindly requesting the Allied Commission to effect that this Mission might arrive in Italy to start with its work.

At the same time the Yugoslav Government have the honour, with reference to the Appendix "A" of said letter, to give the respective information:

1 The function of the Mission is to investigate; the archives where might be found evidence about war crimes committed upon the Nations of Yugoslavia; the camps where Yugoslav internees and prisoners have been located, and the examination of witnesses and suspect Italians and Yugoslavs about crimes committed by Italians and their accomplices. Further to take necessary steps to find out proved Italian criminals and their accomplices and to hand them over to Yugoslav tribunals; to inspect camps and jails where war criminals and traitors of Yugoslav people are located and to collect evidence of their crimes.

2 The Mission will consist of ten persons, four officers and six civilians. The Mission will arrive at Bari by air, and proceed by cars. The Allied Commission is kindly requested to put at the disposal of the Mission 3 cars. The interpreters will be provided by the same Mission.

3 The Headquarters of the Mission would be at the Yugoslav Delegation to the Advisory Council for Italy in Rome and would have a Representative to Allied Force Headquarters at Caserta. Financial means would be furnished on charge of expenditures for the occupation according the Armistice terms with Italy.

4 The Mission will investigate written evidence, taking away documents from Italian archives or making photographs; examining suspect people and witnesses in presence of two members of the Mission. In order to get hold of the people in question the Mission will apply to competent military authorities.

5 The Mission would have to investigate several thousand cases wherever archives, camps, jails and persons wanted for examination might be found.

6 Several groups of the said Mission are supposed to investigate simultaneously in different areas.

7 It is presumed that the investigations will take several months.

8 The Mission will request Allied Military Authorities to keep arrested the proved war criminals and traitors, either until a definite decision of the Interallied Commission for war crimes, or until their extradition to the Yugoslav

3 The Headquarters of the Mission to the Advisory Council for Italy in Rome and would have a Representative to the Allied Force Headquarters at Caserta.
Financial means would be furnished on charge of expenditures for the occupation according to the Armistice terms with Italy.

4 The Mission will investigate written evidence, taking away documents from Italian archives or making photographs; examining suspect people and witnesses in presence of two members of the Mission. In order to get hold of the people in question the Mission will apply to competent military authorities.

5 The Mission would have to investigate several thousand cases wherever archives, camps, jails and persons wanted for examination might be found.

6 Several groups of the said Mission are supposed to investigate simultaneously in different areas.

7 It is presumed that the investigations will take several months.

8 The Mission will request Allied Military Authorities to keep arrested the proved war criminals and traitors, either until a definite decision of the Interallied Commission for war crimes, or until their extradition to the Yugoslav Authorities, as requested according to the Note of the Foreign Office Nr. U 1527/129/73 dated March 29, 1945.

II At the same time the Yugoslav Delegation to the Advisory Council for Italy has the honour to state that the Yugoslav Government would not mind an Italian Mission to established for investigation of war crimes committed by Germans upon Italian nationals

Rome, July 25, 1945

COMMENTS ON THE PROPOSALS OF THE YUGOSLAV GOVERNMENT

- 1 There are several objections to the Yugoslav proposals. It is not, as the Italian request is, a Mission to investigate a particular incident or incidents. They have not particularised. The Mission is a "fishing" Mission to see if they can find out anything. There are no particular allegations disclosed. There are many objections to this type of "fishing" enquiry though we do not wish to appear to oppose a just enquiry nothing but generalities has at present been put forward. The enormous scope of the proposals is disclosed by the 8 page document at 4-B. It is probable that by now the thousands of persons there referred to, have been collected and moved by DIR Sub-Comm. If so there will be no evidence to be obtained in these places.
- 2 It seems to me that it would be better if this Mission should first interrogate returning nationals. If it then obtains evidence of any atrocity that the incident should be specified and that a local enquiry may then be properly made. The wide roving commission seems to ^{be} improper, undesirable and intractable.
- 3 The Government can fairly be allowed reasonable facilities to assure itself that all Yugoslav nationals have been traced and suitably dealt with and that none are detained in prison, internment or elsewhere and that their consular officials shall be supplied with lists of prisoners and shall have the opportunity of visiting them. If any such visit discloses evidence of an atrocity it may then be made the subject of an enquiry. It is suggested that the DIR Sub-Commission is a suitable body to clear these matters with the Mission and that enquiries shall be permitted into specified and defined allegations.
- 4 With regard to
 - Para I-1 - A roving commission through Italian Archives everywhere is unreasonable so is the request to visit all prisons, camps, etc. The Mission should specify the atrocities into which enquiry is desired.
 - Para I-2 - The size of the Mission is reasonable - it would not be capable of carrying out an enquiry on the scale outlined in I-1 under a year or more.
 - Para I-2 - AJ has no cars sufficient for its own requirements, AMHQ can better afford to provide cars. HQ Comdt is the proper person to comment on this.
 - Para I-3 - Has finance any comment - does legal consider that this expense would legally come within the Armistice Terms as an expense of "occupation"?
 - Para I-4 - This Commission should strongly oppose any right to remove documents from Italian Archives, which might thereby become disorganised and unintelligible. Properly authenticated copies can always be made. No Italian Nationals should be allowed to be called as witnesses before the commission unless there is a reasonable belief that they can supply evidence on specified facts.
 - Para I-5 - It is submitted that now that the war is over this is an ~~enquiry~~ ^{version} of the reasonable and practical procedure. The Mission should only visit places ~~of~~ ⁱⁿ

that all Yugoslav nationals have been treated and that their consular officials shall be supplied with lists of prisoners and shall have the opportunity of visiting them. If any such visit discloses evidence of an atrocity it may then be made the subject of an enquiry. It is suggested that the DHR Sub-Commission is a suitable body to clear these matters with the Mission and that enquiries shall be permitted into specified and defined allegations.

With regard to

Para I-1 - A roving commission through Italian Archives everywhere is unreasonable so is the request to visit all prisons, camps, etc. The Mission should specify the atrocities into which enquiry is desired.

Para I-2 - The size of the Mission is reasonable - it would not be capable of carrying out an enquiry on the scale outlined in I-1 under a year or more.

Para I-2 - AD has no cars sufficient for its own requirements, AMHQ can better afford to provide cars. HQ Comit is the proper person to comment on this.

Para I-3 - Has finance any comment - does legal consider that this expense would legally come within the Armistice Terms as an expense of "occupation"?

Para I-4 - This Commission should strongly oppose any right to remove documents from Italian Archives, which might thereby become disorganised and unintelligible.

Properly authenticated copies can always be made. No Italian Nationals should be allowed to be called as witnesses before the commission unless there is a reasonable belief that they can supply evidence on specified facts.

Para I-5 - It is submitted that now that the war is over this is an ^{enquiry} ~~enquiry~~ of the reasonable and practical procedure. The Mission should only visit places

specified in an allegation.

Para I-6 - Each group would require an attendant officer as a go-between, between the Mission and Italian Officials and to arrange for the calling of witnesses accommodation for the enquiry etc. The number of groups should be specified.

Para I-7 - If a roving commission is allowed "several months" may be very optimistic. The offence will not be under arrest

Para I-8 - The wording is confused - many of these persons will not have been "proven" per se what is meant is "to arrest and hold". The offence will not be under arrest

the enquiry is only unilateral. The intention presumably is that the Allies should arrest and hold persons alleged to be incriminated by the enquiries without any limitation as to the type of offence charged or as to the satisfactory nature or sufficiency of the evidence. The Allies must first be satisfied that a prima facie case has been made out and that the crime is of importance.

Generally - The Italian Government should have the right to attend all interviews and to question.

CA Section
24 Aug 45

S.H. WHITE Lt Col,
CA Section

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4119/L.

WEB/lc. 10 July 1945.

SUBJECT : War crime - PATTINI Dante di Arturo, da Bagni di Lucca.

TO : Italian Central War Crimes Commission.

Herewith are forwarded for your investigation the documents in the case of PATTINI Dante di Arturo.

Incl:

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

HEADQUARTERS
LIGURIA REGION
ALLIED MILITARY GOVERNMENT
APO 394

LIG/HQ/73

WGE/sf
6 July 1945

SUBJECT : War crime - PATTINI dante di Arturo,
da Bagni di Lucca.

TO : Headquarters, Allied Commission - APO 394.
(Attn: Legal Sub-Commission)

1. Attached hereto is a letter, and English translation, written by the father of the above named who was killed by a German soldier in the presence of the German Consul.

2. The above is for onward transmission to the War Crimes Commission through AFHQ, please.

For the Regional Commissioner:

W.G. Elder
W.G. ELDER,
Lt. Col., Cdn. Prov. C.,
Regional Legal Officer.

Encls/

Italian Central War Crimes Com.

Herewith are forwarded for your investigation the documents - the case of Pattini Dante di Arturo.

23A

SECRET

HEADQUARTERS ALLIED COMMISSION
APO 304
CIVIL AFFAIRS SECTION

Ref AC/14754/8/PS

21 June 45

SUBJECT : Italians Listed as War Criminals

TO : See Distribution below

- 1 It is not proposed to supply FROs with copies of the lists of War Criminals. The responsibility for dealing with such people does not lie primarily with Public Safety Sub-Commission and PS Officers, but with the Military Authorities.
- 2 It is, however, necessary that you should know what action has been taken and, for that reason, copies of War Crimes Circular No 1 and AG 000.5/197 JA-O of 13 June are enclosed.
- 3 The Italian Government has been supplied with the lists in accordance with the latter letter. Should you be approached with information as in para 3 of that letter you will forward it to Public Safety Sub-Commission immediately by fastest available means. Checking as to whether the person is, in fact, on the list can be done at this HQ.

BY COMMAND OF THE CHIEF COMMISSIONER

DOWN GRADED

UNCLASSIFIED

Col. Inf.

Chief Judicial Officer.
for Chief Civil Affairs Officer.

G.R. JARON Brig,
VP CA Section

DISTRIBUTION :

RCs Emilia, Liguria, Lombardia, Piemonte, Venezia Regions.
SCAOs 5 Army, 3 Army, IV Corps, XIII Corps.
DOCAO - 15 Army Group.
Scale of Distribution : RHC and SCAO (4); HQ (2)
RHC Commissioners Naples, Ancona, Leghorn
RHC Liaison Officers Palermo, Catania, Bari, Rome
Exec Commissioner Leon Sec. Legal Sub-Commission

LEGAL SUB COMMISSION

CLO

CLO

Chief Counsel

CLO

Italian Section

C. RKS

20 JUN 1945

OVER

CONFIDENTIALALLIED FORCES HEADQUARTERS
APO 512C O P Y

13 June 1945

AG-000.5/197 JA-0

SUBJECT : Italians Listed as War Criminals

TO : Chief Commissioner
Allied Commission
APO 394

33

1. The following instructions are issued with reference to AFHQ War Crimes Circular Number 1, dated 15 June 1945.

2. The names and personal particulars only of Italians included in the lists issued by the United Nations War Crimes Commission will be handed by you to the Italian Government with the information that such persons are required by the Allied authorities and a request that they will be traced and made available. It will not be mentioned that they are wanted in connection with War Crimes nor will any indication be given of the accusation against them.

3. If the Italian authorities state that persons listed are held in their custody details will be requested concerning place of detention and the purpose for which they are held and the information passed to this headquarters immediately. No steps will be taken to remove such persons from the custody of the Italian authorities or to delay any trial in which they may be concerned.

4. The distribution to Italian authorities of names of wanted personnel will be kept to the minimum in order to prevent the names coming to the knowledge of unauthorized persons.

5. All information concerning Italians included in the lists will be reported as prescribed in War Crimes Circular Number 1.

BY COMMAND OF FIELD MARSHAL ALFRED:

/s/ C.W. CHRISTENSEN
Colonel, AGD
Adjutant General

C O P YS E C R E TALLIED FORCE HEADQUARTERS
APO 512

WAR CRIMES CIRCULAR)

NUMBER

1)

13 June 1945

1. a. The Combined Chiefs of Staff have stated that a directive defining responsibility in respect of war crimes is awaiting governmental decisions. Directions have also been received that upon receipt from the United Nations War Crimes Commission of lists of war criminals, and pending further instructions from the Combined Chiefs of Staff, the persons listed may be taken into custody and detained without further evidence against them. They will not, however, at present be arrested as "WAR CRIMINALS" but as normal PW or on security grounds.

b. Italians who are listed as war criminals and who are at large in ITALY may also be apprehended, but further directions are to be sought in all cases in which they may already have been detained by the Italian authorities or in cases in which the persons listed are now collaborating with us.

2. Up to the present moment seven (7) lists of war criminals have been received from the United Nations War Crimes Commission. It is anticipated that further lists will be issued and copies of all lists (except lists of Japanese) will be circulated to all concerned.

3. A Central Index has been established for AFHQ in G-1(Br) on which all information as to the arrest and disposal of persons listed is to be recorded.

4. a. Commanding Generals, Fifth and Eighth Armies, PBS and No 1 District are respectively responsible for determining whether any persons on the lists are under their control.

b. If any person under their control is identified as a person on any list, or there are reasonable grounds to believe that he is identical with a person listed, they will order the status of such person (if not already a PW or interned as a security suspect) to be changed to that of a PW or internee on security grounds, and he will be passed through the normal channels to the appropriate detention area.

