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ACC

10000/142/873

DECISION
OCT. 1944

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DECISION TO ESTABLISH ALLIED MILITARY COURTS IN BARI ZONE
OCT. 1944 - FEB. 1945

FILE CLOSED 19 February 1945

17A

HEADQUARTERS
SOUTHERN REGION, ALLIED COMMISSION
LEGAL DIVISION
APO 394

L - 3070

19 February 1945

SUBJECT: Allied Military Courts in BARI.

TO : Chief Legal Advisor, A.C. - HQS., C.M.F.

1. Your AC/4173/L, dated 7 February 1945, refers.
2. By the time this letter reaches you, Major Young and Captain Greenfield will have already reported to you.
3. There remain Major Aulisi, Captain Christians and Lieutenants Robertazzi and Balboni, who are required to assist in the disposal of two important General Court cases now pending in Bari.
4. Owing to the absence of the principal witnesses on operational duties, in the Marine Commandoes' case, it will not be possible to bring this case to trial for some days. 42
5. As you are aware, the other case now pending before an Allied Military Court in Bari, is one involving a series of acts of corruption of an extensive character and the work of the Prosecuting Officer in preparing and presenting the case to the Court will be fairly heavy. The trial itself will, in all probability, last several days.
6. It is, accordingly, doubtful whether the cases now pending can be finished before 1 March 1945, but you are assured that every effort is being made to ensure completion by that date.

For the Regional Commissioner:

LEGAL SUBCOMMISSION
CLO
DCLO
Chief Counsel
G/O

LFD/jc

21 FEB 1945

L. F. Dawson
L. F. DAWSON,
Lt. Col., G.I.,
Regional Legal Officer.

16A

L-3070/4091

15A

TO : C.L.A., A.C. HQ., C.M.F.

- For the Regional Commissioner -

T. W. Hudson.

L.F. DAWSON
Lt. Col., G.L.,
Regional Legal Officer.

LFD/ap.

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117	Chief Counsel	
118	CJO	
119	Italian Section	
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HEADQUARTERS
SOUTHERN REGION, ALLIED COMMISSION
LEGAL DIVISION
APO 394, U.S. Army

L-3070

9 February 1945

SUBJECT: Allied Military Courts - BARI.

TO : Legal Officer for Apulia & Calabria, at BARI.

1. I refer to my telephonic conversation with you of today's date - 9 February 1945.
2. I attach hereto a copy of a letter I have this day received from A.C., H.Q.
3. This letter speaks for itself.
4. You will proceed at once to wind up the Permanent Allied Military Courts now sitting in Bari and Bitonto.
5. All cases already partly heard or set down for trial or in the hands of the Prosecuting Officers will be conducted to a conclusion before the appropriate Military Court.
6. As far as possible no future cases should be undertaken. Cases not falling into any of the categories mentioned in Para. 5 hereof will be diverted to the Italian Courts for disposal.
7. Please advise me at the earliest possible moment and by the quickest possible means of the date w.e.f. which all officers who were attached for special duty with the Military Courts will be available for posting elsewhere.

For the Regional Commissioner:

L.F. Dawson
L.F. DAWSON,
Lieut. Colonel, G.L.,
Reg. Legal Officer.

LFD/mo

Copy to - A.C., H.Q., C.M.F.

Copy to - Zone Commissioner - Bari Zone.

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4173/L.

7 February 1945.

SUBJECT : Allied Military Courts, BARI.

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

1. The Chief Commissioner directs that the Allied Military Courts at BARI be closed forthwith.

2. Would you please therefore make all the necessary arrangements to end the sittings of these courts from the earliest possible date. It will be necessary to clear up those cases which have already been initiated and where a date has been fixed for trial but as far as possible no future cases should be undertaken.

BY Command of Rear Admiral STONE.

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WEB/wcw.

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

(14A)

RHS/EP.

AC/4173/L.

My dear Mr. Prime Minister,

I have carefully considered your letter of the 29th December 1944 together with the Memorandum prepared by the Minister of Justice. The matters to which you refer were present to my mind at the time when I decided to establish the Allied Courts in the Bari area; I was induced, however, to take this decision for military considerations and because of the serious effect to the Allied war effort which was being produced by the large scale interference with the ammunition depots in the area.

Although my investigation persuades me that in the majority of cases the Italian Courts in Bari are doing their best, I am convinced that the volume of crime and the deficiencies of personnel make it presently impossible for the Italian Courts, however well intentioned, to cope with the situation in such manner and with such dispatch as military necessity requires.

Having in mind the contents of the Memorandum of the Minister of Justice, I feel that in all frankness I must point out the conditions as they are reported to me with respect to matters of personnel and the accumulation of cases both in the Italian Military and Civil Tribunals.

As of the 8th of January 1945, there were still lacking, the Primo Presidente, the Procuratore Generale, 3 Presidents of Sections and 3 Counsellors of the Court of Appeal, 9 Judges of the Tribunale and 3 Constituti Procuratori del Regno at Bari; 4 Judges and 1 Constituto Procuratore del Regno at Trani; 1 Judge and 1 Procuratore del Regno of the Tribunale del Minorenni at Bari and 8 Pretori and other officials of the Pretura of the Province of Bari. In short, of a total complement of 124, no less than 34 were absent.

On the same date, 240 cases affecting Allied interests were awaiting trial before the Tribunale Militare in Bari. This congestion will inevitably increase if as recently intimated by the Ministry of War to the Tribunale Militare, its strength is to be so reduced that it may be necessary to close down one of two sections.

As of the 7th of January, 426 cases affecting Allied interests were undisposed of in the penal section of the civil courts, despite the fact that such cases had priority of disposition. The extent of the burden upon these courts and their inability promptly to dispatch their normal business is indicated by the circumstance that, as of the same date, 25,012 criminal cases not affecting the Allied interests and 7,636 civil cases were pending.

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I am sure you will appreciate the military necessity of obtaining a reduction in crimes affecting the Allied war effort and will agree that to accomplish that objective, prompt and deterrent punishment of offenders is essential. The facts which I have outlined leave inescapable the conclusion that the Italian Courts are not now equipped to dispatch such cases with the expedition which the exigencies of the occasion require.

There is every indication that the presence and operation of the Allied Military Courts have already served to diminish the incidence of crime against the Allied interests. Under all of the circumstances, I must conclude that their continuance is essential to military security and the war effort although I hope with you that this condition will not long obtain.

Yours very truly,

ELLERY W. STONE

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

His Excellency Ivanoe Bonomi
The President of Council of Ministers
Italian Government

cc: Legal S/C
Chief of Staff
"A" Files

Prepared by: Lt. Col. MARC J. GROSSMAN, Chief Counsel, LEGAL Sub-Commission 37

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Lt. Col., Spec-Res.

(13A)

HEADQUARTERS
SOUTHERN REGION, ALLIED COMMISSION
LEGAL DIVISION
APO 394, U.S. Army

L-4091

11 January 1945

SUBJECT: Allied Military Courts in Bari.

TO : Chief Legal Advisor, Allied Commission, Headquarters, CMT

1. I refer to your letter number AC/4173/L, dated 1 January 1945.

2. It is assumed that the allegations contained in paragraph 1 of your letter and the questions put in para. 2 thereto, are made and put with reference to their bearing on the Allied Military Courts now sitting in Bari and Bitonto. The information, accordingly, hereafter given relates solely to the Italian Courts operating in the Province of Bari and the statistical data given likewise relates only to that province. They do not include figures for Pretura Courts. The general comments offered are, however, uniformly true both for Pretori Courts in Bari and for all courts in the other ten provinces with which the Legal Officer stationed in Bari is concerned.

3. The Italian Courts in Bari Province are NOT complete in number. Their numerical deficiency has been the occasion for a number of representations from this Headquarters (Please see in this connection your AC/4001/2/L, dated 28 November 1944, addressed to the Minister of Pardon and Justice). An analysis of the staff position in the civil courts of Bari is attached hereto as Appendix A. This Appendix speaks for itself and shows that in the civil courts of Bari alone, there was as at 8 January 1945, a total deficiency of 34 magistrates. It will be noted in particular that Bari is and has been for some months, without either a First President or a Procuratore Generale although it is now understood that these magistrates have been appointed and will assume duty at some time or another.