5. In order that accurate information may be available in the Central Index office at this headquarters concerning the status and location of each apprehended, an immediate report by signal if practicable will be transmitted to this headquarters in all cases in which action is taken under paragraph 4-b above. This report will include the name, the enemy unit, the date of arrest and the place and mode of detention. Any change in the place of detention will be notified in the same way. All reports relating to suspects will include the words "WAR CRIME". If report is made other than by signal it will be prepared in duplicate, one copy marked for G-1(Br) and the other for Theater Judge Advocate, LTOUSA.

39

DOWN GRADED

UNCLASSIFIED

Col. Inf.

Chief Judicial Officer,
for Chief Civil Affairs Officer

- 2 -

6. Addressees will report to this headquarters any cases which may come to their knowledge in which Italians listed as war criminals have already been detained by the Italian authorities. Any available information as to place of and reason for detention will be included in the report which will also include the words "WAR CRIME"; no steps will be taken to request the Italian authorities to hand over any person in their custody; any further action necessary will be taken by this headquarters.

7. If in any case an Italian at large in ITALY is identified as a listed war criminal and he is known to have been collaborating with the Allies he will nevertheless be taken into custody as a security suspect, but a full report on the nature and extent of his collaboration will be forwarded as soon as possible after the preliminary report of his detention.

8. No person in detention as a listed War Criminal will be surrendered to the representatives of a nation other than UK or US.

9. In the event that any commander, other than those referred to in paragraph 4-a, discovers a person under his control who is listed as a War Criminal, he will take action in conformity with this directive.

10. The foregoing instructions do not affect in any way the existing British and US directives relating to the investigation of war crimes within the respective forces.

BY COMMAND OF FIELD MARSHAL ALEXANDER :

Sd/

C.W. CHRISTENSEN
Colonel, AGP
Adjutant General.

TRANSLATION NO. 676

MINISTRY OF PARDON AND JUSTICE
Ref. 291.263

ROME, 14 April 1945

SUBJECT: War Criminals

TO : THE ALLIED COMMISSION
CIVIL AFFAIRS
R O M E
and for information
LIAISON OFFICE FOR THE MINISTRY
Cabinet

Reply to letter No. AC. 4119 L. of 3 March 1945

With reference to the above letter we wish to inform you that on 14th March last His Excellency the Minister signed the circular dealing with war criminals, the draft of which was transmitted to your Commission with letter No. 191.51.263 of 2 March, and a copy of same sent to the Heads of the Courts of Appeal of the Kingdom.

FOR THE MINISTER
(A. Spallanzani)

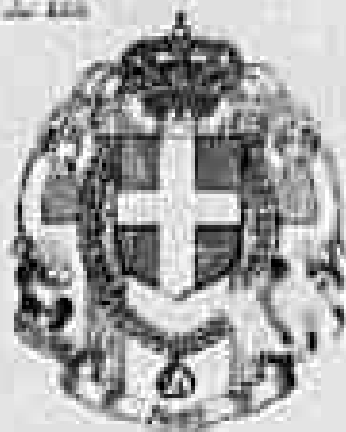
LEGAL SUB COMMISSION	
CLO	
DCLO	
Chief Counsel	
CL	
Italian Section	
CL RKS	
10 APR 1945	

38

3951

fm

Mod. 402



MINISTERO DI GRAZIA E GIUSTIZIA

*Direzione Generale degli Affari Penali
delle Grazie della Statistica e del Casellario*

(228)

Ufficio I° A.P.

Prot. N° 291.263

Risposta al f. N. C. 4119 L.

del 3.3.945

OGGETTO Criminelli di guerra.

Roma,

14 APR. 1945
aprile 1945ALLA COMMISSIONE ALLEATA - Sottocom-
missione legale (A)

R O M A

e per conoscenza:ALL'UFFICIO DI COLLEGAMENTO DEL MINISTERO
GabinettoS E D E

In relazione al foglio suindicato, si comuni-
ca che in data 14 marzo u.s. è stata firmata da S.E.
il Ministro la circolare circa i criminali di guerra,
il cui schema fu trasmesso a codesta On. Commissione
con nota 2 marzo u.s. n. 131.51.263, inviandone copia
ai Capi delle Corti d'Appello del Regno.

pel MINISTRO
(A. Spallanzani)

37

39312

SECRET

SECRET

228

NEAR HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/gmf

ACC/4119/L

27 March 1944.

Dear Dean,

WAR CRIMINALS

I have already mentioned to you the difficulty which I think the War Criminals Commission sitting in London may find themselves if the directives issued as to the treatment of persons accused of war crimes are not slightly relaxed.

In one case there were four Italian officers (including a Colonel), all of whom have been accused of stealing the contents of prisoners of war parcels intended for British P.O.W. in South Italy before, of course, the invasion of Italy began. This was an offence against the Geneva Convention and under the existing directive received from AFHQ we are bound to treat them as War Criminals and retain them in custody.

I feel strongly that the War Criminals Commission never intended to deal with this type of case at all, but only with the big men and those guilty of atrocities and I suspect the Commission will be flooded out with investigations if they are to handle the type of case mentioned above. I may instance the fact that we are investigating another theft of red cross parcels case but in this case the offences were in a smaller scale and the accused are merely NCOs and men.

You might like to suggest to the appropriate authorities some relaxation of the rule now being applied so that we can dispose locally of cases such as the above which involve only meanness, pettiness and greed and to clear the decks for the real war criminals after the war.

If this plan be followed we could either try these small criminals in specially constituted Allied Military Courts or hand them over to the Italian authorities for trial, under our supervision.

DOWN GRADED

UNCLASSIFIED

Col. Inf.

Chief Judicial Officer.
for Chief Civil Affairs Officer.
Yours,

36

SECRET

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

(21A)

AG/4119/L.

/mt.
3 March 1945.

SUBJECT : War criminals.

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

1. Receipt is acknowledged with thanks of Prot. E.AP/131.51, 263 (Direz. Gen. Affari Pen.) with a draft circular on the above subject.

2. This Sub-Commission has no comments to offer on the circular which meets the requirements of the case.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Adviser 35

NR

1749

(21A)

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4119/L.

3 March 1945. /mt.

SUBJECT : War criminals.

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

1. Receipt is acknowledged with thanks of Prot. N.AP/131.51/263 (Direz. Gen. Affari Pen.) with a draft circular on the above subject.

2. This Sub-Commission has no comments to offer on the circular which meets the requirements of the case.

G. G. HANNAFORD,
Lt. Col.,
Officer i/c Italian Branch,
for Chief Legal Adviser 35

NR

750



Roma, 4119 MARZO 1945 Mod. 40 20A

Ministero di Grazia e Giustizia
DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE DELLA STATISTICA E DEL CASELLARIO

Ufficio I
Aut. N° A.P. 134.51/263

Al Comm. Alleata
Sotto Comm. Legale
e p.o. All'Uff. Collegamento
Gabinetto Ministro G;
Responsabile del
Dir. Dir. N°

OGGETTO: Delitti e criminali di guerra.

In relazione alla proposta contenuta nel foglio 31 gennaio u.s.n. 41194, si trasmette un esemplare della circolare che si intende inviare agli Uffici dipendenti allo scopo di organizzare il servizio degli accertamenti relativi ai delitti ed ai criminali di guerra, particolarmente in vista della abolizione della Commissione Alleata regionale.

Si gradirebbe conoscere l'avviso di codesta On. Commissione al riguardo.

Pel MINISTRO
(Spallanzani)

Bogian
bul



Ministero di Giustizia

DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE DELLA STATISTICA E DEL CASELLARIO

I

*Uff. I
Prot. N. 2*

OGGETTO

DELITTI DI GUERRA E CRIMINALI DI GUERRA.

Proposta al Feld

Dir. Sec. N. 2

*Alle LL.EE. I PROCURATORI
GENERALI PRESSO LE CORTI DI
APPELLO DEL REGNO.*

Roma

*2013
N. 1*

Il Governo Alleato sta provvedendo per l'accertamento dei delitti e delle atrocità commesse dai nazisti e dai fascisti a danno della popolazione italiana.

Non è il caso di insistere sulla gravità dei reati suddetti, che, violando persino le più tradizionali norme universalmente accettate sulla condotta della guerra nei riguardi delle popolazioni civili, hanno posto in luce forme di criminalità finora inaspettate, che esigono esemplari punizioni.

Le Autorità giudiziarie italiane debbono contribuire con ogni mezzo a mettere in grado il Governo Alleato di provvedere alla dovuta repressione nel modo più esemplare e più pronto.

A tale scopo e per evitare duplicazioni, dispersioni e diversi di indirizzo, le EE.LL. vorranno dare istruzioni perchè sia le informazioni e le prove che pervengono direttamente alle Autorità dipendenti, sia quelle che si stanno raccogliendo da

altri Enti anche non dipendenti

1752

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

Il Governo Alleato sta provvedendo per l'accertamento dei delitti e delle atrocità commesse dai nazisti e dai fascisti a danno della popolazione italiana.

Non è il caso di insistere sulla gravità dei reati suddetti, che, violando persino le più tradizionali norme universalmente accettate sulla condotta della guerra nei riguardi delle popolazioni civili, hanno posto in luce forme di criminalità finora inaspettate, che esigono esemplari punizioni.

Le Autorità giudiziarie italiane debbono contribuire con ogni mezzo a mettere in grado il Governo Alleato di provvedere alla dovuta repressione nel modo più esemplare e più pronto.

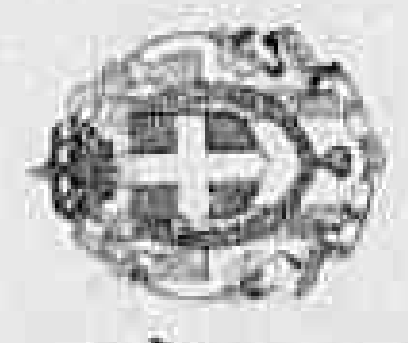
A tale scopo e per evitare duplicazioni, dispersioni e diversi di indirizzo, le E.E.LL. vorranno dare istruzioni perché sia le informazioni e le prove che pervengono direttamente alle Autorità dipendenti, sia quelle che si stanno raccogliendo da altri Enti anche non ufficiali, siano raccolte e trasmesse a questo Ministero, che provvederà a farle pervenire al Governo Alleato.

Si attende un cenno di assicurazione.

IL MINISTRO

1753

f.m.



Ministro di Giustizia

DIREZIONE GENERALE DEGLI AFFARI PENALI
DELLE GRAZIE DELLA STATISTICA E DEL CASELLARIO

4/19/42
Me

Roma 19 febbraio 1943
(19A)

Al On. Commissione Alleata
Sottocommissione legale ROMA

e per conoscenza: ALL'UFFICIO DI COLLEGAMENTO
Gabinetto - S E D E

Ufficio
1° A.P.

Prot. N. 135.51.263

Registrali del 31.1.c.e.

Per A.O. 24-4119/L

Oggetto: Delitti di guerra e crimini ali di guerra.

In relazione alla proposta contenuta nel sopra indicato foglio di codesta Commissione Alleata si ritiene opportuno segnalare che il concentramento delle denunce, delle informazioni, delle prove concernenti i crimini di guerra commessi a danno di cittadini italiani, esorbita dalle attribuzioni del Ministero, che ha compiti meramente amministrativi, e non giudiziari, e darebbe luogo a notevoli ritardi, stante le difficoltà delle comunicazioni.

E' consigliabile, invece, che gli atti di cui si tratta vengano raccolti presso l'Ufficio d'Istruzione del Tribunale del luogo dove il reato fu commesso, e quindi trasmessi, o direttamente o a mezzo delle Procure del Regno, alla Sottocommissione Alleata del luogo.

In tal modo, mentre il servizio ne risulterebbe avvantaggiato in celerità e speditezza, si realizzerebbero più diretti e proficui rapporti con le Autorità Alleate, inquirenti e giudicanti.

Si attende di conoscere se codesta On. Commissione approva quanto sopra per dare le disposizioni del caso.

per MINISTRO 32

In relazione alla proposta contenuta nel sopra indicato foglio di codesta Commissione Alleste si ritiene opportuno segnalare che il concentramento delle denunce, delle informazioni, delle prove concernenti i crimini di guerra commessi a danno di cittadini italiani, esorbita dalle attribuzioni del Ministero, che ha compiti meramente amministrativi, e non giudiziari, e darebbe luogo a notevoli ritardi, stante le difficoltà delle comunicazioni.

E' consigliabile, invece, che gli atti di cui si tratta vengano raccolti presso l'Ufficio d'Istruzione del Tribunale del luogo dove il reato fu commesso, e quindi trasmessi, o direttamente o a mezzo delle Procure del Regno, alla Sottocommissione Alleste del luogo.

In tal modo, mentre il servizio ne risulterebbe avvantaggiato in celerità e speditezza, si realizzerebbero più diretti e proficui rapporti con le Autorità Alleste, inquirenti e giudicanti.

Si attende di conoscere se codesta On. Commissione approva quanto sopra per dare le disposizioni del caso.

pel MINISTRO 32
(A. Spallanzani)

Spallanzani

Legal for retention

18A

TRIAL OF WAR CRIMINALS

BY MILITARY TRIBUNALS

BY MAJOR WILLARD R. COMBS, J.A.G.D.
Vice Chairman, Section of International and Comparative Law

Although most lawyers are more or less acquainted with the court-martial system, which deals chiefly with military discipline within the confines of particular national armies, few are familiar with another system of military tribunals in the United States which has paralleled the court-martial system and which, instead of applying chiefly the Articles of War, administers the laws and customs of war - the principles and rules of public international law which deal with the conduct, conditions, and incidents of warfare. Though many lawyers in this country believed the trial of the eight saboteurs by military commission in 1942 was an extraordinary and somewhat unprecedented proceeding, there was nothing essentially new in the way the saboteurs were tried, or in the law applied. Such military tribunals go back, in United States military practice, to the Revolutionary War; were used extensively in the Mexican War; several thousand cases were tried by such tribunals during the Civil War and the period of reconstruction; and several hundred, during the Spanish-American War and the insurrectionary period which followed in the Philippines. Military tribunals were likewise employed by United States forces during World War I, both in this country and in the Rhineland. A few examples are the trial of Major Andre' as a British spy during the Revolution, the trial of the conspirators in the assassination of President Lincoln, and the case of Pablo Sabaterki during World War I.

The November 1, 1943, tripartite Declaration of German Atrocities stated that those German officers, soldiers, and members of the Nazi party who have been responsible for, or who have taken a consenting part in, the commission of atrocities, will be sent back to the countries in which their deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein. While not so familiar to lawyers generally, it is a commonplace to the military and international lawyer that a body of criminal law exists for the punishment of offenses committed in time of armed hostilities in violation of the laws of war. As a part of the law of nations it is a part of the available law of all nations. In December, 1943, in the Khar'kov trials, the accused Germans were tried, not by a civilian tribunal under the ordinary criminal law, but by a Russian military tribunal under the international law of war. The saboteurs were not condemned under ordinary criminal law, but were tried by military

31

Such military tribunals go back, in United States military practice, to the Revolutionary War; were used extensively in the Mexican War; several thousand cases were tried by such tribunals during the Civil War and the period of reconstruction; and several hundred, during the Spanish-American War and the insurgency period which followed in the Philippines. Military tribunals were likewise employed by United States forces during World War I, both in this country and in the Rhineland. A few examples are the trial of Major Andre' as a British spy during the Revolution, the trial of the conspirators in the assassination of President Lincoln, and the case of Pablo Mateoski during World War I.

The November 1, 1943, tripartite Declaration of German Atrocities stated that those German officers, soldiers, and members of the Nazi party who have been responsible for, or who have taken a consenting part in, the commission of atrocities, will be sent back to the countries in which their deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein. While not so familiar to lawyers generally, it is a commonplace to the military and international lawyer that a body of criminal law exists for the punishment of offenses committed in time of armed hostilities in violation of the laws of war. As a part of the law of nations it is a part of the available law of all nations. In December, 1943, in the Karkov trials, the accused Germans were tried, not by a civilian tribunal under the ordinary criminal law, but by a Russian military tribunal under the international law of war. The saboteurs were not condemned under ordinary criminal law, but were tried by military tribunals and convicted under charges and specifications for violation of the international law of war, and the Supreme Court upheld the legality of the saboteur proceedings solely on this basis (1). The ordinary criminal laws in the United States were in no way involved in the case, and the applicable substantive law is not even written into an international treaty, but rests solely upon customary international law. The Supreme Court has expounded the nature of the applicable international law as follows:

The question here is, what is the law which governs an army invading an enemy's country? It is not the civil law of the invaded country; it is not the civil law of the conquering country; it is military law, the law

* Summary of an Address delivered before the Section of International and Comparative Law of the American Bar Association, meeting at the Pan American Union January 28, 1944, under the aegis of the Inter-American Bar Association. The opinions expressed are the writer's and do not necessarily represent those of the Judge Advocate General or the War Department.

(1) See Ex parte Quirin et al., 317 U.S.1.

- 2 -

of war.... The fact that war is waged between two countries negates the possibility of jurisdiction being exercised by the tribunals of the one country over persons engaged in the military service of the other for offences committed while in such service.... The laws of the state for the punishment of crimes were continued in force only for the protection and benefit of its own people.... But their continued enforcement is not for the protection or control of the Army, or its officers or soldiers. These (individuals) remain subject to the laws of war, and are responsible for their conduct.... to... the tribunals by which those laws are administered. If guilty of wanton cruelty to persons, or of unnecessary spoliation of property, or of other acts not authorized by the laws of war, they may be tried and punished by the military tribunals. They are amenable to no other tribunal... The officers or soldiers of neither army could be called to account civilly or criminally in those (the ordinary) tribunals for such acts, whether those acts resulted in the destruction of life; nor could they be required by those tribunals to explain or justify their conduct upon any averment of the injured party that the acts complained of were unauthorized by the necessities of war. (2)

No one will question the correctness of these statements as an exposition of the relevant international law. Less there be misapprehension that the customary laws of war are vague and indeterminate, let it be noted that this body of customary law is of the same general nature as the English common law and found in much the same manner. Indeed it has received substantial confirmation both as regards general principles and numerous particular situations. A pertinent statement in this connection was made by Attorney General Biddle, while arguing the saboteur case in 1942. Responding to a question from the bench referring to the law of war, the Attorney General said: "Now, sir, of this law, Mr Justice Jackson, of course is not found in common law reports. It is found in history, in books and treaties, in opinions of the Judge Advocate General, and in accounts of what actually took place on the battlefield". It was from just such sources that the Supreme Court found the law in that case.

These rules are applicable, by analogy or direct deduction from principle, to what are popularly called war crimes. Although the various national military court systems, in the application of this body of law, have procedural differences, the United States system appears to be essentially typical of the legitimate jurisdiction of such courts.

Regardless of the manner or extent to which it may be implemented by national law, the law of nations is the ultimate source of the authority to establish military tribunals to try offenses against the law of war. The power to wage war is an attribute of independent states. The power to create military tribunals is an aspect of waging war. The United States military commission was initiated by General Winfield Scott in the Mexican War because of the narrow jurisdiction given by Congress to courts-martial. That jurisdiction did not cover many of the offenses against the law of war. Scott correctly took the position that the military commander had implied power directly under the laws of war to execute that law without legislation. Though courts-martial and military commissions

the saboteur case in 1942. Responding to a question from the Attorney General said: "Nor, all of this law, Mr Justice Jackson, of course is not found in common law reports. It is found in history, in books and treaties, in opinions of the Judge Advocate General, and in accounts of what actually took place on the battlefield". It was from just such sources that the Supreme Court found the law in that case.

These rules are applicable, by analogy or direct deduction from principle, to what are popularly called war crimes. Although the various national military court systems, in the application of this body of law, have procedural differences, the United States system appears to be essentially typical of the legitimate jurisdiction of such courts.

Regardless of the manner or extent to which it may be implemented by national law, the law of nations is the ultimate source of the authority to establish military tribunals to try offenses against the law of war. The power to wage war is an attribute of independent states. The power to create military tribunals is an aspect of waging war. The United States military commission was initiated by General Winfield Scott in the Mexican War because of the narrow jurisdiction given by Congress to courts-martial. That jurisdiction did not cover many of the offenses against the law of war. Scott correctly took the position that the military commander had implied power directly under the laws of war to execute that law without legislation. Though first asserted and applied during the Mexican War, the validity of this proposition was not tested in the Supreme Court of the United States until the Civil War. In 1863, in General Orders No 100 - the first codification of the international laws of war - Francis Lieber stated the same principle: "Military offenses which do not come within the statute must be tried and punished under the common law of war". Referring specifically to this statement, the Supreme Court recognized the validity of military commissions at its December term in 1863 (3) and did so again as recently as 1942 (4). In these cases the Court said that the military commission exercises a "special authority" to sentence persons for offenses over which they have jurisdiction according to the rules and precepts of the law of nations, and more particularly the law of war.

Military tribunals have jurisdiction so long as a technical state of war continues. This includes the period of an armistice, or military occupation, up to the effective date of a treaty of peace, and may extend beyond by treaty agreement. From the point of view of international law, all persons, military and civilian, charged with having committed offenses in violation of the law of war are subject to the jurisdiction of the military tribunals. In the absence

- (3) Ex parte Vallandigham 1 Wall 243
- (4) Ex parte Quirin et al., 317 U.S. 1
- (2) These excerpts are from the opinions in Coleman v. Tennessee, 97 U.S. 509, 16, 547, and Dow v. Johnson, 100 U.S.
- 158, 166, 169, 170. These cases stemmed from the civil war.

valid special jurisdiction given by statute, the subject matter of actions over which they have jurisdiction is offenses against the laws of war. Many offenses which are civil offenses in time of peace become military offenses in time of war.

National military tribunals, in the trial of alleged offenses in violation of the law of war, may apply the provisions of such great treaties as the Hague conventions of 1899 and 1907, the 1929 Geneva Prisoners of War and Red Cross conventions, and the enormous body of the customary practices of war which have solidified into principles and rules of law.

The fact that an offense did not take place in an area of active hostilities does not affect the jurisdiction of military tribunals. Indeed, by well-established practice United States military commissions take jurisdiction over offenses beyond particular territorial commands or national boundaries. Instead of being limited to the territory in which the offense was committed, this aspect of jurisdiction is determined largely by physical custody of the accused.

It has been customary in most countries to try offenders against the laws of war by military tribunals. A decision as to what type of court or personnel is to be used is simply a matter of policy. A military tribunal with mixed inter-allied personnel may properly be established by the commanding general of cooperating belligerent forces. In the United States, the personnel of military commissions have usually been commissioned officers. There is, however, no logical objection to the use of qualified civilians... No particular number of members is required. The number has varied from three to fourteen. The Judge Advocate General held during the Civil War that failure to designate a Judge Advocate was fatal to the validity of military commission proceedings. The prosecuting officer is usually, but need not be, an army officer. The Attorney General, a civilian, was a member of the prosecution in the sabotage case, and a civilian was introduced as an Assistant or Special Judge Advocate in the trial, by military commission, of the conspirators in the assassination of President Lincoln.

During the Civil War the usual practice of military commissions was to use the court-martial oath for the members of the commissions. The Judge Advocate General held this to be the proper procedure. The court-martial oath then, as now, stipulates that the members swear, among other things, to try and to determine cases according to "the custom of war in like cases".

Records are provided for all military commissions, and their proceedings are fully recorded and authenticated. Military commissions are empowered to subpoena witnesses, and may punish for contempt.

Unlike court-martial procedure where the accused is charged with having violated one or more Articles of War, the accused in a military commission proceeding is usually charged with violating the law of war, or the laws and customs of war. The specifications usually read that the accused did such and such a thing, "contrary to the laws and customs of war in like cases", or, to take the specific case of United States v. Dorsey, decided in 1864, the specification stated that he had violated the "laws of war as laid down in paragraph 86 of General Orders No 100" (5). The charge need not, however, allege in terms that the prisoner committed an offense in violation of the law of war, provided the specification clearly and fully set forth sufficient facts to constitute such an offense.

The charges and specifications are sufficient if they apprise the accused of the

General, a civilian, was a member of the Special Judge Advocate in the case, civilian was introduced as an Assistant or Special Judge Advocate of President by military commission, of the conspirators in the assassination of President Lincoln.

During the Civil War the usual practice of military commissions was to use the court-martial oath for the members of the commissions. The Judge Advocate General held this to be the proper procedure. The court-martial oath then, as now, stipulates that the members swear, among other things, to try and to determine cases according to "the custom of war in like cases".

Records are provided for all military commissions, and their proceedings are fully recorded and authenticated. Military commissions are empowered to subpoena witnesses, and may punish for contempt.

Unlike court-martial procedure where the accused is charged with having violated one or more Articles of War, the accused in a military commission proceeding is usually charged with violating the law of war, or the laws and customs of war.

The specifications usually read that the accused did such and such a thing, contrary to the laws and customs of war in like cases, or, to take the specific case of United States v. Dorsey, decided in 1864, the specification stated that he had violated the "laws of war as laid down in paragraph 86 of General Orders No 100" (5). The charge need not, however, allege in terms that the prisoner committed an offense in violation of the law of war, provided the specification clearly and fully set forth sufficient facts to constitute such an offense. The charges and specifications are sufficient if they apprise the accused of the accusations he must meet and do not mislead him.

Ninety-seven years ago, in 1847, at the time the military commission was originated during the Mexican War, General Zachary Taylor ordered a military commission to be "governed in its proceedings by the practice of courts-martial". With but a few exceptions, the procedure of military commissions, for the following century, has followed that of general court-martial. The basic reason for adopting the general court-martial procedure is that it provides for proceedings under oath and with judicial safeguards already familiar to army officers, and it tends to diminish any tendency by irresponsible officers to resort to methods formerly associated with "drumhead" or "kangaroo" courts-martial. There have been, however, some variations in the practice of the military commission from that of the general court martial, principally as regards the number required for a quorum and voting.

- 4 -

During the Civil War it was held that the evidence adduced before a military commission should be "according to the well understood rules and principles regulating any other court". Article of War 36, enacted by Congress in 1920, authorizes the President to prescribe modes of proof in cases before military commissions.