4. With regard to the Tribunale Militare in Bari, it has recently received a communication from the Italian Ministry of War in Rome to the effect that its establishment would be reduced to the following : -

President	1
Lay members of court	3
Legally qualified members of court	2
Procuratore Generale Militare	1
Assistant Procuratore Gener.Mil.	4
Giudice Istruttore	1
Registrar and clerks	4

with a reserve of four additional assistant Procuratori Militari and 3 clerks who may be called in for emergencies. In addition, the Tribunale has been told that all NCO's and soldiers who are at present on temporary detached duty from their parent units and employed on various duties by the Tribunale and Procuratore Militare must be replaced forthwith by civilians. With its present staff of nine officers on the bench side and seven on the Procuratore side surplus to establishment, the Tribunale is just able to maintain two sections, each section being composed of a President, a legal member and three lay members of the bench. Notwithstanding the maintenance of two sections sitting simultaneously and continuously, there are still at the time of writing, 240 cases affecting Allied interests awaiting trial by the Tribunale Militare. The figure of 240 pending cases represents an appreciable reduction from the figure of 307 shown as pending at 18 November 1944 and this is mainly due to the fact that the standing Allied Military Courts set up in the Bari area towards the end of November 1944 have diverted a large proportion of the traffic of Allied interest cases from the Italian Courts. If the Tribunale Militare is to be reduced to the establishment set forth above, it will be compelled to close down one of its two sections. Should this happen and the Allied Military Court be abolished, congestion in the judicial work affecting Allied interest cases will quickly pass into unmanageable proportions. I am, however,

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addressing a separate communication to you on this aspect of the matter.

5. Subject to the qualifications hereafter stated, the Italian courts in Bari are, upon the whole, co-operative in spirit. This applies particularly to the Tribunale Militare which under its present President and Procuratore is undoubtedly making a gallant effort to achieve the well nigh impossible. The exceptions are the Pretore of Bari and the Tribunale dei Minorenni which, under an outward appearance of willingness to co-operate and unfailing courtesy, raise every possible obstacle that the Italian procedural system provides to prevent the prompt and severe punishment of offences affecting Allied interests (Please see in this connection paragraph 15 of the RLO's report for the month of December 1944).

6. The Italian courts in Bari are NOT effective in operation from the point of view of protection of Allied interests in a very large and important Port and Base area. The fact is indisputable that neither the severity of their sentences nor the speed of their proceedings over a period of approximately one year, was sufficient to prevent large and increasing pilferage of and damage to ammunition and stores of the Allied Forces. Complaints from the various military authorities in various parts of the Bari Zone and indeed from AFHQ itself are illustrative of this state of affairs. The fact, however, that Allied Military Courts during a very short period have been able substantially to improve the position is a clear demonstration of the ineffectiveness of the Italian Courts to deal with it. Indeed, it has been reported to me recently by letter under the hand of the OC, Number 14 BAD, that during the month of December 1944, there had been no major item of pilferage in this depot. He states that it is known that six of the leading criminal characters in Bitonto have temporarily left that area since the establishment of the permanent military courts and he pays tribute to the presence of these courts in the area and the publicity given to their proceedings for this, on the whole, satisfactory state of affairs. It is true that since the OC, 14 BAD, wrote his letter, two major cases of theft of ammunition have been³⁴ reported and are awaiting trial by the Superior Court in Bitonto.

The reasons for the ineffectiveness of the Italian courts are I suppose to some extent a matter of personal opinion. the RLO has set these out at length in his report, Number L/4091,

dated 18 October 1944, which is basically the document upon which the decision to set up military courts in the Bari Zone was eventually made. The cumbersomeness of the Italian legal procedure, the waste of man-power involved in that procedure, the necessity for release of accused pending appeal in the all too frequent cases in which the accused are entitled to be at liberty pending trial, and the unwillingness of many magistrates, for various reasons, to impose sentences which take adequately into account military necessity, must here be noticed.

7. By reason of the fact that the Allied Military Courts in Bari were limited in jurisdiction both in respect of class of case and place for sitting, as also for other reasons, I instructed that the Italian Courts in Bari Zone should not be wholly excluded from the trial of cases in which Allied Military interests were involved and Major Boyd-Carpenter was accordingly ordered to organize the work in such a way that a selection would be made of those cases which were to be tried by the Allied Military Courts and of those which would be left to the Italian courts for action. Accordingly the Italian Courts are continuing to handle a large number of Allied interest cases. Between 18 November 1944 and 6 January 1945, they tried 581 of such cases. In general, they have tried all cases relating to prostitution (of the unsatisfactory nature of their dealings with which you have already been apprised), assaults on troops, bribery, possession of WD property of less value than five hundred lire and all offences committed by Italian troops. Generally speaking, the sentences though higher than they were a few months ago, are still too low to deter the commission of such offences and a certain number of cases result in acquittals on a technicality, for example, lack of a "querela". Further as already pointed out, it is not possible for them, for procedural reasons, to ensure that prompt and continuous incarceration of offenders which is of the essence of the suppression of crime.

8. There were pending in the Italian courts at 2359 hours, on 6 January 1945, 426 cases affecting Allied interests. During the last few months, in consequences of ceaseless pressure from the RLO and his officers on the spot, the number of cases pending, though still too high for real efficiency, has been progressively

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reduced from the high figures reached during the summer of 1944. This result, however, has only been achieved by a rigid insistence upon priority for Allied interest cases and at the cost of an ever increasing total of arrears of non-Allied interest cases. As at the same time and date, as above, the number of criminal non-Allied interest cases pending was 25,012. This total increased by 348 during the seven days prior to 6 January 1945 and has increased by substantially the same amount for every week since figures have been available. In addition, 7,639 civil cases were pending as of the same date.

It is manifest, therefore, that the Italian courts are still in arrears even with the assistance of the Allied Military Courts in respect of Allied interest cases and that in so far as other cases are concerned, they have well nigh lost control of the situation.

9. This report, furthermore, is based on the assumption that the Italian courts continue to operate. The possible strike, which has already been reported to you, though postponed as a result of action taken by the Zone Commissioner, will in the opinion of the Law Officer for Apulia and Calabria take place in the near future unless decisive action to remedy grievances is taken by the Italian Government.

10. The facts being as they are stated above, I am of the opinion that it would be a mistake of the first magnitude now to abolish the standing military courts which, by their mere presence in Bari and Bitonto quite apart from their output of work, the deterrent sentences they are passing and the speed of their proceedings, have brought about a vast improvement in the sorry condition of affairs which once prevailed in the centres affected.

LFD/mo

LEGAL SUB COMMISSION	
CLO	
DELO	
Chief Counsel	
CJ	
Italian Section	
CL RKS	
12 JAN 1945	
	-5-


JOHN K. DUNLOP
Brigadier,
Regional Commissioner,
Southern Region, A.C.

APPENDIX "A"

SHOWING EFFECTIVE STRENGTH AS AT 8.1.45 OF PERSONNEL OF CIVIL
ITALIAN COURTS IN THE PROVINCE OF BARI AS COMPARED WITH FIXED
ESTABLISHMENTS

	<u>Establishment</u>	<u>Strength</u>	
<u>Court of Appeal -BARI-</u>			
First President	1	- - -	
Presidents of Sections	5	2	
Counsellors	19	16	
<u>Procura Generale -BARI-</u>			
Procuratore Generale	1	- - -	
Sostituti	3	3	
<u>Tribunale -BARI-</u>			
President	1	1	
Presidents of Sections	3	3	
Judges	26	17	
<u>Procura del Regno -BARI-</u>			
Procuratore del Regno	1	1	
Sostituti	6	3	
<u>Tribunale -TRANI-</u>			
President	1	1	
Presidents of Sections	1	1	
Judges	13	9	
<u>Procura del Regno -TRANI-</u>			
Procuratore del Regno	1	1	
Sostituti	3	2	3!
<u>Tribunale dei Minorenni -BARI-</u>			
President	1	1	
Judges	2	1	

	<u>Estab</u> <u>ishment</u>	<u>Stength</u>
<u>Procura dei Minorenni -BARI-</u>		
Procuratore del Regno	1	- - -
<u>Preture for Province of -BARI-</u>		
Primi Pretori, Pretori e Uditori	35	27
Totals	124	90

Total deficiency in magistrates 34

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HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4173/L.

/rlp.
11 January 1945.

SUBJECT : Pari Courts.

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

1. Further to our letter of 1 Jan 45, the Chief Commissioner is anxious to send a reply to the Prime Minister as soon as possible.
2. Please therefore expedite the replies to the questions raised in our letter.