The Article provides that the President's regulations shall, insofar as he shall, insofar as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States. In the absence of any contrary regulation by the President, these rules of evidence are governing. Military commissions follow the usual rules of judicial notice. It has been expressly held that depositions taken without notice, or notice unreasonably short, and ex parte affidavits are inadmissible, and if there is no other supporting testimony the findings must necessarily be disapproved.

A variation between the terms of the specifications and the evidence is fatal only where the accused could have been misled thereby. Findings must be made on all specifications and charges. If an accused is found not guilty of all specifications, he cannot be found guilty of the charge. But a military commission may convict of a lesser included offense where the offense charged is not proved.

There are few limitations on the sentences which may be imposed by military commissions. Where actual war "crimes" are involved the law on the point is well summed up in the UNITED STATES BASIC FIELD MANUAL ON THE MILITARY AND NAVAL CRIMES as follows:

"All war crimes are subject to the death penalty, although a lesser penalty may be imposed. The punishment should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not necessarily limit the imprisonment to be imposed."

Sentences are largely discretionary. Our interest lies, therefore, in how the discretion has been exercised. As is well known, the penalty, under international law for being captured as a spy is death. It is interesting to note the appreciation of the basis for the penalty by the Continental Congress, and its specific application by the Board of General Officers appointed in 1780 to examine into the case of the British officer, Major Andre, during the Revolution. On August 21, 1776, the Continental Congress resolved that any alien found lurking as a spy in or about the encampments of the Armies of the United States shall suffer death, "according to the law and usage of nations" or such other punishment as a court martial shall direct. The Board in the Andre case reported that Andre ought to be considered as a spy, and accordingly suffer death, agreeably "to the law and usage of nations". During the Civil, Spanish-American and the present war, sentences for irregular warfare, such as guerrilla activities, have included death, confinement, and fines. Penalties have ranged from sixty days labor to death. Sentences for having intercourse with the enemy have been imprisonment for the duration of the war; imprisonment at hard labor for 3 years and a \$1000 fine; and confinement in a penitentiary for

"All war crimes are subject to the death penalty, and in no case should the punishment be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not necessarily limit the imprisonment to be imposed."

Sentences are largely discretionary. Our interest lies, therefore, in how the discretion has been exercised. As is well known, the penalty, under international law for being captured as a spy is death. It is interesting to note the appreciation of the basis for the penalty by the Continental Congress, and its specific application by the Board of General Officers appointed in 1780 to examine into the case of the British officer, Major Andre, during the Revolution. On August 21, 1776, the Continental Congress resolved that any alien found lurking as a spy in or about the encampments of the Armies of the United States shall suffer death, "according to the law and usage of nations" or such other punishment as a court martial shall direct. The Board in the Andre case reported that Andre ought to be considered as a spy, and accordingly suffer death, agreeably "to the law and usage of nations". During the Civil, Spanish-American and the present war, sentences for irregular warfare, such as guerrilla activities, have included death, confinement, and fines. Penalties have ranged from sixty days labor to death. Sentences for having intercourse with the enemy have been imprisonment for the duration of the war; imprisonment at hard labor for 3 years and a \$1000 fine; and confinement in a penitentiary for five years. Sentences for aiding the enemy have been from death to a fine for one month.

First as a matter of practice, and later as a matter of positive statute, decisions of military commissions have been passed upon by a reviewing or confirming authority, or both, in substantially the same manner as those of general courts martial, before sentences are executed. General Washington made a practice of approving, disapproving or mitigating sentences. Early in the Civil War many findings and sentences were disapproved by General Henry W. Halleck. Commanding General of the Department of Missouri, as reviewing authority. An excerpt from the opinion of the Judge Advocate General in the case of the United States v. Sailor, is worth quoting. Writing to President Lincoln, he said:

This record is regarded as fatally defective. It does not appear that the General Order convening the Commission was read to the prisoner, or in his hearing; or that he had an opportunity to object to any member of the Commission. Nor does it appear that the charge against him was in writing; or that he had, in advance of the examination of the witnesses, any knowledge of the offense for which he was to be tried; nor is it shown that the prisoner was allowed to plead to the charge against him, as recited in the General Order convening the Commission. In a proceeding involving life, such irregularities are wholly inexcusable, and make the execution of the sentence legally impossible. (C)

There are no limits on the nature of the punishment, except that, in contrast to nearly a century ago, they must not be of a cruel or unusual nature. Military commissions established under the Reconstruction Act in 1867 were expressly prohibited by Congress from inflicting any cruel or unusual punishment, and this has since been the general practice. Perhaps the best statement of the law on this point as it is to-day, is contained in the British Manual of Military Law, which provides that "corporal punishment is excluded, and cruelty in any form must be avoided". Punishment, however, is not regarded as a cruel or unusual punishment for a war crime. For sentences less than death, the choice of a place of incarceration is not limited, except that such a place must comply with minimum international standards for such institutions. Sentences imposed by military commissions do not lapse upon the re-establishment of peace, but there is a tendency to mitigate sentences after hostilities have ceased.

The following propositions summarizing the basic rights of the accused are from holdings, mostly by the Judge Advocate General, and represent the general practice: He has the right to have charges signed by a commissioned officer; he is entitled to a copy of the charges against him, and of any amendments hereto; and he has a right to have the members of the commission and the Judge Advocate sworn in his presence. The charges and specifications and the order convening the commission are to be in writing and be read aloud to, or within hearing of, the accused; he is given an opportunity to challenge the members of the commission; he must be allowed to plead to the charges and specifications as recited in the order convening the commission; he need not respond to questions; he has a right to be confronted with the witnesses against him; the witnesses must be sworn before they testify; all testimony should be fully set forth in the record; it is fatal error for the military commission to refuse to admit evidence of the defense material to the issues; and the guilt of the accused must be proved beyond a reasonable doubt. It is error to reject testimony that the accused was insane at the time of the offense. The accused is allowed defense counsel as found in civilian courts. In practice, however, defense counsel has not always been chosen by the accused. While private counsel, of the accused's choice, has often been allowed, military defense counsel have also often been assigned. In the 1942 saboteur trial, military defense counsel were permitted private access to the accused.

informational statements. The following propositions summarizing the basic rights of the accused are from holdings, mostly by the Judge Advocate General, and represent the general practice: He has the right to have charges signed by a commissioned officer; he is entitled to a copy of the charges against him, and of any amendments hereto; and he has a right to have the members of the commission and the Judge Advocate sworn in his presence. The charges and specifications and the order convening the commission are to be in writing and be read aloud to, or within hearing of, the accused; he is given an opportunity to challenge the members of the commission; he must be allowed to plead to the charges and specifications as recited in the order convening the commission; he need not respond to questions; he has a right to be confronted with the witnesses against him; the witnesses must be sworn before they testify; all testimony should be fully set forth in the record; it is fatal error for the military commission to refuse to admit evidence of the defense material to the issues; and the guilt of the accused must be proved beyond a reasonable doubt. It is error to reject testimony that the accused was insane at the time of the offense. The accused is allowed defense counsel as found in civilian courts. In practice, however, defense counsel has not always been chosen by the accused. While private counsel, of the accused's choice, has often been allowed, military defense counsel have also often been assigned. In the 1942 saboteur trial, military defense counsel were permitted private access to the accused.

(6) 2 J.A.G. Record Book 83 (1863)

(7) Except when the accused escapes after arraignment and while the trial is proceeding. A military tribunal may, in such a case, proceed to judgement, even though the accused has not put in any part of his defense. (Opinion of the Judge Advocate General in UNITED STATES v. DODD, 7 Fed. Res. II 1214, 1215 (1864).)

- 6 -

While all are agreed that "war criminals" should be tried and punished, there are differences of opinion with respect to whether or not they should be tried during the course of the war and also whether they should be tried by civilian or military tribunals. Some persons are fearful that if such trials are not postponed until after military operations have been completed, the enemy may resort to reprisals irrespective of whether or not there is a proper basis therefor. Moreover, there is a feeling that military men would be less judicial in their determinations than trained civilian jurists.

The system of military commissions was developed not primarily as a method of vindicating the law after military operations have ceased; traditionally these commissions have been a device which was an integral part of the very carrying on of military operations. The chief purpose has been, by setting examples, to prevent others from adversely affecting operations or from committing inhuman acts. Speaking particularly of military occupation, the British Manual sets forth the basic purpose concisely and suggests a caveat: "The punishment should be deterrent, but great severity may defeat its own ends by driving the population to rebellion". What is in mind here perhaps can be best illustrated by the following excerpt from a letter by General William T. Sherman, written during the Civil War:

"Spies and guerrillas, murderers, under the assumed title of

.... soldiers, deserters on leave, should be hung quick (sic), of course after a trial, for the number of escapes made easy by the changes on guard during the long time consumed by trial and reference have made that class of men bold and dangerous, and our own scouts and detachments have so little faith in the punishment of known desperadoes that a habit is growing of "losing" prisoners in the swamp", the meaning of which you know. This horrible attendant of war originated in the practice of our enemies, and I have seen it chuckled over in their public journals, but our own men are quick to learn, and unless a legal punishment can be devised you will soon be relieved of all such cases. I believe that the vilest demon should have a hearing and trial, but punishment should be prompt, yes, speedy, or it loses its efficacy."

The Supreme Court, recognizing this need in the recent saboteur case, said: "An important incident to the conduct of war is the adoption of measures by the military command not only to repel and defeat the enemy, but to seize and subject to disciplinary measures those enemies who in their attempt to thwart or impede our military effort have violated the law of war". During the Civil War the Judge Advocate General went so far as to say that "without the authority to visit upon this class of offenses summary and severe punishments, the war-making power would be greatly paralyzed." Whether commanding generals should be precluded from using their discretion in the matter of trying, or not trying,

Spies and guerrillas, saboteurs, should be hung quick (sic). soldiers, deserters on leave, should be hung quick (sic). of course after a trial, for the number of escapes made easy by the changes on guard during the long time consumed by trial and reference have made that class of men bold and dangerous, and our own scouts and detachments have so little faith in the punishment of known desperados that a habit is growing of "losing prisoners in the swamp", the meaning of which you know. This horrible attendant of war originated in the practice of our enemies, and I have seen it chucked over in their public journals, but our own men are quick to learn, and unless a legal punishment can be devised you will soon be relieved of all such cases. I believe that the veriest demon should have a hearing and trial, but punishment should be prompt, yes, speedy, or it loses its efficacy.

The Supreme Court, recognizing this need in the recent saboteur case, said: "An important incident to the conduct of war is the adoption of measures by the military command not only to repel and defeat the enemy, but to seize and subject to disciplinary measures those enemies who in their attempt to thwart or impede our military effort have violated the law of war". During the Civil War the Judge Advocate General went so far as to say that "without the authority to visit upon this class of offenders summary and severe punishments, the war-making power would be greatly paralyzed." Whether commanding generals should be precluded from using their discretion in the matter of trying, or not trying, particular cases on the spot, at the time of the occurrence, when witnesses, are readily available is, however, not a matter of law but of policy. The legal power to do so is vested in them unless withdrawn.

There is a tendency to believe that what the Nazis are doing to the civilian populations in Europe is unprecedented. It is only so in the extreme degree in which it is being done. The already-existing and well-understood principles of the laws of war include most of these offenses, and precedents exist for their punishment. Reflecting the law as it had then developed, Francis Lieber laid down the basic principle simply in 1843: "All wanton violence committed against persons in the invaded country.... are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense." The Hague Conventions of 1899 and 1907 also contain established principles of law under which Nazi offenders may be properly punished.

- 7 -

There is a popular misconception that international law completely lacks a sanction. The fact is that, although the military court deals with individuals rather than states, these courts, applying international law have constituted one of the most effective sanctions of international law, up to the present time.

Finally, let it be said that the development of the military commission system is due principally to two men - General Winfield Scott, who originated the commission in the Mexican War; and the international lawyer and general, Henry W. Halleck, who, because of his interest and position during the Civil War, brought it to maturity.

LEGAL SUBCOMMITTEE
CJO
Chief Counsel
CJO
Litigation Section
CL RKS
11 FEB 1945

DELIO
Chief Counsel
CJO
Italian Section
CL RKS
11 FEB 1945

26

HEAD QUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4119/L.

GCH/pa.
31 Jan 45.

SUBJECT : War crimes and War Criminals.

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

1. Your Excellency will no doubt learn with pleasure that arrangements are now being made by the Allied Government for the trial of persons charged with committing crimes and atrocities against the Italian population.
2. In order to facilitate the work of the Allied authorities responsible for ascertaining the nature of the crimes and the identity of the offenders, it will be necessary to centralize all sources of information. Up to this day it appears that such information has been collected by various official and semi official Italian bodies, and that there exist no established channels through which it can be conveyed to Allied authorities concerned.
3. It is therefore suggested, with Your Excellency's approval, that all information on war crimes received from Italian sources be concentrated at the Ministry of Justice. If this can be agreed to, Allied authorities concerned would be in a position to set up the necessary liaison with the ministerial office responsible for collecting evidence, facts and documents relating to the ascertainment of such crimes.
4. It is hoped that Your Excellency will be able to give to this suggestion favourable consideration.

O. G. HANNAFORD,
Lt. Colonel,
Officer i/c Italian Branch,
for Chief Legal Advisor.

BF 21/2

WAR CRIMES

Notes of a meeting between Brigadier UPTON, Lt. Col. JACKLING
Lt. Col. PASSINGHAM and Lt. Col. HADEN

- 1 The present policy of AFHQ as to War Crimes is that laid down in Directive CR/15000/3-A dated Jan 45. They are bound by Directives from Combined Chiefs of Staff and the Directive of C.C.S. of 30 Oct 43 still applies. (C.C.S. to be asked for new Directive.)

SHARP have issued a Directive as to how War Crimes will be dealt with by them, and it was discussed, but finally agreed not to follow it.

- 2 As regards the American policy Administrative Memorandum No. 11 would appear to be still in force, but two American Officers have recently arrived for the purpose of dealing with War Crimes and it is thought they will issue a new Directive as to American policy in the near future.

- 3 It was the opinion of the meeting that efforts should be made to clear up the smaller cases. Points which affected this policy and which were discussed at some length were:-

- (a) whose permission was to be obtained for trying the cases - the War Office or Combined Chiefs of Staff.
- (b) what was the position of British National Office of War Crimes.
- (c) who would try the cases. Brig. Upjohn thought it inadvisable to leave it to Italians. The question of reprisals was raised and the consent of the D.P.W. to any trials should be obtained.
- (d) If they are to be tried by Commission is it to be an Allied Commission or a British Commission?
- (e) would a solution be to try cases as they have been tried in Bulgaria with American military observers attending trials? Brig. Upjohn thought that the language difficulty was the biggest objection to this course.
- (f) Could persons be tried in Italian Government territory or should they be moved into AMI territory.

Finally it was agreed that AFHQ should make a test case of ALBANIAN. AFHQ had sent copies of all documents in the matter to London some time ago and they now propose signalling London saying if they are doing any thing about it. If not, AFHQ propose trying the case in an AMI Court and

- (b) that was the position of British National Office of War Crimes.
- (c) Who would try the cases. Brig. Upjohn thought it inadvisable to leave it to Italians. The question of reprisals was raised and the consent of the U.P.W. to any trials should be obtained.
- (d) If they are to be tried by Commission is it to be an Allied Commission or a British Commission?
- (e) Would a solution be to try cases as they have been tried in Bulgaria with American military observers attending trials? Brig. Upjohn thought that the language difficulty was the biggest objection to this course.
- (f) Could persons be tried in Italian Government territory or should they be moved into AMT territory.

Finally it was agreed that AFHQ should make a test case of ALBANIA. AFHQ had sent copies of all documents in the matter to London some time ago and they now propose signalling London asking if they are doing any thing about it. If not, AFHQ propose trying the case in an AMT Court and if London have no objection they will ask CCS permission to do this.

Other points discussed at the meeting were: Yugoslavia wants to try Italians for crimes committed in that country. Three Italians have already been shot, but AFHQ have protested against it. Brig. Upjohn thought that the trend of opinion in London would be clearly against giving any such permission.

AFHQ to signal London for list of 57 war criminals which Brig. Upjohn had seen in London.

S.1(B) are making enquiries into alleged war crimes and in some cases, such as the cave atrocity, the Italians have evidence which would be of invaluable help - the question was who to go to. Brig. Upjohn said he would ask Chief Legal Adviser to see Minister of Justice to find out the right person. It might be advisable to have a liaison officer (Italian).

Brig. Upjohn will send to AFHQ a list of the smaller war crimes at present on the files of AC which appeared suitable for immediate trial.

29 Jan 45

21 JAN 1945

4119

file

LONDON, W.C.2.

15A

December, 1944.

Dear Walkin,

Thank you so much for your letter of the 16th December.

I have, of course, Dean's letter much in mind and fear that, as you say, the matter may have become submerged in subsequent discussions on a general directive.

I shall take the matter up with the War Office.

In the meantime and on the other topic we discussed I shall, in the light of your observations, continue to try recalcitrant Yugoslavs in Allied Military Courts.

Yours

Sir William Walkin,
Legal Adviser,
Foreign Office.

22

4119
FOREIGN OFFICE, S.W.1.

16th December, 1944.

Dear Upjohn,

I have looked up the papers which I mentioned the other day about dealing with unimportant war crimes which are not suitable for reference to the War Crimes Commission. They confirm my recollection, but I find that the position was fully stated in Dean's letter to you C 5775/14/62 of May 11th. Unfortunately the papers do not show that any action has been taken by the Combined Chiefs of Staff on the proposals which we had made to Washington, and I am rather afraid that this may have got submerged in the subsequent discussions about the issue of a general directive on war crimes. Possibly the War Office may have some further information about this, which would no doubt be at your disposal. So far as the Foreign Office is concerned I fear we can only say that we did our best to help you about the point in question, and that if no instructions on the lines that we desired have in fact been issued, this is due to the Combined Chiefs of Staff.

Yours sincerely,
William Melvin

Brigadier G.R. Upjohn,
C.A.2.,
War Office.

SECRET

14A

HEADQUARTERS ALLIED COMMISSION
APO 394
CIVIL AFFAIRS SECTION

Ref. 4/29.4/34

19 Jan 45

SUBJECT : Investigation of War Crimes.

TO : See Distribution

- 1 The enclosed copy Directive CP/15000/G-1(B) from AFHQ as to investigation of war crimes is forwarded for information and action as necessary.
- 2 Attention is drawn to paragraph 11 (b). All such reports will be forwarded by Regional Commissioners to this HQ for onward transmission to AFHQ.
- 3 A copy of GRO 697/44 is also enclosed.

BY COMMAND OF THE CHIEF COMMISSIONER

R. R. Chipp
R. R. CHIPP, Col.,
GSO 2A Section
for VP G. Section
DPOB 40

DISTRIBUTION :-

Abruzzi Region	Lombardia Region
Emilia Region	Latvia Region
Toscana Region	SCAO 5 Army
Venezia Region	SCAO 8 Army
Piemonte Region	
Liguria Region	

For info :- Legal E/C ✓
COS
Estab Section

**DOWN GRADED
TO
UNCLASSIFIED**

Col. Inf.
Chief Judicial Officer,
for Chief Civil Affairs Officer.

LEGAL SUB-COMMISSION	
CPO	
DCIO	
Chief Counsel	✓
CJO	
Italian Section	
CL RKS	
20 JAN 1945	20

Extract from
General Routine Orders

No. 697 of 1944

WAR CRIMES

- 1 The responsibility of units and formations in relation to war crimes will be limited to reporting any matters which may indicate that such a crime has been committed. This HQ circular G1/P/3305/A3 dated 6 Feb 44 (which required a Commanding Officer to investigate any circumstances suggesting the commission of a war crime which might be notified to him) is cancelled.
- 2
 - a) Examples of offences falling within the category of war crimes are given in the Manual of Military Law, Chapter XIV, para 443.
 - b) The examples most commonly encountered are ill-treatment of British and Allied Prisoners of War and atrocities committed by the enemy against the civil population.
- 3 Any unit or formation which discovers any circumstances suggesting the commission of a war crime will report by signal direct for action to AFHQ (G1 (Br) A3) and to DFM, AFM, or DAFM of the formation district or area concerned, repeated, if the unit or formation is under command of HQ, and, to Main HQ, and, for information.
- 4 The signal will give the location, with map reference, at which the crime is believed to have occurred and a very brief indication of the nature of the crime.
- 5 Detailed instructions as to the action to be taken by DFMs, AFMs, or DAFMs of formations districts or areas on receipt of signals under para 3 of this GRO, and as to the action required in respect of reports of war crimes received through channels other than those specified in this GRO, are being issued separately to those concerned.

14 B

SUBJECT:-- Investigation of War Crimes.

SECRET

ALLIED FORCE HEADQUARTERS

CE/15000/C-1(B)

11 Jan 42.

Rear HQ Eighth Army (30)
 British Inverment ('A' Branch) (20)
 Rear HQ Fifth Army. (20)
 HQ No. 1 District (20)
 HQ No. 2 District (20)
 HQ No. 3 District (20)
 HQ North Africa District (5)
 HQ Land Forces & Mil Liaison, Greece. (20)
 HQ Land Forces Adriatic (20)
 HQ Allied Commission. (15)

GENERAL.

1. In order that enemy war criminals may in due course be brought to justice steps must now be taken to provide for their identification and apprehension, and for the recording of all available evidence against them.
2. For the purpose of this directive war crimes are defined as violations of the recognised rules of warfare by members of the enemy's armed forces, examples of which are set out in MIL, Chapter XIV, paragraph 443.

RESPONSIBILITY FOR INVESTIGATIONS.

3. The British and Allied Governments are establishing their own National Offices for War Crimes, which will be responsible for presenting to the War Crimes Commission for consideration cases in which war crimes have been committed against their own nationals. Trials of such cases will be postponed until after the cessation of hostilities against Germany.
4. The American and British Governments have agreed in principle that the two Governments, in view of Italy's co-belligerent status, should act for the Italian Government in transmitting to the War Crimes Commission information relating to German war crimes against Italians.

1. In order that enemy war criminals may in due course be brought to justice steps must now be taken to provide for their identification and apprehension, and for the recording of all available evidence against them.

2. For the purpose of this directive war crimes are defined as violations of the recognised rules of warfare by members of the enemy's armed forces, examples of which are set out in IHL, Chapter XIV, paragraph 445.

3. The British and Allied Governments are establishing their own National Offices for War Crimes, which will be responsible for presenting to the War Crimes Commission for consideration cases in which war crimes have been committed against their own nationals. Trials of such cases will be postponed until after the cessation of hostilities against Germany.

4. The American and British Governments have agreed in principle that the two Governments, in view of Italy's co-belligerent status, should act for the Italian Government in transmitting to the War Crimes Commission information relating to German war crimes against Italians.

5. It has been agreed that in this theatre investigation of war crimes against Italians shall be undertaken by the British Army when the alleged offense was committed in a sector or area under British command and by the US Army when committed in a sector or area under US command.

6. The responsibility for investigation devolving on the British Army is therefore confined to war crimes which are either :-

- (a) committed against British subjects, or
- (b) committed against Italian subjects in a sector or area under British command at the date when they are reported.

7. Reports of crimes against nationals of US or other Allied Nations should be passed to this HQ for onward transmission to the appropriate authority.

DO NOT

Unpublished

Copied for

Sheet 2

PRELIMINARY REPORTS AND INVESTIGATION.

8. To ensure full co-ordination and for convenience in investigation, the procedure for dealing with war crimes committed in this theatre, so far as they are the concern of the British Army, has been centralized at this HQ.
9. The procedure for reports by units and formations of suspected war crimes is laid down in GSO 697/44.
10. Provost instructions for action on receipt of a report under GSO 697/44 are set out in Appendix 'A' to this letter.
11. (a) Information as to war crimes which comes to the notice of AMG officers with British Armies will be passed immediately to HQ the Army with which they are serving, which will deal with the report as laid down in GSO 697/44.
 (b) Reports received by AMG/AC officers in Regions should be passed to AFHQ G-5 who will pass such reports as are the concern of the British Army to G-1 (British) A3.
12. All information acquired from other sources, such as interrogation of enemy POW and of British or Allied ex-POW, will be passed direct to AFHQ G-1 (British) A3 with a copy to the DFM(SIB) AFHQ.
13. Certain cases have arisen in which enemy documents have been captured which contain orders amounting to direct incitement, if not instruction, to commit war crimes. These orders are of particular importance and the originals should be passed without delay through existing G-2 documents evacuation channels for prompt transfer to AFHQ G-1 (British) A3, with as full as possible a statement of the circumstances in which they were found and the names and units of any witnesses to their discovery.

DETAILED INVESTIGATION.

14. This will normally be carried out either by SIB sections specially detailed for this work, or if DFM(SIB) decides that their services are not available or are not required, by local SIB or GMP personnel.
15. At the conclusion of the investigation, a full report will be submitted through Provost channels to AFHQ G-1 (British) A3 which will, in consultation with DFM, AFHQ, decide whether a formal Court of Inquiry should be held to

(i) Reports received by G-1/NO on the concern of the British Army to G-1 (British) A3.

12. All information acquired from other sources, such as interrogation of enemy POW and of British or Allied ex-POW, will be passed direct to AFHQ G-1(British)A3 with a copy to the DPM(SIB) AFHQ.
13. Certain cases have arisen in which enemy documents have been captured which contain orders amounting to direct incitement, if not instruction, to commit war crimes. These orders are of particular importance and the originals should be passed without delay through existing G-2 documents evacuation channels for prompt transfer to AFHQ G-1(British)A3, with as full as possible a statement of the circumstances in which they were found and the names and units of any witnesses to their discovery.

DETAILED INVESTIGATION.

14. This will normally be carried out either by SIB sections specially detailed for this work, or if DPM(SIB) decides that their services are not available or are not required, by local SIB or CIP personnel.
15. At the conclusion of the investigation, a full report will be submitted through Provost channels to AFHQ G-1(British)A3 which will, in consultation with DLAG, AFHQ, decide whether a formal Court of Inquiry should be held to record the evidence.

COURT OF INQUIRY.

16. Should it be decided to hold a Court of Inquiry it will be convened by, or under the orders issued by, this HQ, and will assemble, if practicable, at or near the scene of the alleged crime. The President will be a member of the Staff of the DLAG, and the evidence will be taken on oath.
17. The proceedings of the Court of Inquiry will be forwarded by the President to AFHQ G-1(British)A3 which will, in consultation with DLAG, decide whether the case merits submission through the War Office and the British National Office for consideration of the War Crimes Commission.