By command of Rear Admiral STONE:

W. E. DEHRENS,
Colonel,
Deputy Chief Legal Advisor. 29

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

(11A)

AS/4473/L

1 Jan 45

SUBJECT: A. I. Courts in BARI

TO : Regional Commissioner, Southern Region
(att: Regional Legal Officer)

1. The Prime Minister has written to the Chief Commissioner requesting cancellation of the permanent Allied Courts in the Bari Zone. He points out that the existence of these courts is *damaging* to the prestige of the Italian Government and he alleges that the Italian judiciary in the area are complete in numbers, cooperative in spirit and effective in operation.

2. In order that a reply may be forwarded to the Prime Minister's letter please advise as soon as possible

- (a) the extent, if any, to which local courts are now handling allied cases and the results of any such trials now being held by them
- (b) whether in fact the Italian courts are keeping up to date with the flow of work in the area apart altogether from the type of cases being heard in A. I. Courts.

By Command of Rear Admiral STINE:

W. E. BARKER,
Colonel,
Deputy Chief Legal Officer.

Trans. ionThe President of the Council of
Ministers

23136/19.10

31 DEC 1944

Rome, December 29th 1944

10A
Eng

Dear Admiral,

I have given all my attention to your letter Ac/4173/L of 12 November, about the institution of Allied Tribunals in the Bari and Bitonto region, and I had the competent Italian Authorities make thorough inquiries about the inconveniences you pointed out.

The Minister Keeper of the Seals has now transmitted to me the enclosed report which points out all the negative and unfavourable aspects inherent to this regulation, and also shows all what has been and is being done by the Italian Judiciary organs to satisfy, in a true spirit of collaboration, the requirement of the Allies and give them the full, unconditional and objective help of our magistracy.

I shan't stop speaking about the technical aspects of the projected regulation, aspects which have been made sufficiently clear by the above mentioned note, but I want, my dear Admiral, to draw your particular attention on the political aspect of the question which is particularly serious.

Since last June, when I agreed to preside the Government of the country, my constant aim has been to reinforce by every means the prestige and authority of the Italian democratic State, for I am convinced that it is only through the good functioning of its traditional institutions that Italy will be able to give the Democracies such collaboration as she is eager to give.

The work of reconstruction of the chief institutes of the State is going forward slowly but safely, so that now only, and not even in all sectors and all provinces, submitted to Italian Administration, we begin to see the first results of this difficult and delicate work.

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Admiral Stone
Chief Commissioner of the Allied Commission
R o m e

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While explaining a few transitory deficiencies of organization, which are nevertheless promptly cored with, this enables us to see how much the announced regulation establishing Allied Tribunals in the Bari and Bitonto region might prejudice the efforts made in this sense by the Italian Government. This seems very serious, the more so as the prestige and authority of the State would be compromised in the very Southern regions where recent experience has proved the need for a strong and powerful State organization, to nip in the bud the anti-national forces which do not help the war effort of the Allies and prejudice the contribution that the Italian nation can and must give to the common cause.

Considering this, I beg you my dear Admiral, to trust the assurances given by the Italian judiciary authority in the enclosed note, and to see that the announced regulations be suspended so that the main functions of the Italian Government shouldn't be so seriously diminished.

I remain, my dear Admiral,

Yours very truly,

S. I. Bonomi

e.c.

List
Action: ~~CA SEC~~ Legal
INFO: CHIEF COMM
C or S 25

NOTE10B
Eng

The decision to institute Military Tribunals in the Bari and Bitonto zone would be an obvious act of mistrust towards the work of our magistracy, and create an unfavourable impression among the population of these regions which have now been back under Italian authority for quite a long time.

On the other hand, this resolution does 't seem to be justified for the chiefs of the Appeal Court of Bari, fully conscious of the requirements of justice in this zone, have already asked for the judiciary personnel to be completed, so as to be able to proceed without delay to the definition of the penal proceedings which are still pending, for offences against the Allies.

On his side the Minister hasn't failed to give satisfaction to the above mentioned requests by appointing new personnel, immediately substituting the magistrates who had been pensioned off, by adequate changes of seat, and by obtaining the discharge from service of some magistrates who were still under arms.

According to such regulations, the organic plan of the Appeal Court of Bari, composed of 5 Section Presidents and 19 counsellors is now complete.

Counsellor MAGGI Amerigo only hasn't resumed his service yet, for he was under arms, but his discharge was requested last October.

The Procura Generale and the local Procura del Regno have now a complete personnel, and the Tribunal, which includes 26 magistrates has one vacancy only because of the promotion in appeal of judge ANTONACCI Palmio, who will be substituted as soon as possible.

It must also be noted that the special requirements for the administration of Justice in the Bari region, and the wish of the Allies for a rapid change of the heads of the Court whom they didn't trust have found immediate comprehension in the last changes among the high ranking magistrates, including the appointment of the new First President and of the Procuratore Generale of the said Court, respectively substituting E. EX. Cuomo, discharged, and E. EX. De Santis suspended, because he is being submitted to a judgement of expiation.

To this we must add that, after the frequent requests of the Allies for a more rapid definition of the trials of the offences committed against their Army Forces, the attention of the competent judiciary officials has every time been drawn on the opportunity for these trials to be dealt with first, requiring the greatest activity from the magistrates about this matter.

On the occasion of the installation of the new Chiefs of the Court which is shortly to take place, the Minister Keeper of the Seals will not fail to impart precise instructions for a more intense rhythm of work to be taken by the dependent offices, through a better organization of the services, so as to grant a better efficiency of the personnel and the rapid definition of the trials related with the interests of a military character, mentioned in Admiral Stone's letter.

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fully conscious of the grave requirements of the present moment, the Italian magistrature will not fail to prove in this occasion too, its spirit of sacrifice to insure the regular functioning of justice in every field and particularly in that which is most directly related with the interests of the Allies and war needs.

e.c.



23/3/60

Il Presidente
del Consiglio dei Ministri

Roma, 29 dicembre 1944

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Tuc

Caro Ammiraglio,

ho attentamente considerato quanto ha formato oggetto della Sua lettera Ac/4173/2 del 12 novembre u.s. concernente la istituzione di Tribunali Alleati nella zona di Bari e Bitonto ed ho tenuto a far svolgere dalle competenti autorità italiane un'accurata indagine sugli inconvenienti da Lei segnalati.

Il Ministro Guardasigilli mi ha ora trasmesso l'accluso esposto nel quale, mentre si segnalano gli aspetti negativi e sfavorevoli che il provvedimento comporterebbe, si mette in luce tutto ciò che è stato fatto e si sta facendo da parte degli organi giudiziari italiani per venire incontro, nello spirito della più volenterosa collaborazione, alle necessità degli Alleati per fornire ad essi l'ausilio pieno, incondizionato ed obiettivo nella nostra magistratura.

Non intendo pertanto soffermarmi sugli aspetti tecnici del progettato provvedimento, aspetti che ritengo sufficientemente lumeggiati nell'appunto suddetto, ma desidero invece attirare, caro Ammiraglio, la Sua particolare attenzione sull'aspetto politico, di eccezionale gravità, che la questione riveste.

Fin da quando, nello scorso giugno, assunsi l'incarico di presiedere il Governo del Paese, l'intendimento di rafforzare con ogni mezzo il prestigio e l'autorità dello Stato democratico italiano, è stato il mio costante obiettivo, nella convinzione che solo attraverso l'ordinato funzionamento delle sue istituzioni tradizionali, l'Italia avrebbe potuto dare alle Nazioni Democratiche quel contributo di collaborazione che essa è ansiosa di conferire.

Ora quest'opera di ricostruzione dei principali istituti dello Stato va lentamente ma sicuramente progredendo, cosicchè solo adesso e non ancora in tutti i settori nè in tutte le provincie sottoposte all'Amministrazione Italiana, si cominciano a registrare i primi frutti di questo arduo e delicato lavoro.

Il ministro Guardasigilli mi ha già comunicato il suo
cluso esposto nel quale, mentre si segnalano gli aspetti negativi e
sfavorevoli che il provvedimento comporterebbe, si mette in luce tut-
to ciò che è stato fatto e si sta facendo da parte degli organi giudi-
ziari italiani per venire incontro, nello spirito della più volentiero
sa collaborazione, alle necessità degli Alleati per fornire ad essi
l'ausilio pieno, incondizionato ed obiettivo nella nostra magistratura.