...../Sheet 3

Sheet 3.

LISTS OF SUSPECTS.

18. Records are being maintained at AFHQ of persons suspected of war crimes, and "Lists of War Criminals" will from time to time be prepared, even information provided by the War Crime Commission and from reports from sources in this theatre. These will be circulated to all concerned. These "Lists of War Criminals" must be carefully distinguished from other "Black Lists" issued through Intelligence channels.

19. Any Commander in possession of these "Lists of War Criminals" will take all possible steps to locate and apprehend the individuals listed, and will report any arrests immediately to this HQ, which will issue instructions for their custody and disposal.

20. Commanders may arrest suspects whose names are not on the above mentioned lists if satisfied that there is reasonable evidence that they have committed a war crime, and will immediately report such arrests in accordance with GVO 697/44.

21. Some war criminals may be found among persons already detained by the Allied Forces as prisoners of war or civilian internees, and among persons otherwise entitled to be treated as prisoners of war upon apprehension. The fact that such persons have been charged as war criminals will not affect their treatment as prisoners of war or civilian internees. Prisoners of war who are charged as war criminals will be retained in this theatre until completion of the record of evidence of the Court of Inquiry, but will thereafter be evacuated under normal arrangements, with an indication on their records of such charges.

CO-ORDINATION WITH OTHER SERVICES.

22. Investigation of war crimes against Italian civilians will be undertaken by the Army only, and arrangements have been made for any reports reaching the Royal Navy or the Royal Air Force to be passed direct to AFHQ.

23. Investigations relating to war crimes committed exclusively against personnel of the Royal Navy will be undertaken by the Army. Any information should be passed to AFHQ C-1 (British) A3 which will keep C-in-C Mediterranean informed of the progress of the investigation.

mentioned lists if satisfied that there is reasonable evidence that they have committed a war crime, and will immediately report such arrests in accordance with HQ 637/44.

21. Some war criminals may be found among persons already detained by the Allied Forces as witnesses of war or civilian internees, and among persons otherwise entitled to be treated as prisoners of war upon repatriation. The fact that such persons have been charged as war criminals will not affect their treatment as witnesses of war or civilian internees. Prisoners of war who are charged as war criminals will be retained in this theatre until completion of the record of evidence of the Court of Inquiry, but will thereafter be evacuated under normal arrangements, with an indication on their records of such charges.

CO-ORDINATION WITH OTHER SERVICES.

22. Investigation of war crimes against Italian civilians will be undertaken by the Army only, and arrangements have been made for any reports reaching the Royal Navy or the Royal Air Force to be passed direct to AFHQ.

23. Investigations relating to war crimes committed exclusively against personnel of the Royal Navy will be undertaken by the Army. Any information should be passed to AFHQ G-1(British)A3 which will keep C-in-C Mediterranean informed of the progress of the investigation.

24. Investigations relating to war crimes committed exclusively against personnel of the RAF will be undertaken by the RAF. Any information should be passed to the Senior RAF Officer in the locality in which it comes to light and to AFHQ G-1(British)A3, which will inform HQ MAF.

25. Where the crime is committed against both Army personnel and of the same time against personnel of another British service, action will be taken in accordance with paragraphs 8-15 of this letter, a copy of the information being passed to the Senior Local Commander of the other service concerned. AFHQ G-1(British)A3 will arrange for a joint investigation with the service concerned, and for a Joint Court of Inquiry should the facts warrant it.

26. Where the crime is committed against both British service personnel and at the same time against American personnel, action will be taken in accordance with paragraphs 8-15 of this letter. AFHQ G-1(British)A3 will pass to G-1(American) a copy of all information received with such recommendations as may be appropriate.

...../Sheet 4

Sheet 4DOMINION FORCES.

27. Dominion Formations and Units will comply with these instructions in relation to all war crimes except those affecting members of their own Dominion Force, in relation to which they will comply with such instructions as may be issued by the appropriate Dominion HQ.

JTM.

Response by
for

Major General,
DAG, 3-1(B).

Copy to :- C-in-C, Mediterranean. (2)
 HQ MJAF (2)
 Cdn Sec CHQ 1 Ech. (2)
 UDF Adm HQ Main (2)
 HQ 2 NZEF (2)
 CHQ 2nd Echelon (4)
 HQ GR & E (2)
 PWs
 HQ Allied PW Repatriation Unit (5)
 G-1(A) (3)
 G-2 (4)
 G-5 (3)
 PW(Br) (3)
 DJAF (20)
 C-1(B)A2
 C-1(B)A6
 C-1(B)A7.
 Float

Copy to :-

C-in-C, Mediterranean. (2)
 HQ MAF (2)
 Cdn Sec GHQ 1 Ech. (2)
 UDF Adm HQ Main (2)
 HQ 2 NZEF (2)
 GHQ 2nd Echelon (4)
 HQ CR & E (2)
 FWR
 HQ Allied PW Repatriation Unit (5)
 G-1(A) (3)
 G-2 (4)
 G-5 (3)
 PW(Br) (3)
 DLAG (20)
 G-1(B) A2
 G-1(B) A6
 G-1(B) A7.
 Float

Appendix 'A' to
JFHQ letter CR/15000/G-1(B)
dated 11 Jan 45.

WAR CRIMES.

- (a) Attention of all Provost Officers should be directed to the provisions of GRC 697/44, dealing with the responsibility of units and formations in relation to war crimes in general, and in particular to the Provost procedure for investigating such cases.
- (b) On receipt of information of a suspected war crime, the DEM/AFM/DEPM of Formation/District/Area concerned will initiate a preliminary investigation, collecting such immediate evidence as is available. He may obtain the technical assistance of the nearest SIB Section, though it is pointed out that immediate SIB help may not always be available.
- (c) An interim report containing such initial information, as under, should be forwarded direct to DEM, HQ, SIB.
- (1) Initial information should show :-
- (i) Date of alleged crime
 - (ii) Place i.e. name of town, village etc, province, sheet number and map reference.
 - (iii) Nature of allegation and approximate number of victims involved e.g. approximately 20 victims said to have been shot, or 4 victims alleged to have been burned to death. Particulars of witnesses, including last name, first name, paternity, address, identification number.
- (e) In order that formation or other SIB sections may not become permanently involved in war crime investigations to the prejudice of their normal work, the further investigation of these cases will be carried out by SIB personnel specially allotted for this task by DEM, SIB if required and available.

1785

(c) An interim report containing such initial information, as under, should be forwarded direct to DEM, HQ, SIB.

(d) Initial information should show :-

(i) Date of alleged crime

(ii) Place i.e. name of town, village etc, province, sheet number and map reference.

(iii) Nature of allegation and approximate number of victims involved e.g. approximately 20 victims said to have been shot, or 4 victims alleged to have been burned to death. Particulars of witnesses, including last name, first name, paternity, address, identification number.

(e) In order that formation or other SIB sections may not become permanently involved in war crime investigations to the prejudice of their normal work, the further investigation of these cases will be carried out by SIB personnel specially allotted for this task by DEM, SIB if required and available.

(f) Such specially allotted personnel will be under command of AFHQ and will be departmentally directed by DEM, SIB, AFHQ.

(g) DAFM of SI Sections will take similar action as DEMs/APMs/DAPMs in respect of information relating to war crimes received by them from non Provost sources.

(h) DEM, HQ SIB, CME, will maintain a complete record of all cases investigated under Provost arrangements (including SIB) throughout the theatre, and available for information of the Staff at this Headquarters.

(i) To reduce chances of delay in transit, use will be made of CME/DEIS Services in forwarding such reports.

2119 26 13A

7. May I please have your concurrence or otherwise as regards the above-stated views for my general guidance, since presumably the same machinery should be adopted in all territories?

8. As regards Italy, I have checked up with Brig. Upjohn who confirms that, to the extent that they have yet gone, the above-stated views accord with their practice. Very little has yet been done in that theatre in relation to post-hostilities trials for war-crimes. On the other hand, there has been a substantial volume of immediate trials in the field for war-crimes (e.g. espionage), all of which have been handled by C.A. Legal.

C.A. 20(a)
Army 1272 Ext: 312
20 Dec. '44

Robert
Colonel
Legal Advisor.

1787

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

785016

15

File

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

11A

AG/4119/L.

W.B/pa.
30 Oct 44.

SUBJECT : Alleged War Crimes.

TO : C.A.Sec. (Attention Col. R.E. Grippa).

1. Herewith file of papers in connection with an alleged war crime forwarded by IAXIO-UGERIA Region for necessary action.
2. It is understood that the two men, F. NANO Romano and CHIARI Bente, are in Soriano jail.

W. E. BUSHN, Jr.,
Colonel,
Deputy Chief Legal Advisor.

16

G.R.O. No. 697

Dated 1 Sept. 44

10A

6A

697. WAR CRIMES

1. The responsibility of units and formations in relation to war crimes will be limited to reporting any matters which may indicate that such a crime has been committed. This HQ circular 91/3/3705/A3 dated 6 Feb 44 (which required a Commanding Officer to investigate any circumstances suggesting the commission of a war crime which might be notified to him) is cancelled.

2. (a) Examples of offences falling within the category of war crimes are given in the Manual of Military Law, Chapter XIV, para. 143.

(b) The examples most commonly encountered are ill-treatment of British and Allied prisoners of war and atrocities committed by the enemy against the civil population.

3. Any unit or formation which discovers any circumstances suggesting the commission of a war crime will report by signal direct for action to AMHQ (91 (Br) A*) and to DPM, APM or DAPM of the formation district or area concerned, repeated, if the unit or formation is under command of HQ, AA1, to Main HQ, AA1, for information.

4. The signal will give the location, with map reference, at which the crime is believed to have occurred and a very brief indication of the nature of the crime.

5. Detailed instructions as to the action to be taken by DPMs, APMs, or DAPMs of formation districts or areas on receipt of signals under para 3 of this GRO, and as to the action required in respect of reports of war crimes received through channels other than those specified in this GRO, are being issued separately to those concerned.

GH/6501/01(Br)

13

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

8A

8 August 1944

ACC/4119JL

SUBJECT: War Criminals

TO : SCAOs 5 and 8 Army

At the request of the Executive Commissioner I am enclosing copies of circulars on War Criminals - AFHQ dated 27 November 1943 and 6 February 1944 and NATOUISA dated 26 January 1944. From these it would appear that in Army Areas the question is one to be dealt with by the Armies themselves.

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

RHW/wew

Copy to: R C & M G Sec

~~SECRET~~HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Sub-Commission
APO 394SECRET
JM/pa

7A

28 Jul 44

REFERENCE : ACC/4119/L.
SUBJECT : War Crimes.
TO : RLOs (thru RCs) Regions 1, 2, 3, 4, 5, 6, 7, 8,
9, Z, and Rome Region.
PLO (thru PC) Foggia Province.

1. Reference Executive Memo No.72 para 4 a .
2. Attached are copies of A.F.H.Q. Circulars of 27/11/43, 26/1/44 and 6/2/44 regarding War Crimes.

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

DOWN GRADED

UNCLASSIFIED

Col. Inf.
Chief Justice Officer
Chief Civil Affairs Officer
SECRET

4119

(9a)

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

Ref : 773/23/CA.

26 August 1944

SUBJECT : War Crimes

TO : S.C.A.C. 5 & 8 Armies.
R.C.s Regions I, II, III, IV, V, VI, VII, VIII, IX and "2"

The procedure in future for the reporting of War Crimes or suspected war crimes will be as follows:-

(a) For Armies.

Information received or which comes to the notice of AMG Officers with the British Armies will be passed immediately through their S.C.A.C.'s to the H.Q. of the Army with which they are serving. The Army concerned will thereafter pass the information direct to G-5 AFHQ. Similar instructions will be issued in due course dealing with American Armies.

(b) For Regions.

Reports received by Officers of A.C.C. in Regions should (as in the past) be passed through their Regional Commissioner to this HQ who will forward to G-5 AFHQ.

LEGAL SUB-COMMISSION

→ CLO

→ DCLO

Chief Commr

CJO

Italian Copy to: AFHQ (your G-5, 010-2 of 20 Aug refers).

CL RKS

Adm. Section

NORMAN E. FISKE
Colonel,
Deputy Executive
Commissioner.

11

6A
CONFIDENTIAL

Allied Force H.Q.

6 Feb 44

WAR CRIMINALS

Unrelied see 10A

The following procedure will be adopted by British Forces in this theatre in order to implement the directive of the Combined Chiefs of Staff of 29 Oct 43 and Allied Force Headquarters Circular "War Criminals" under reference AG 000, 5-1 G.A.P. A.G.M., dated 27 Nov 43.

For the purpose of this directive war crimes are defined as violations of the laws and customs of war, examples of which are set out in paragraph 143, chapter XIV, Manual of Military Law.

As soon as any circumstances suggesting the commission of a war crime come to the notice of any officer he will immediately notify his commanding officer who will cause an investigation to be made and if necessary, apply through the usual channels for the assistance of the Field Security Police. Statements will be obtained from any available witnesses.