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ci del progettato provvedimento, aspetti che ritengo sufficientemente
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Ammiraglio, la Sua particolare attenzione sull'aspetto politico, di ec-
cezionale gravità, che la questione riveste.

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attraverso l'ordinato funzionamento delle sue istituzioni tradizionali,
l'Italia avrebbe potuto dare alle Nazioni Democratiche quel contributo
di collaborazione che essa è ansiosa di conferire.

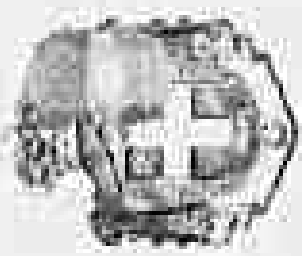
Ora quest'opera di ricostruzione dei principali isti-
tuti dello Stato va lentamente ma sicuramente progredendo, cosicchè
solo adesso e non ancora in tutti i settori nè in tutte le provincie
sottoposte all'Amministrazione Italiana, si cominciano a registrare i
primi frutti di questo arduo e delicato lavoro.

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All'Ammiraglio
ELLERY W. STONE
Capo della Commissione Alleata

R O M A

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*Al Presidente
del Consiglio dei Ministri*

- 2 -

Ciò, mentre spiega alcune transitorie deficienze di organizzazione, che vengono però prontamente affrontate, permette di apprezzare quanto il preannunziato provvedimento di istituire Tribunale li Alleati nella zona di Bari e Bitonto rischi di pregiudicare gli sforzi che il Governo italiano va compiendo in questo senso. E ciò appare tanto più grave in quanto il prestigio e l'autorità dello Stato verrebbero compromessi proprio in quelle regioni meridionali dove l'esperienza, anche recente, ha dimostrato la necessità di un apparato statale forte ed autorevole, per stroncare l'affiorare di forze subdolamente antinazionali che non facilitano lo sforzo bellico allegato e pregiudicano il contributo che il popolo italiano può e deve dare alla causa comune.

Alla luce di queste considerazioni, La prego dunque, caro Ammiraglio, di voler prestare credito ai rassicuranti affidamenti dati dall'autorità giudiziaria italiana nell'accluso appunto e di voler disporre affinché il provvedimento annunciato venga sospeso, evitando al Governo italiano una così grave menomazione delle sue funzioni essenziali.

Mi creda, caro Ammiraglio, con la consueta cordialità

P. Ammiraglio

apparire tanto più grave in quanto il prestigio e l'autorità delle regioni meridionali dove to verrebbero compromessi proprio in quelle regioni meridionali dove l'esperienza, anche recente, ha dimostrato la necessità di un apparato statale forte ed autorevole, per stroncare l'affiorare di forze subdolanamente antinazionali che non facilitano lo sforzo bellico alleato e pregiudicano il contributo che il popolo italiano può e deve dare alla causa comune.

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Mi creda, caro Ammiraglio, con la consueta cordialità

G. Aramini

A P P U N T O

108
11/11

La decisione, di istituire dei Tribunali Militari a Bari e Bitonto, mentre costituirebbe un palese atto di sfiducia verso l'opera della nostra magistratura, non mancherebbe di suscitare un'impressione sfavorevole anche nelle popolazioni di quelle regioni, da tempo restituite all'amministrazione italiana.

Tale determinazione non appare, d'altra parte, giustificata, giacchè i Capi della Corte di Appello di Bari, pienamente consci delle particolari esigenze della giustizia in quella zona, hanno già richiesto che gli organici del personale giudiziario fossero completati, al fine specialmente di poter provvedere alla sollecita definizione dei procedimenti penali pendenti per reati in danno degli alleati.

Ed il Ministero, a sua volta, non ha mancato di soddisfare le richieste anzidette con nuove destinazioni di personale, con l'immediata sostituzione dei magistrati collocati a riposo, con opportuni trramutamenti di sede e promuovendo altresì il congedamento di qualche magistrato ancora trattenuto alle armi.

In virtù di tali provvedimenti, la pianta organica della Corte di Appello di Bari, composta di 5 presidente di Sezione e di 19 consiglieri, è ora al completo.

Solo il Consigliere MAGGI Amerigo non ha ancora ripreso servizio perchè richiamato alle armi: ma il suo congedamento è già stato richiesto fin dall'ottobre scorso.

Anche la Procura Generale e la locale Procura del Regno hanno ora

10/10

./.

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Solo il Consigliere MAGGI Amerigo non ha ancora ripreso servizio perchè richiamato alle armi: ma il suo congedamento è già stato richiesto fin dall'ottobre scorso.

Anche la Procura Generale e la locale Procura del Regno hanno ora l'organico al completo, ed il Tribunale, che conta un complesso di 26 magistrati, presenta una sola vacanza per la promozione in appello del giudice ANTONACCI Palmo, che sarà al più presto sostituito.

E' ancora da rilevare che le speciali esigenze dell'amministrazione della giustizia nella Regione di Bari e le premure degli alleati per il mutamento dei Capi di Corte, che più non godevano la loro fiducia, hanno trovato immediata comprensione in occasione dell'ultimo movimento negli

alti gradi della magistratura, con la nomina del nuovo Primo Presidente e del Procuratore Generale di detta Corte, in sostituzione rispettivamente di S.E. Cuomo, collocato a riposo, e di S.E. De Santis, sospeso dalle funzioni perchè sottoposto a giudizio di epurazione.

A ciò si aggiunga che, in seguito alle frequenti sollecitazioni degli alleati per una più rapida definizione dei processi riguardanti i reati commessi in danno delle loro forze armate, è stata ogni volta richiamata l'attenzione degli uffici giudiziari competenti sulla opportunità che la trattazione di detti processi avesse la precedenza, invitandosi i magistrati alla maggiore attività e solerzia in tale materia.

In occasione, poi, del prossimo insediamento dei nuovi Capi di Corte, il Ministro Guardasigilli non mancherà di impartire precise istruzioni affinché il più intenso ritmo di lavoro sia impresso agli uffici dipendenti anche mediante una migliore organizzazione dei servizi, così da consentire un maggiore rendimento del personale e la pronta definizione dei processi aventi attinenza con gli interessi di carattere militare di cui è cenno nella lettera dell'Ammiraglio Stone.

La magistratura italiana, pienamente consapevole delle gravi necessità del momento, non mancherà di dar prova, anche in questa occasione, del suo spirito di sacrificio, per assicurare il regolare funzionamento della giustizia in ogni campo e particolarmente in quello che più direttamente tocca gli interessi degli Alleati e le esigenze di carattere bellico.

(911)

AC/4173/L

12 Nov 44

My dear Mr. Prime Minister,

As you are no doubt aware, the Allied Military authorities in Bari have for many months complained of the thefts and acts of sabotage which have taken place in the various depots in that area. In particular they have repeatedly protested against the large quantities of ammunition which are either stolen or rendered unserviceable.

These complaints have been brought to the notice of the Ministry of Justice and the local judicial officials. The local courts, however, seem unable or unwilling to take a serious view of the cases which are brought before them.

The number of these offences is not decreasing in any way. The offenders are clearly guilty of acts hostile to the Allied forces and are in fact seriously prejudicing military operations and the prosecution of the war.

I regret to inform you that I consider it necessary in these circumstances to protect the Allied interests by the establishment of Allied Military Tribunals in the area, and I am accordingly authorizing the Regional Commissioner to convene regular Allied Military Tribunals in the Bari zone for the trial of such cases of this nature as he may consider necessary.

Yours very truly,

(Sd) ELLERY W. STONE

ELLERY W. STONE
Commodore, USN
Chief Commissioner.

His Excellency Ivanoe BONOMI
The President of the Council of Ministers
Italian Government
B O M I

4173

Legal S/C
2857
(8A)ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 471

9 November 1944

SUBJECT: Pilferage of Ammunition.

TO : Headquarters, Allied Commission,
APO 394.

1. In confirmation of telephone conversation this day (Colonel Behrens - Lt Bullowa) it is understood that an Allied Military Court is in course of being constituted to deal with the matters set forth in letter from Lieutenant General Clark to your Headquarters subject as above dated 1 November 1944.

C. E. Spottford Col. fr
CHARLES M. SPOTTFORD
Brigadier General, G.S.C.
Assistant Chief of Staff, G-5

5B

REG. SUB.	
DELO	
Chief Counsel	
CJO	
Italian Section	
CLERKS	
11 NOV 1944	

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ROUTINE

CITE: PHEG

65/10

1 NOV 1944

RESTRICTED.

Pilferage of ammunition Bahl is subject. In reply to your 6215 of 9 November and confirming our letter of 8 November same subject proposal is agreed.

DIST

ACTION: Legal S/C 2

INFO: 20 to 1/CC

4/CC

C.O.S.

C.A. Sec

File 2

Float

18

1642

1 6 4 3

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

RESTRICTED.

Pilferage of ammunition RAJ is subject. In reply to your 6245 of 9 November and confirming our letter of 8 November same subject proposal is agreed.

DIST

ACTION: Legal S/C 2

INFO: SC to 1/CC

4/CC

C.O.B.

C.A. Sec

File 2

Float

18

RESTRICTED

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NOV

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785016

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AFHQ

HQ ACC

6245

9 NOV

RESTRICTED

ROUTINE

LEGAL SUB COMMISSION

58

RESTRICTED PD

SUBJECT IS PILFERAGE OF AMMUNITION BARI CHA REFERENCE YOUR LETTER OF
FIRST NOVEMBER PD FAREN TO AMH FOR CHIEF ADMINISTRATIVE OFFICER
(ACTION) REPEATED GEORGE DASH FIVE (INFO) FROM HQ AC FAREN PD THE
COMMISSION HAS FOR MANY MONTHS MADE REPRESENTATIONS TO THE ITALIAN
GOVERNMENT IN THIS MATTER PD I FEEL THAT THESE FURTHER REPRESENTATIONS
WILL BE UNPRODUCTIVE OF FAVOURABLE RESULTS AND PROPOSE FORTHWITH TO
ESTABLISH ALLIED MILITARY COURTS FOR TRIAL OF THESE CASES PD DO YOU
AGREE QUERY

Copy to: SO to A/CC
Chief of Staff
CA Section

NICHOLAS W. DRAGNETT
MAJOR, A.G.D.
ADJUTANT

Dispatched by office C of S

1530 hrs 9 Nov 44.

17

1645

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

785016

36A

AMHQ

HQ ACC

6245

9 NOV

RESTRICTED

ROUTINE

LEGAL SUB COMMISSION

58

RESTRICTED PD

SUBJECT IS PILFERAGE OF AMMUNITION BARI CHA REFERENCE YOUR LETTER OF
 FIRST NOVEMBER PD PAREN TO AFHQ FOR CHIEF ADMINISTRATIVE OFFICER
(ACTION) REPEATED GEORGE DASH FIVE (INFO) FROM HQ AC PAREN PD THE
 COMMISSION HAS FOR MANY MONTHS MADE REPRESENTATIONS TO THE ITALIAN
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 WILL BE UNPRODUCTIVE OF FAVOURABLE RESULTS AND PROPOSE FORTHWITH TO
 ESTABLISH ALLIED MILITARY COURTS FOR TRIAL OF THESE CASES PD DO YOU
 AGREE QUERY

Copy to: SO to A/CC
 Chief of Staff
 CA Section

NICHOLAS W. DRAGNETT
 MAJOR, A.G.D.
 ADJUTANT

Dispatched by office C/S

1530 hrs 9 Nov 44.

4173
HEADQUARTERS ALLIED COMMISSION
APO 394
Office of the Chief of Staff
+++++

From Chief Staff Officer.

7 NOV 1944

REF - 1008/2/COS

Tel: 388

6 November 1944

SUBJECT: Pilferage of Ammunition.

TO : Deputy Chief of Staff,
Civil Affairs Section.

1. I enclose a letter from Chief Administrative Officer, Allied Force Headquarters, on the above subject.

2. Will you please take action as indicated in paragraph 4. I am directed to ask you to write a strong letter to the Italian Government since it is considered most important that this pilferage be stopped.

3. Will you also please forward in draft a reply to AFHQ for the signature of the Acting Chief Commissioner.

4. I am directed to say that the matter must be treated as urgent.

Richard R. R.
Chief Staff Officer
To the Chief of Staff

Encl:

Copy to: Major Quayle.

16

3842

1008
ALLIED FORCE HEADQUARTERS
C.A.O. Office

2314
So to A/c
A/c 838
5/11/44

1 November 1944

SUBJECT: Pilferage of Ammunition.

TO : Acting Chief Commissioner, Allied Commission,
APO 394.

1. This Headquarters has been informed that very considerable difficulty is being experienced in the maintenance of ammunition depots in and near Bari. Pilferage from these depots by Italian civilians has increased in recent months and losses of ammunition are such that a very serious problem has been created.

2. There has been widespread theft of ammunition, and also of parts of ammunition. In many cases the damage done to ammunition which has not been stolen has been substantial and may indicate sabotage.

3. Every effort is being made to guard and patrol the materiel in question. It is felt to be urgently necessary that the Italian Government cooperate in controlling this situation, particularly by means of prompt apprehension and prosecution of offenders and by judicial treatment of the offenders in accordance with the gravity of the offence.

4. It is requested that you will inform the Italian Government of the above, and that you will further advise the Italian Government that in the event of any laxity in the judicial administration it may become necessary to try persons charged with stealing War Department property before Allied Military Courts.

J. G. W. Clark

J. G. W. CLARK
Lieutenant General
Chief Administrative Officer

Copy to: Ord (B)
Q (Maint)



15

3843

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

AC/4173/c
~~AC/4173/c~~

/rlp.
2 November 1944.

SUBJECT : Allied Military Courts in Bari Zone.

TO : VP, CA Sec.

1. Herewith are submitted for your approval the recommendations for the institution of AM Courts in Bari Zone.

a. Authority to be delegated to the Regional Commissioner, SOUTHERN Region to appoint without reference to Hq AC, Summary and Superior Allied Military Courts in the Bari Zone for trial of offences involving:

- (1) Loss of or damage to Allied ammunition or supplies;
- (2) Damage to or interference with military installations of any kind;
- (3) Assaults upon or other interference with military personnel engaged in the performance of their duty in the area.

No authority to be delegated to the Regional Commissioner in respect of General Courts.

follows, b. Courts for trial of the above offences to be established as

- (1) Bitonto Zone: 1 Superior Court;
- (2) Bari Zone: 1 Superior and 1 Summary Court;
- (3) Circuit Courts: 1 Summary and 1 Superior Court.

c. Additional legal personnel required for the operation of these courts; 8 legal officers. These officers can be provided as follows:

- 2 officers who recently joined,
- 3 officers from Venezia Region,
- 2 officers now attached to Lazio-Umbria Region,
- 1 officer from Lombardia Region now attached to Toscana Region.

In the event of an Allied advance making it necessary to provide additional legal officers for the Northern Regions, some or all of these officers may have to be withdrawn.

d. It is considered by the Regional Legal Officer that one Public Safety Officer, if available, would materially assist in the prevention and ~~protection~~ of the crimes.

2. It is appreciated that if these courts are opened it may be necessary to close them on short notice should military operations make any sudden progress. It is nevertheless felt that even in a short time these courts could dispose of a large number of cases and that the ~~moral~~ moral effect which they would have both with the local population and upon the Italian courts, generally as well as locally, would be considerable.

3. It is therefore requested that authority be given for these recommendations to be put into operation at the earliest possible date.



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

Incls.

~~CONFIDENTIAL~~

(3A)

HEADQUARTERS
ALLIED CONTROL COMMISSION
CIVIL AFFAIRS SECTION
APO 394

WER/pa.
26 October 44.

AC/4173/L.

SUBJECT : Legal and Judicial situation in Southern Region.

TO : Regional Commissioner, Southern Region.

1. I have considered your R/1137 and R/1138 of 21 October 1944 and I agree that the situation disclosed by the Regional Legal Officer's report is unsatisfactory. I do not feel however that the position is such as to justify as recommending to the Acting Chief Commissioner the establishment of a military zone.

2. I am prepared, however, subject to the considerations enumerated in this letter, to recommend the establishment of Allied Military Courts in the Bari zone. I must point out however that in my opinion criminal proceedings, however rapidly or severely prosecuted, will never serve as an adequate substitute for a ~~efficiency~~ efficiency of military guards.

3. If Allied Military Courts are established, all charges and punishments will of course be under Italian law. It will not be possible for the charges to be settled in this HQ, as has been the practice in the past. You will presumably therefore require a prosecuting staff in each Court area.