When the investigation has been completed a brief report together with any statements obtained from witnesses will be forwarded through the usual channels to DIAG, AFHQ, who will advise G-1(B) whether a court of inquiry should be assembled, its terms of reference, and the witnesses to be summoned. If a court of inquiry is ordered to assemble, it will do so, when practicable, at or near the scene of the alleged crime. It will consist of two officers, the president being a member of the Deputy Judge Advocate staff of the Judge Advocate General and the convening officer will order that the evidence be taken on oath.

Whenever practicable the accused will be present and will have the right to be represented by a military officer as counsel.

The court will record all relevant evidence whether for or against the accused and will receive any evidence which in their opinion has probative value.

The evidence will be recorded in narrative form except that the cross-examination of witnesses will, upon the request of the accused, be recorded in the form of question and answer.

Each witness will sign his name at the foot of the record of his evidence.

The examination and cross-examination of witnesses will normally be conducted by a military officer, termed military counsel (when practicable a member of the JAG's legal staff) and by a military officer, termed defence counsel (when practicable an officer with legal qualifications).

The president may question any witness in order to supplement the information adduced by counsel.

794

obtained from witnesses will be forwarded through the usual channels to DJAG, AFHQ, who will advise (i-1(b) whether a court of inquiry should be assembled, its terms of reference, and the witnesses to be summoned. If a court of inquiry is ordered to assemble, it will do so, when practicable, at or near the scene of the alleged crime. It will consist of two officers, the president being a member of the Deputy Judge Advocate staff of the Judge Advocate General and the convening officer will order that the evidence be taken on oath.

Whenever practicable the accused will be present and will have the right to be represented by a military officer as counsel.

The court will record all relevant evidence whether for or against the accused and will receive any evidence which in their opinion has probative value.

The evidence will be recorded in narrative form except that the cross-examination of witnesses will, upon the request of the accused, be recorded in the form of question and answer.

Each witness will sign his name at the foot of the record of his evidence.

The examination and cross-examination of witnesses will normally be conducted by a military officer, termed military counsel (when practicable a member of the JAG's legal staff) and by a military officer, termed defence counsel (when practicable an officer with legal qualifications).

The president may question any witness in order to supplement the information adduced by counsel.

The following certificate will be signed by the president and member at the foot of the proceedings :-

CERTIFICATE

The above witnesses appeared in person before us this day
of 1944, at and [in the presence
of the accused, who was afforded the opportunity to cross-examine] *
gave evidence upon oath as set out above.

*If the accused was not present the words in brackets will be omitted.

The president will forward the proceedings together with the convening order, under sealed cover to the convening officer who will forward them to DJAG, AFHQ.

PSS/NA/2/44/6,000—AFHQ Press 1504

G.1B/3305/A3

RESTRICTEDC
O
P
Y

HEADQUARTERS
NORTH AFRICAN THEATER OF OPERATIONS
UNITED STATES ARMY
APO 534

CIRCULAR)
NUMBER 11)

26 January 1944

INVESTIGATION OF WAR CRIMES

1. The following procedure is established to effect the purposes of the directives concerning war crimes of the Combined Chiefs of Staff of 29 October 1943 and Allied Force Headquarters Circular of 27 November 1943.

2. For the purpose of this directive war crimes are defined to be violations of the laws and customs of war, examples of which are set forth in paragraphs 347 and 355 of the Rules of Land Warfare, U. S. Army.

3. In order that the testimony of witnesses may be recorded in such form that it shall be admissible in their absence before legal tribunals in accordance with generally accepted rules, the following procedure is prescribed:

a. Whenever practicable, witnesses will be examined and cross-examined under oath on oral interrogatories in the presence of the accused and before a military officer termed a commissioner, who, for the purpose of such examination, shall have authority to administer oaths as an officer detailed to conduct an investigation within the purview of Article of War 114, U. S. Army.

b. The accused shall be entitled to be represented by counsel.

c. The oral examination of witnesses shall normally be conducted by military officer termed military counsel and by a military officer termed defense counsel, if the accused desires counsel. The commissioner before whom a witness is being examined may interrogate the witness in order to supplement the information adduced by counsel.

d. The examination of witnesses will take place when practicable at the scene of the alleged crime and as soon thereafter as circumstances permit.

4. a. The Commanding General of each Army shall designate, from officers of his command, one officer of field grade with legal qualifications as commissioner, one officer as military counsel and one officer as defense counsel.

b. Each Army Commander shall refer to the commissioner designated by him all cases involving war crimes in which the accused is in the custody of the Army Commander. He may also refer to such commissioner cases involving war crimes if witnesses are available in his command though the accused may not be in custody or even identified.

5. a. The commissioner to whom cases are referred is responsible for their prompt investigation and reduction of the available evidence to permanent form,

- 1 -

RESTRICTED

2.

as prescribed herein. To accomplish this result he is authorized to give necessary instructions to the military counsel and the defense counsel in the preparation of interrogatories and cross-interrogatories and take such action with respect to time and place for conducting the taking of testimony as circumstances warrant.

b. The commissioner is responsible for the taking of all available testimony and for submitting the same in due form to the Army Commander by whom he was designated. He will authenticate the testimony of each witness at the end of the transcript by certificate as follows :

"I certify that _____ personally appeared this _____ day of _____ 1944, at _____ before me, a Commissioner duly designated by competent orders and in the presence of the accused, who was afforded the opportunity of cross-examination, and testified under oath in the matter of _____ in the manner above set forth.

"Place _____ Name _____

"Date _____ Rank _____"

6. The Army Commander will transmit to this Headquarters the reports of commissioners designated by him.

7. Commissioners, military counsel and defense counsel will be designated by this Headquarters to take testimony and make report in respect of the investigation of war crimes when either witnesses or the accused are not under the command of an Army Commander or for any other reason investigation by direction of an Army Commander is not practicable. Commissioners designated by this Headquarters will conform to the procedure set forth herein except that their reports will be submitted directly to this Headquarters.

8. Commissioners are authorized to receive any evidence which would have probative value to a reasonable man.

9. Officers may be detailed as investigators to assist commissioners.
(AG 000.5/367)

By command of Lieutenant General DEVERS:

E. L. FORD,
Brigadier General, GSC.
Chief of Staff.

OFFICIAL:

/s/ H. V. Roberts,
H. V. ROBERTS,
Colonel, AGD,
Adjutant General.

Reproduced, Hq Peninsular Base Section,
APO 782, 5 February 1944 ?

DISTRIBUTION:

"A" & "E"

R E S T R I C T E D

U. S. SECRET - EQUALS BRITISH MOST SECRET

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
LEGAL SUB-COMMISSION

AMG/4096/L

6 January 1944

Subject: War Criminals.

To : RGICs (Through RGACs) Regions I and II.

1. Enclosed is copy AFHQ circular (secret) dated 27 Nov. 1943,
Subject: War Criminals, just received at this Headquarters.2. The foregoing supersedes AMG-4096/L subject: War Criminals issued
by this office 22 Nov. 1943.3. All reports pursuant to aforesaid circular will proceed through command
channels as indicated therein.RICHARD H. WILDER
Lt. Colonel
Deputy Chief Legal Officer

RECEIVED BY THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

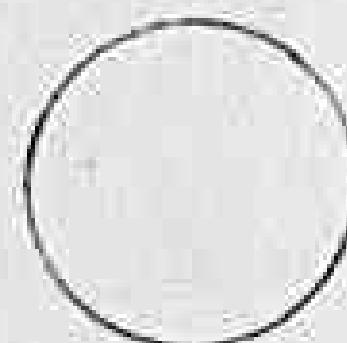
FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

FOR THE SECRETARY OF THE ARMY
WASHINGTON, D.C. 20315

ON HIS MAJESTY'S SERVICE.

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.



(Label)

(51-1020)

47B

RECEIVED 120 112

27 November 1945

7200000000

SECRET R:

1. The ultimate disposition of persons charged with the commission of war crimes in a matter for consideration by the Government of the Allied Nations.

2. Trials by military courts of persons suspected of war crimes will not be held unless directed by this Headquarters. Such persons will be held in custody pending decision as to their disposal. While suspects are under detention all available information about them and about war crimes of which they are suspected will be collected and forwarded to this Headquarters.

3. The following procedure will govern:

a. Secret reports, through command channels, will be made to this Headquarters, containing all possible information concerning the specific individual held under detention as a war criminal suspect and concerning the time, place, character and details of the alleged war crime. It is imperative that each report include not only the names and addresses of witnesses but also the list of the evidence which each may reasonably be expected to give in any proceedings which may later be reported to to constitute a full testimony for trial purposes. In order that these investigations may be kept strictly within command channels, they will be made by persons subject to the direct orders of the Commanding Officers making the report.

b. Reports submitted to this Headquarters shall pertain only to persons then being held in detention.

c. For the purpose of this directive, war crimes are acts committed by persons in violation of the laws and customs of war. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported as above directed for consideration by this Headquarters.

d. When reports are received at this Headquarters and further investigation is considered advisable, either unit and orders will be directed to make the supplementary investigation or the supplementary investigation will be carried on directly from this Headquarters.

e. When any change in the place of detention of a person upon whom a report has been made is directed by any authority other than this Headquarters, an immediate report of such change will be made to this Headquarters, in order that the report be immediately carried on.

b. Reports submitted to this headquarters shall pertain only to persons then being held in detention.

c. For the purpose of this directive, war crimes are acts committed by persons in violation of the laws and customs of war. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported as above directed for consideration by this headquarters.

d. When reports are received at this headquarters and if other investigation is considered advisable, either this command will be directed to make the supplementary investigation or the supplementary investigation will be carried on directly from this headquarters.

e. When any change in the place of detention of a person upon whom a report has been made is directed by any authority other than this headquarters, in order an immediate report of such change will be made to this headquarters, in order that any supplementary investigation may be expeditiously carried on.

4. Situations may come to the attention of Commanding Officers in which the alleged war criminal is not in detention or may even be performing duties not incompatible with the Allied cause. In order that orderly procedure with respect to such situations may be followed, Commanding Officers will report such cases to this headquarters with all available information.

5. Italians who commit crimes against Italian Nationals are not to be considered as war criminals and such persons will be turned over to Italian Government representatives for trial.

6. Persons who commit crimes against members of the Allied Command during the period of occupation of Italian territory may be charged and tried before military tribunals in accordance with established practice.

7. It is emphasized upon all persons of this command to refrain from giving any publicity whatever to war crimes or war criminals or to any act taken by the military forces with respect thereto.

The release of any information concerning war crimes or war criminals is specifically reserved to this headquarters. (LC 000.5-1 WAR - CR)

W. H. E. IVE
Major General, G.S.C., Chief of Staff

By command of General LEBLANC LEB

OFFICIAL:

SGT T. J. DAVIS

Brigadier General, United States Army, Adjutant General.

RESTRICTED

CONFIDENTIAL

HEADQUARTERS

JOINT CHIEFS OF STAFF

WASHINGTON, D.C.

PO 554

CIRCULAR)

26 January 1944

NUMBER 11)

EXAMINATION OF WITNESSES

1. The following procedure is established to effect the purposes of the Directives concerning war crimes of the Combined Chiefs of Staff of 29 October 1943 and Allied Forces Headquarters Circular of 27 November 1943.

2. For the purpose of this Directive war crimes are defined to be violations of the laws and customs of war, examples of which are set forth in paragraphs 247 and 255 of the Rules of Land Warfare, U.S. Army.

3. In order that the testimony of witnesses may be recorded in such form that it shall be admissible in their absence before legal tribunals in accordance with generally accepted rules, the following procedure is prescribed:

a. Whenever practicable, witnesses will be examined and cross-examined under oath on oral interrogatories in the presence of the accused and before a military officer termed a commissioner, who, for the purpose of such examination, shall have authority to administer oaths as an officer detailed to conduct an investigation within the purview of Article of War 114, U.S. Army.

b. The accused shall be entitled to be represented by counsel.

c. The oral examination of witness shall normally be conducted by military officer termed military counsel and by a military officer termed defense counsel, if the accused desires counsel. The commissioner before whom a witness is being examined may interrogate the witness in order to supplement the information adduced by counsel.

d. The examination of witnesses will take place when practicable at the scene of the alleged crime and as soon thereafter as circumstances permit.

4. a. The Commanding General of each Army shall designate, from officers of his command, one officer of field grade with legal qualifications as commissioner, one officer as military counsel and one officer as defense counsel.

b. Each Army Commander shall refer to the commissioner designated by him all cases involving war crimes in which the accused is in the custody of the Army Commander. He may also refer to such commissioner cases involving war crimes in which the accused is available in his command though the accused may not be

examination, shall have authority to administer oaths as an officer detailed to conduct an investigation within the purview of Article of War 114, U.S. Army.

b. The accused shall be entitled to be represented by counsel.

c. The oral examination of witnesses shall normally be conducted by military officer termed military counsel and by a military officer termed defense counsel, if the accused desires counsel. The commissioner before whom a witness is being examined may interview the witness in order to supplement the information afforded by counsel.

d. The examination of witnesses will take place when practicable at the scene of the alleged crime and as soon thereafter as other matters permit.

4. a. The Commanding General of each Army shall designate, from officers of his command, one officer of field grade with legal qualifications as commissioner, one officer as military counsel and one officer as defense counsel.

b. Each Army Commander shall refer to the commissioner designated by him all cases involving war crimes in which the accused is in the custody of the Army Commander. He may also refer to such a commissioner cases involving war crimes if witnesses are available in his command though the accused may not be in custody or even identified.