I note your suggestion that a Police officer should be attached for prosecuting. I do not feel that this would be satisfactory and I think that a legal officer would be essential for this work.

4. Under the terms of restoration, the Allies are entitled to hold Military Courts, no qualifications being made of General, Superior or Summary. At the same time I feel that the constitution and powers of punishment of the Courts set up should be in accordance with the AMG Proclamations.

I should have no objection to the constitution of "Superior" and "Summary" courts in appropriate cases and I presume it is your intention to constitute permanent courts in the area. This again will involve additional legal personnel.

5. In present conditions it appears that a small number of Legal officers can be withdrawn from the staffs of the Northern Regions and is available for Southern Region. It would have to be clearly understood that, unless the ceiling of the Legal Sub-Commission can be raised these extra officers will have to be withdrawn from Southern Region when the Allied advance is substantially resumed. The Legal staff now allotted to the Northern Regions is entirely inadequate for Military Government when that area is fully occupied.

6. If Allied Military Courts are established in the Bari Zone I should be prepared to advise the Acting Chief Commissioner to authorize me to delegate to you the power to convene such courts in cases where operational

necessity requires an immediate trial and where it is inadvisable to have to refer the decision to this HQ. I am not prepared to recommend a complete delegation of my power in this matter.

7. In order therefore that I may be in a position to advise the Acting Chief Commissioner on all the aspects of the case will you please forward the following information :-

- (a) Location of proposed courts
- (b) Number and type of proposed courts
- (c) Anticipated volume of work
- (d) Additional legal personnel required
- (e) The classes of cases in which you desire to have delegated to you the power to convene courts.

FOR THE ACTING CHIEF COMMISSIONER :

_____, Brigadier,
 VP CA Sec
 Dep COS

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1129 ✓
SECRETC A See
(2A)HEADQUARTERS
SOUTHERN REGION, ALLIED CONTROL COMMISSION
OFFICE OF THE REGIONAL COMMISSIONER
APO 394

25 OCT. 1944

R/1138

21 October 1944

SUBJECT: 14 BAD, BITONTO.

TO: Headquarters, Allied Control Commission,
(Chief of Staff).

1. Under cover of this HQ letter R/1137, dated 21 October 1944, a copy of the Regional Chief Legal Officer's report on the Legal and Judicial Situation in this Region has been forwarded to you. Para 14 of the Report describes the critical situation which has arisen at 14 BAD as a result of sabotage.
2. The BITONTO dump covers an area of 150 square miles and the ammunition is stacked along a maze of roads and by-roads. The local population has discovered that ammunition includes components which can be used for civilian purposes of various kinds. It is also possible that the population includes true saboteurs who commit acts of direct sabotage to interfere with the war effort.
3. Owing to the inevitable size of the dump, it is practically impossible to protect the ammunition from interference during the night. For instance it is estimated that a complete division of troops would not insure total cessation of sabotage.
4. The result of the foregoing conditions is that really important quantities of ammunition are being sabotaged and - which is particularly dangerous - sabotaged in such a way that the damage is frequently not discovered until the ammunition has reached the front line. Machine gun belts are stolen by the thousands and the cartridges replaced in the boxes or thrown on the ground (3 million rounds have been lost in this way); carrying straps of 3 inch mortar shell boxes have been cut so that shells drop to the ground when the box is lifted; parachutes of illuminant mortar shells have been removed and the shells reassembled so that this cannot be detected; Artillery cartridges are emptied of all or some of the propellants and the shell replaced so that the loss is not detected; bags of cordite are emptied and the bags removed. The O/C of the BAD has stated that the situation is now of real urgency.
5. In order to meet this situation the following steps are recommended:

- a. That the area covered by the dump and, for say, a mile beyond should be declared a Military Zone. BITONTO is not a particularly important commune and no inconvenience to the ci-

SECRET

vilian administration is expected from such a declaration.

b. That this HQ attaches a Legal Officer to the BAD HQ and that 2 suitable Ordnance Officers be approved as members of any General Court, which it might be necessary to convene. The Legal Officer will conduct all Summary and Superior Courts ~~in~~ which it may be necessary to hold in the Zone and will also be available to preside on any General Courts.

c. That, insofar as accommodation can be obtained, the maximum number of first-quality Italian troops should be stationed in the military zone for guard purposes. Requisitioning should be freely used to find them accommodation (the commune has not earned the right of any special consideration in this matter). It is suggested that there is little duty which the Italian Army can do at present which is as important as this.

d. That a Public Safety Officer of a really energetic and aggressive character be attached to 14 BAD. The Police Officer would prosecute before the Military Courts and would put ginger into the Italian soldiers or CCR guards. A little really active saboteur-shooting might do wonders-but it needs an Allied Officer to conduct the chase.

e. That the widest publicity be given to the creation of the Military Zone and that strongly-worded posters should be erected throughout the zone warning saboteurs of the fate which awaits them if they are caught stealing or in possession of ammunition, its components or other Allied property.

f. These proposals are recommended for consideration as a matter of urgency. Military authorities have NOT been approached, pending your decision or views.

CET/jh

cc: RCLO

Comr, Bari Zone.


C. E. TEMPERLEY,
Colonel,
Regional Commissioner.

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4173
SECRET
HEADQUARTERS

CAS (1A)
SOUTHERN REGION, ALLIED CONTROL COMMISSION
OFFICE OF THE REGIONAL COMMISSIONER
APO 394

20 OCT 1944

6/1137

21 October 1944

SUBJECT: Legal and Judicial Situation in Southern Region.

TO: Headquarters, Allied Control Commission,
(Chief of Staff).

1. Attached herewith is copy of the Regional Chief Legal Officer's report on the legal and judicial situation in Southern Region as at 18 October 1944. It seems clear from this report that the conduct of legal and judicial matters by the Italian Courts in the region is not such as to meet the minimum requirements of security for the Allied Forces. In spite of repeated exhortations the general level of sentences is still far below that which is necessary if the sentences are to have any deterrent value at all.

2. The reduction in the number of Allied Troops in this region has made the protection of Allied stores and interests ever more difficult; prevention of sabotage and theft depends largely upon strong, and speedy judicial action. In the case of 14 BAD, BITONTO, the situation is already critical, and this is being dealt with in a separate letter as a special case. In the remainder of the area, and especially on the East side, thefts and illegal possession show little sign of abatement and the time has come when something must be done.

3. One method would be to declare as Military Zones (or return to AMG if that be possible) all areas where it is essential that rapid judicial action should be taken and deterrent sentences should be imposed. It is presumed, however, that any wide-scale use of this measure would be contrary to the policy of returning Italy to the Italian Government and would be objectionable on PR grounds.

4. A simpler and possibly more acceptable measure would be, if HQ ACC reduced very substantially the standard of seriousness of cases in which they are prepared to authorize the functioning of AMG Courts in the Southern Region. Military Courts of all grades, Summary, Superior and General, could then be held freely in those parts of the region where this is deemed necessary for the protection of Allied interests. This would have the treble effect of securing deterrent sentences, of ensuring quick judicial action and of setting a standard for Italian judges to follow in their own courts. The Italian authorities might be told that the action is necessary because, in spite of repeated warnings,

SECRET

Italian sentences are too low, and their justice too tardy.

5. It is, therefore, recommended on operational grounds that in this Region the Regional Commissioner on the advice of his Chief Legal Officer should be authorized to permit Summary, Superior and General Military Courts to function wherever and whenever he is satisfied that such action is essential in the Allied interest. Alternatively, if the power to permit such courts to function cannot be formally delegated to the Regional Commissioner, it is recommended that the same result be attained by ACC agreeing to authorize such courts on brief cabled or telephonic application from this HQ, relying on the discretion of the Regional Commissioner and the Chief Legal Officer not to overstep the bounds of any directive that ACC may issue on the subject as a result of this letter.

6. What I wish to stress for your consideration is that, if serious operational damage is to be avoided, two things are immediately essential:

Firstly: That offenders should be quickly punished and

Secondly: That the punishment should be severely deterrent.

As neither of these can apparently be obtained through the Italian Courts, it has in the opinion of the Regional Commissioner, become essential for military courts of all grades to be freely convened in an effort to stamp out crimes affecting the war effort.

C. E. Temperley
C. E. TEMPERLEY,
Colonel,
Regional Commissioner.

CET/jh
1 Incl.

cc: RCLO.

LEGAL SUB COMMISSIONER	
CLO	
DCLO	
Chief Counsel	
CIO	
Italian Section	
CL RK3	
23 OCT 1944	

SECRET

L-4091

SECRET

SUBJECT: Legal and Judicial Position, Southern Region.

TO : Regional Commissioner, Southern Region, ACC.

1. During the 7 weeks of my tenure of office as Regional Chief Legal Officer for the Southern Region, I have particularly concentrated all the available energies of my Division upon the task of securing a maximum of efficient effort from all Italian Courts functioning in the Region.

2. I have myself visited a number of tribunali, the seats of courts of appeal and the Italian Military Courts in the Region and have in the course of these visits seen what I believe to be a fair cross-section of the Italian judiciary committed to my supervision.

3. Wherever I have gone, I have stressed the undermentioned considerations:-

a. The supreme importance of giving priority to all cases in which Allied interests directly or indirectly are involved.

b. The supreme importance of forgetting the rights of individual offenders as apparently entrenched in the ordinary peacetime practice of taking into account the sociological desirability of reforming offenders and the supreme necessity of imposing sentences which will deter by their exemplary character other persons from committing those crimes which cannot have otherwise than an adverse effect upon the Allied war effort.

c. Pointing out clearly and firmly that rapidity of judicial action following upon police complaint is the keynote of all judicial effectiveness in the handling of crime, I have repeatedly endeavored to convince the Italian Judiciary that it is just as important that justice should appear to be administered as that it in fact is.

d. Dealing with matters of intention as they affect the destruction of Allied supplies of all sorts, I have constantly reiterated the doctrine that a man must be held to intend the reasonable consequences of his acts; that no one not an idiot interfering with ammunition for example, could believe that he was not deteriora-

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c. Pointing out clearly and firmly that rapidity of judicial action following upon police complaint is the keynote of all judicial effectiveness in the handling of crime, I have repeatedly endeavored to convince the Italian Judiciary that it is just as important that justice should appear to be administered as that it in fact is.

d. Dealing with matters of intention as they affect the destruction of Allied supplies of all sorts, I have constantly reiterated the doctrine that a man must be held to intend the reasonable consequences of his acts; that no one not an idiot interfering with ammunition for example, could believe that he was not deteriorating its effectiveness as ammunition.

4. The general impression that I have gained as a result of all these personal efforts and of consultations with my officers is that the above propositions have met with receptions passing from an apparent enthusiastic concurrence in them, through the various grades of lip service, and passive acceptance coupled with a mental reservation that they cannot be translated into action and ending with a thinly disguised hostility. Almost everywhere I have been accorded a patient and outwardly courteous hearing and everywhere, where I have raised matters of inadequacy of sentences, tardiness in bringing offenders to justice and the ever rising tide of judicial congestion in cases affecting the interests of the Allies I have been met some one or more of the following excuses:-

- a. Lack of transportation.
- b. Difficulty of communications,
- c. Inadequate staffing,

d. Lack of paper,

e. Congestion of prisons.

5. Looking at the staff position generally through my own eyes and those of my officers, I cannot escape the feeling that if a British or American judge disposed of the staffs which exist at all the courts I have visited, he would believe that he was looking upon the world through rose-colored glasses. It is of course quite impossible for me in the time and with the staff at my disposal, to state definitely, whether complaints of inadequacy of staff are or are not, well founded and I have not attempted to do so. I can only say that when I have directed the attention of the Italian Judiciary to the short hours that they work officially, to their observable unpunctuality in even keeping to these hours and to the lengthy vacations through which I found them passing on my assumption of duty here and which do not yet even appear to have expired, they have merely shrugged their shoulders and conveyed the impression that these things at any rate were, like the laws of the Medes and the Persians, things that could not be altered. In addition to other causes for lack of expedition in the dispatch of work that I have had to listen to, I have also been told of difficulties in the way of sending Courts of Assize, for example, on circuit for the reason that it is necessary to find accommodation for the relatively large staff which must accompany the Court on its travels in towns where such accommodation is either not at all available or is inadequate. I am doing what I can, but it is of necessity not much, to solve the transportation difficulty. This involves the provision of motor transport which we have not got and the use of rail transport which either is not functioning or is functioning only for military purposes.

6. With regard to difficulties of communication, I have asked officers, where these exist in the Region, to allow the Italian Courts to use their official means for the conveyance or mail for the transmission of Italian official acts.

7. The problem of inadequate staffing is of course one which I suppose ultimately depends upon the Minister of Justice for its solution. On this point when I have exhorted all courts to bear in mind the fact that the war in Italy is still in progress and that they can help the Allied war effort by endeavoring to carry on with the minimum of staff, I am immediately confronted with the proposition that under the Italian Law so many judges and so many Consiglieri and so many of this and so many that are required properly to constitute some court or another or some section of it.

8. In regard to lack of paper, I have already taken this matter up with HQ AGC in Rome and pointed out the position which is

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8. In regard to lack of paper, I have already taken this matter up with HQ ACC in Rome and pointed out the position which is arising in some parts of this Region owing to lack of paper. It is a well known fact that under the forms of the Italian Law an immense amount of paper work is necessary and it is becoming something of a task to supply the courts with the material most essential to their proper and efficient functioning.

9. As to the congestion in the prisons, this is a matter quite outside my functions but I have in consultation with the Foggia Zone Commissioner endeavored to set on foot action to secure the release from army requisition of the San Severo Prison in Foggia.

10. As far as the obtaining of accommodation for the Assize Courts is concerned particularly in bomb-blasted centers like, for example, Benevento, I am endeavoring to arrange for some sort of accommodation through the Town Major and I have in general instructed all officers to do everything in their power to help the Italian Judiciary to get on with their job.

11. Although the utmost energy has been displayed by us all in our attempts to secure that degree of efficiency from the Italian Courts which alone is commensurate with the urgency of the war effort; although I have endeavored to mix persuasion and aggressive firmness with a word of commendation here and a word of appreciation and encouragement there for the smallest visible improvement; and although I think that some progress has been made on the whole and that some improvement has been effected, I am satisfied that this is not proceeding and never will proceed at the tempo which it is necessary to achieve for it to be safe to say that the effective protection of Allied supplies of all kinds can be entirely or almost entirely left in the hands of the Italian Courts. Sentences remain in general inadequate, measured by the deterrent standard; justice on the whole is tardily administered and the net result is unsatisfactory.

12. I do not propose to burden this report with masses of statistics. These have already been supplied in my own divisional reports, in the interim reports of my officers, and with great lavishness, in the most recent and useful report of Major LITTLE. I have in addition set up a system which is only just beginning to function, that will furnish me with uniform judicial statistics throughout the Region. The system has been revised and re-revised and has been explained to all concerned. It will suffice for me to quote a few examples in this report illustrative of what I have said above.

In the Tribunale of Santa Maria C. V., I found that one of the judges had tried to reach an outlying place where he had to conduct an Istruttoria, mounted on the back of a mule. He was on this journey accompanied by another judge or segretario who, before the journey's end had been reached, fell off his mule and was hurt. I do not recall whether the remaining judge reached his destination. In any case I think I refrained from asking! In another instance a section of the Court of Appeal in Naples was dispatched to Campobasso in a weapons-carrier and on the return journey the vehicle left the road and to the best of my recollection, at least one of the judges was killed. I am informed that when they use ordinary means of transport for CC.PP. or witnesses, the cost is prohibitively high and in many cases is not provided for in the voted expenditure. In Lucera, the President of the Court of Assize, a gentleman of venerable years, stated that he could not get from place to place either at all or at any rate too late to be of any judicial use. I have asked the Zone Commissioner, if it would be possible to place these gentlemen on trucks taking out supplies and so forth and to help as far as possible in rendering them mobile. One of his officers, however, informed me that the Judiciary simply did not make much effort to use or to obtain whatever transportation was available - a statement which rather confirms me in my general impression of the supineness of and the lack of active drive in the Italian Judiciary.

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In Lucera also I found the Tribunale of Lucera begging me for my assistance in the matter of obtaining paper, when in a room in the Tribunale of Foggia, situated in the same building, I saw masses of paper, which though not of any high quality could have been used for writing purposes.