5. a. The commissioner to whom cases are referred is responsible for their prompt investigation and reduction of the available evidence to permanent form, as prescribed herein. To accomplish this result he is authorized to give necessary instructions to the military counsel and the defense counsel in the preparation of interrogatories and cross-interrogatories and take such action with respect to time and place for conducting the taking of testimony as circumstance warrant.

b. The commissioner is responsible for the taking of all available testimony and for submitting the same in due form to the Army Commander by whom he was designated. He will authenticate the testimony of each witness at the end of the transcript by certificate as follows:

"I certify that this _____ day of _____, 1944, at _____ personally appeared _____ before me, a Commissioner duly designated by competent orders and in the presence of the accused, who was afforded the opportunity of cross-examination, and testified under oath in the matter of _____ in the manner above set forth.

- 2 -

"Place"

"D to"

6. The Army Commander will transmit to this Headquarters the reports of commissioners designated by him.

7. Commissioners, military counsel and defense counsel will be designated by this Headquarters to take testimony and a report in respect of the investigation of war crimes when either witnesses or the accused are not under the command of an Army Commander or for any other reason investigation by direction of an Army Commander is not practicable. Commissioners designated by this Headquarters will conform to the procedure set forth herein except that their reports will be submitted directly to this Headquarters.

8. Commissioners are authorized to receive any evidence which would have probative value to a responsible man.

9. Officers may be detailed as investigators to assist commissioners. (G.O.O. 5/567).

By command of Lieutenant General DWTS:

E. L. FORD,
Brigadier General, GSC.
Chief of Staff.

ORIGINAL:

/s/ E. V. Roberts,
E. V. ROBERTS,
Colonel, AGD,
Adjutant General.

Reproduced, HQ Peninsular Base Section,
AO 762, 5 February 1944.

DISTRIBUTION:

"A" & "B"

RESTRICTED

CONFIDENTIAL

Allied Force ...

6 Feb 44

THE CHIEFS

The following procedure will be adopted by British Forces in the theatre in order to implement the directive of the Combined Chiefs of Staff of 29 Oct 43 and Allied Force Headquarters Circular "War Criminals" under reference G. OVO 5-1 G.I.F. - 4.6.44, dated 27 Nov 43.

For the purpose of this directive war crimes are defined as violations of the laws and customs of war, examples of which are set out in paragraph 4.4.3, Chapter XIV, Manual of Military Law.

As soon as any circumstances suggesting the commission of a war crime come to the notice of any officer he will immediately notify his commanding officer who will cause an investigation to be made and if necessary, apply through the usual channels for the assistance of the Field Security Police. Statements will be obtained from any available witnesses.

When the investigation has been completed a brief report together with any statements obtained from witnesses will be forwarded through the usual channels to D.F., HQ, who will advise G-1(B) whether a court of inquiry should be assembled, its terms of reference, and the witnesses to be summoned. If a court of inquiry is ordered to assemble, it will be so, when practicable, at or near the scene of the alleged crime. It will consist of two officers, the president being a member of the Deputy Judge Advocate staff of the Judge Advocate General and the convening officer will order that the evidence be taken on oath.

However, practicable the accused will be present and will have the right to be represented by a military officer as counsel.

The court will record all relevant evidence whether for or against the accused and will receive any evidence which in their opinion has probative value.

The evidence will be recorded in narrative form except that the circumstances of the evidence will, upon the request of the accused, be recorded in the form of question and answer.

Each witness will sign his name at the foot of the record of his evidence. The examination and cross-examination of witnesses will normally be conducted by a military officer, termed military counsel (when practicable a member of the J.A.G.'s legal staff) and by a military officer, termed defence counsel (when practicable an officer with legal qualifications).

The President may question any witness in order to supplement the information adduced by counsel.

The following certificate will be signed by the president and member at the

to the notice of any evidence which will cause an investigation to be made and if necessary, apply through the usual channels for the assistance of the Field Security Police. Statements will be obtained from any available witnesses.

When the investigation has been completed a brief report together with any statements obtained from witnesses will be forwarded through the usual channels to D.J.G., J.C.Q., who will advise G-1(B) whether a court of inquiry should be assembled, its terms of reference, and the witnesses to be summoned. If a court of inquiry is ordered to assemble, it will do so, when practicable, at or near the scene of the alleged crime. It will consist of two officers, the president being a member of the Deputy Judge Advocate staff of the Judge Advocate General and the convening officer will order that the evidence be taken on oath.

Whenever practicable the accused will be present and will have the right to be represented by a military officer as counsel.

The court will record all relevant evidence whether for or against the accused and will receive any evidence which in its opinion has probative value.

The evidence will be recorded in narrative form except that the cross-examination of witnesses will, upon the request of the accused, be recorded in the form of question and answer.

Each witness will sign his name at the foot of the record of his evidence. The examination and cross-examination of witnesses will normally be conducted by a military officer, termed military counsel (when practicable a member of the JAG's legal staff) and by a military officer, termed defence counsel (when practicable an officer with legal qualifications).

The President may question any witness in order to supplement the information adduced by counsel.

The following certificate will be signed by the president and member at the foot of the proceedings:-

CERTIFICATE

The above witnesses appeared in person before us this day of 1944, at and (in the presence of the accused, who was afforded the opportunity to cross-examine,*) gave evidence upon oath as set out above.

*If the accused was not present the words in brackets will be omitted.

The president will forward the proceedings together with the convening order, under secret cover to the convening officer who will forward them to D.J.G., J.C.Q.

G.2B/3305/A3

DOWN OF DEF
UNCLASSIFIED

For Chief of Staff
Chief of Staff
Col. Inf.
Chief of Staff
Chief of Staff

~~SECRET~~
U. S. SECRET EQUALS BRITISH MOST SECRET

52

4096/c

ALLIED FORCE HEADQUARTERS
APO 512

: : : : : : : :
: ~~SECRET~~ :
: Auth: CINC. AF :
: Initials: VVW :
: 27 November 43 :
: : : : : : : :

3A

CIRCULAR:

27 November 1943

WAR CRIMINALS

1. The ultimate disposition of persons charged with the commission of war crimes is a matter for consideration by the governments of the Allied Nations.

2. Trials by military courts of persons suspected of war crimes will not be held unless directed by this headquarters. Such persons will be held in custody pending decision as to their disposal. While suspects are under detention all available information about them and about war crimes of which they are suspect will be collected and forwarded to this headquarters.

3. The following procedure will govern:

a. Secret reports, through command channels, will be made to this headquarters containing all possible information concerning the specific individual held under detention as a war criminal suspect and concerning the time, place, character and details of the alleged war crime. It is imperative that each report include not only the names and addresses of witnesses but also the gist of the evidence which each may reasonably be expected to give in any proceedings which may later be resorted to to perpetuate such testimony for trial purposes. In order that these investigations may be kept strictly within command channels, they will be made by persons subject to the direct orders of the Commanding Officer making the report.

b. Reports submitted to this headquarters shall pertain only to persons then being held in detention.

c. For the purpose of this directive, war crimes are acts committed by persons in violation of the laws and customs of war. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported as above directed for consideration by this headquarters.

d. When reports are received at this headquarters and further investigation is considered advisable, either unit commanders will be directed to make the supplementary investigation or the supplementary investigation will be carried on directly from this headquarters.

DOWN GRADED

UNCLASSIFIED

Col. Inf.
Col. Inf.Chief Justice
Chief Justicefor
for

U. S. SECRET EQUALS BRITISH MOST SECRET

U. S. SECRET EQUALS BRITISH MOST SECRET

AFHQ Circular, dtd 27 Nov '43

3. (Cont'd)

e. When any change in the place of detention of a person upon whom a report has been made is directed by any authority other than this headquarters, an immediate report of such change will be made to this headquarters, in order that any supplementary investigation may be expeditiously carried on.

4. Situations may come to the attention of Commanding Officers in which the alleged war criminal is not in detention or may even be performing duties not incompatible with the Allied cause. In order that orderly procedure with respect to such situations may be followed, Commanding Officers will report such cases to this headquarters with all available information.

5. Italians who commit crimes against Italian Nationals are not to be considered as war criminals and such persons will be handed over to Italian Government representatives for trial.

6. Persons who commit crimes against members of the Allied Command during the period of occupation of Italian territory may be charged and tried before military tribunals in accordance with established practice.

7. It is enjoined upon all persons of this command to refrain from giving any publicity whatever to war crimes or war criminals or to any act taken by the military forces with respect thereto.

The release of any information concerning war crimes or war criminals is specifically reserved to this headquarters. (AG 000.5-1 GAP-ACM)

By command of General EISENHOWER:

W. B. SMITH
Major General, G.S.C., Chief of Staff

OFFICIAL:

T. J. Davis

T. J. DAVIS, Esq.
Brigadier General, United States Army,
Adjutant General.

DISTRIBUTION:
See attached
page.

*Col upfolder
Produced up letter
circulation at AFHQ
on about 25 Dec 1943*

U. S. SECRET EQUALS BRITISH MOST SECRET

AFHQ Circular: War Criminals, dtd 27 Nov '43

DISTRIBUTION:

- 1 - C-in-C
- 1 - C/S, AFHQ
- 1 - DTC
- 1 - CAO
- 4 - 15th Army Group
- 4 - Fifth Army
- 4 - Seventh Army
- 4 - Eighth Army
- 1 - NAAF
- 1 - Allied Control Commission
- 1 - G-1 (US)
- 1 - G-1 (Br)
- 1 - G-2 AFHQ
- 1 - G-2 MATCUSA
- 1 - G-3 AFHQ
- 1 - G-4 AFHQ
- 1 - JAG
- 1 - Mr. Murphy
- 1 - British Resident Minister
- 1 - IBS) THEU: CG
- 1 - FES) MATCUSA
- 1 - PMG
- 1 - LGS
- 1 - INC
- 1 - FWE
- 1 - PRO
- 4 - AFHQ Adv Admin Ech
- 1 - NORTH AFRICA Dist
- 1 - No. 1 Dist
- 1 - No. 2 Dist

DOWN GRADDED

UNCLASSIFIED

Col. Inf.
Chief Judicial Officer,
for Chief of Staff Affairs Officer.

U. S. SECRET EQUALS BRITISH MOST SECRET

1809

785016

U.S. SECRET EQUALS BRITISH MOST SECRET

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
APO 512
LEGAL SUB-COMMISSION

AMG/4096/L.

22nd November, 1943.

SUBJECT: War Criminals.

TO : Regional Chief Legal Officers
(through HQAGs).

1. Imperative orders have been received in this Headquarters from the
AFHQ. regarding trials of War Criminals and directing that the Allied
Military Courts will not try cases of the type specified in paragraph 2 below.

2. It is essential that no War Criminals be tried in your Region by
Allied Military Courts. All reports of Italians or others accused of
committing war crimes, e.g. of maltreating in any way, prisoners of war or
internment, or committing other offences of this general nature, will be
immediately investigated and full and complete reports, including names and
places of alleged crimes, names and addresses of the alleged offenders, of the
victim and of the witnesses, will be forwarded to the Chief Legal Officer,
AMG.

3. Such investigations will not include the holding of any formal
hearings but will be limited to the gathering of the necessary facts for the
preparation of a proper report for submission by this HQ to higher authority.
The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those
committed against Allied Forces (wire cutting, sniping, stealing etc., or
black market activities, curfew violations etc.) which will be tried as now by
Allied Military Courts.

G R Lupton
Colonel,
Deputy Chief Legal Officer.

DISTRIBUTION :

RCAO Region I (For action) 25
RCAO Region II (For action) 25
AMG HQ 15 Army Group (For information) 6
(For information) 2

committing crimes, O.G. of maltreating in any way, prisoners of war, internment, or committing other offences of this general nature, will be immediately investigated and full and complete reports, including names and places of alleged crimes, names and addresses of the alleged offenders, of the facts and of the witnesses, will be forwarded to the Chief Legal Officer, AMG.

3. Such investigations will not include the holding of any formal hearings but will be limited to the gathering of the necessary facts for the preparation of a proper report for submission by this HQ to higher authority. The utmost secrecy will be observed in making these investigations.

4. The foregoing does not apply to current crimes such as those committed against Allied Forces (wire cutting, sniping, stealing etc., or black market activities, curfew violations etc.) which will be tried as now by Allied Military Courts.

G R Hayden
 Colonel,
 Deputy Chief Legal Officer.

DISTRIBUTION :

RCAG Region I (For action)	25	1 (Your cable 3405 dated 20th Nov. refers).	DOWN GRANTED UNCLASSIFIED
RCAG Region II (For action)	25		
AMG HQ 15 Army Group (For information)	6		
AGS. AM. (For information)	2		
RCAG. Region III (For information and action when these Regions are transferred to jurisdiction of A.M.G. H.Q.)	15		
RCAG. Region IV (Regions are transferred to jurisdiction of A.M.G. H.Q.)	20		
WCS. AMHQ for distribution to Regions V, VII and IX.	18		
File AMG/4096/L	1		
Plout	1		
Spare	20		

Col. Inf.

Chief Judicial Officer,
 Chief of Staff, Civil Affairs Officer.

U.S. SECRET EQUINE BRITISH MOST SECRET

1811