In the Tribunale of Foggia I found 3 cases taken quite at random in which very considerable quantities of Allied supplies of all kinds had been stolen. The sentences passed in each case were one month and 500 lire, one month and 600 lire, and one month and 1,000 lire. The value of the articles stolen in each case would have shown a profit on sale over and above the fines, of many thousands of lire to the thieves. I pointed out the ridiculous nature of these sentences and after all other excuses had been tried and rejected, I was informed by the First President and by the Procuratore del Regno

that after all the very fact that these citizens had been convicted as thieves, was in itself a heavy punishment for them. I had throughout this interview noticed that the attitude of these two gentlemen was not only one of non-cooperation, but was indeed characterized by a thinly disguised hostility. In this impression I was confirmed by Lt. BANNO of the U.S. Army, who throughout the tour acted as my interpreter-officer. After I had told these two gentlemen what I thought of them, at the same time remembering the limitations upon my own powers and therefore so as to avoid giving offence, I abandoned the matter. I was then informed by the Procuratore del Regno that an appeal would be noted in each of the 3 cases. I left the building with a general complaint from all concerned including the Bar Council that there were some 250 appeals awaiting disposal. This number was later amended to 360.

13. Passing on to the Bari Zone, I interviewed personally the Civil Judiciary and the Military Tribunale Officers of Bari. I went to Taranto, where I did the same thing and from Taranto I proceeded to Brindisi, where, because I had arrived at 1440 hours I found the courts closed for the day. After wandering about this building for some 5 minutes, I discovered a "segregatorio" who said he would send for the First President and for the Procuratore del Regno. As by 1530 hours, these gentlemen, who we were told, lived quite near the court, had not put in an appearance, Lt. BANNO and I took our departure for Taranto. In the course of my interviews with the Civil Judicial Functionaries in Bari, Captain GERMAN placed before me a case in which a man had been charged with stealing 300 lbs. of cordite. The Italian prosecutor had considered that a sentence of one year and two months would adequately meet the justice of the case! It is perhaps irrelevant to mention here that the accused was in any event acquitted. It was not to the acquittal as such that I drew particular attention, but to the attitude of the prosecution representative himself, who had asked for a sentence of no deterrent value at all. The President and Procuratore Generale agreed with my views on this case.

I suggest that I have said enough in the foregoing to indicate perhaps only a few straws floating on the bosom of the stream but they are straws, nonetheless, which in my view show the direction in which the current is flowing. I observe that Major LITTLE in his report on page 3 of my copy makes a statement which perhaps, standing by itself, is correct. There has been some increase in sentences, but sentences are still far from adequate. In regard to the statement attributed to Major ROYD-CAPPELIER in Major LITTLE's report, I can only draw attention to this Officer's statement in his report, dated 4 October 1944, a copy of which has already been transmitted to HQ, ACC. I cannot refrain from quoting here two passages in this report: "It must be recollected that these cases are the mere froth on the deep sea of Italian cases pending," and again: "Military

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14. Against the above Italian judicial background, on the invitation of Colonel DEWEY, O/C LA BIA, conveyed to me through Captain GERMANN, I proceeded to PITOMBO to hear what he had to say about the enormous destruction of ammunition, which is taking place there and to see for myself what forms this destruction was taking.

I saw examples of how leather and cloth slings are cut from 84 pound boxes of antipersonnel shrapnel mines and the slings apparently made by those into whose possession they came into belts or twine.

The easy carriage of two boxes of these mines by one man is thus rendered impossible. I saw how machine gun belts with the cartridges therein arranged in the order of two tracer bullets to every four armor piercing bullets had completely disappeared and how the cartridges had simply been thrown back into the boxes loose and the boxes thereupon closed and wired down, so that to all outward appearances, they looked as if they had not been interfered with. These belts, we were told had been removed by the thousand, rendering useless hundreds of thousands of rounds of ammunition. We were told that some three million rounds of small arms ammo had been lost through being thrown upon the ground and afterwards trampled into the ground after their removal from the cloth bandoliers in which they were originally packed.

We saw how the carrying straps attached to 3 inch mortar shell boxes had been cut away as a result of which, when an attempt is made to lift the box, the shells drop out onto the ground. We also saw how the parachutes contained in illuminant mortar shells had been removed from these shells and how as a consequence, such shells instead of remaining suspended in the air for a certain time, to give light, fall uselessly to the ground. We were next shown how heavy caliber shells are dealt with. The projectile is removed from the shell case and the cordite emptied out. Thereupon the projectile is replaced in the shell case, so that to all outward appearances it is fit to function, whereas in fact it has become a dud. We were also shown an example of how a part only of the propulsive cordite charge is removed from the shellcase, so that the projectile falls short. It was explained to us how when SAA in clips is removed from the bandoliers and thrown upon the ground, it rusts and is thereby rendered useless. We were told that as much as 200,000 rounds have been lost in one night. Other examples were shown to us of ammunition destruction which I need not mention here. Whole bags of cordite are either completely removed or the cordite is emptied on the ground and the bagging material taken away. It is hardly necessary to stress as Lt. Colonel DREWERY did, the danger to masses of ammunition which cordite lying on the ground, if ignited, could bring about. Colonel DREWERY offered to show us still more examples of the destruction which is taking place, but time did not permit of my seeing any more. He indicated that the methods of destruction we had looked at represented about 10% of what is actually happening. He stated to me with all the emphasis that he could command, that such a situation could not be allowed to go on unchecked. He quoted an example of ammunition which had been thoroughly checked the night before for transmission to the line. When this ammunition was examined again the next morning, none of it was found to be intact.

Manpower shortage, he stated, made it impossible for him to guard the masses of material under his care and he expressed the firm belief that only swift and exemplary action on the part of military courts could do something, if not actually completely to

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Manpower shortage, he stated, made it impossible for him to guard the masses of material under his care and he expressed the firm belief that only swift and exemplary action on the part of Military Courts could do something, if not actually completely to cure, at any rate substantially to reduce the destruction which is going on in his BAD.

15. It is not for me to speak of the importance of the South of Italy in operations now taking place in the Mediterranean Theatre of this war, nor is it for me to question the policy decided at a much higher level than my own. Of course I do not do so but it is, I apprehend, my duty to state the facts as I see them and as I know them to be, and to point out that in my opinion the Italian Courts are not functioning satisfactorily certainly in the Bari Zone and that in my opinion quick and vigorous action by Allied Military Courts is requisite to put an end to what I feel I am bound to say is my conviction, namely, that ammunition destruction has assumed proportions which seem to go beyond a mere desire to thrive. It is true that we were shown rather pathetic examples of the use to which some of the material taken from the ammunition is put. We were shown, for example,

a child's jacket made out of an ammunition bandolier, and we were shown a sock being knitted from the twine that had been made available from a sling, but I am tempted to wonder whether these pathetic examples of lack of wearing apparel are not produced to throw dust in the eyes of the courts and to cloak a far more sinister intent. Before I left Bari, Major BOYD-CARPENTER was arranging for Lt. Colonel DREWREY to give a lecture to all the available Judicial functionaries on the subject matter of this paragraph, subject of course, to security limitations.

15. In what has gone before, I do not wish to be understood to be indicting the bona fides of the Italian judiciary as a whole; I feel that under continuous stimulation some of its members are trying to be cooperative, more particularly perhaps on the western side of this Region; but I am clearly of the opinion that the Italian Courts with their short hours of work, with their long vacations, with their cumbersome procedure, with the masses of documentation in which they have to indulge and with the difficulties, some real and some illusory, with which they have to contend, are not capable of measuring up to the demands of a war situation, which calls for rapid, determined and deterrent action.

16. I accordingly recommend that Bari Zone or such portions of it, as can be easily defined, should be created a Military Zone in exactly the same way as Naples Commune is. Having heard Colonel DREWREY and seen what he had to show us, I find it difficult to appreciate how a great BAD can stand in need of less protection than the Port of Naples. I also recommend that for Foggia Zone some system be devised whereby Allied Superior and Summary Courts can sit whenever and wherever necessary.

Even in the case of those Tribunali depending upon the Appeal Court of Naples under the supervision of an officer stationed at this H.Q. which are, on the whole, more generally satisfactory in their work than is the case elsewhere, I have very recently had two complaints from Comd. 3 District in cases in which no conviction took place at all although the evidence from the written reports seems very strong. In one of these cases Cpl. Cooper, C.M.P., the principal witness had been commended by the Dist. Comd. through D.R.O.5 for the tactful and courageous way in which he had effected the arrests.

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