

ACC

10000/142/981

LEGAL S/C OF
OCT. 1943 - JAN

10000/142/981

LEGAL S/C OF ACC, ITALIAN MILITARY TRIBUNALS
OCT. 1943 - JAN. 1944

1470

SUBJECT MATTER

Italian Military Tribunals

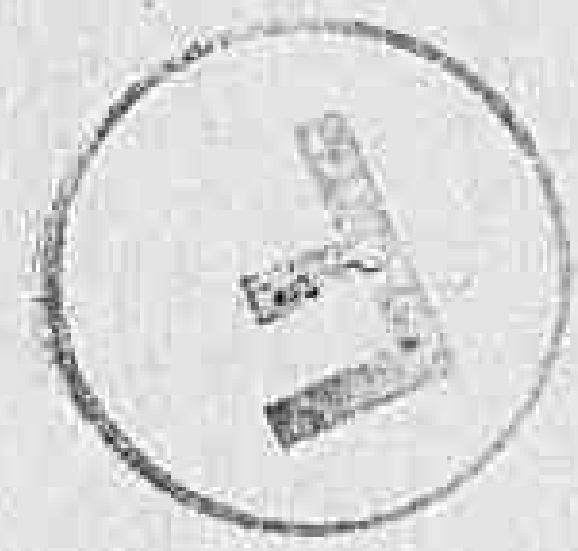
ITALIAN MILITARY
TRIBUNALS

Acc/4/101

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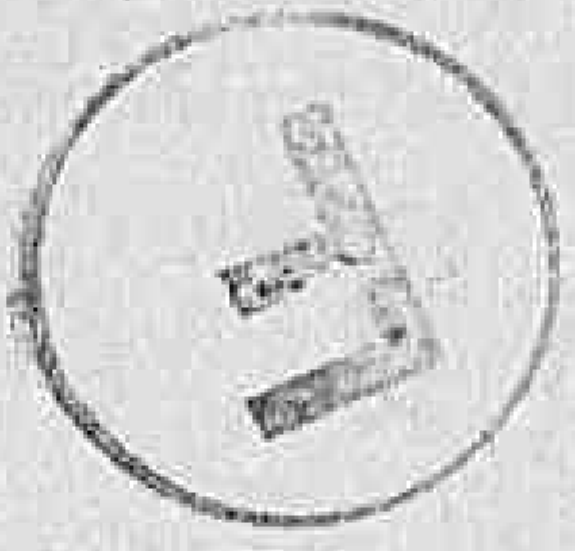
FEDERAL SUPPLEMENTATION OF ALLIED CONTROL COMMISSION



1471



LEAD SUBCOMMISSION OF ALLIED CONTROL COMMISSION



10000 / 142 / 981

THIS FOR
 MAY 1943
 Oct. #3
 10 Jan. #4
 CATALOGUE

1911
 [Signature]

1
PENINSULAR BASE SECTION
SIGNAL MESSAGE CENTER

7 JANUARY 1944

SECRET

OPERATIONAL PRIORITY

PREMIER, MILITARY AIR BASE, CG PIR (FOR ENEMY FOR SHORTER)

ROME

PAGE 4 SIGNED JOIGL

061755A

071553A

18152 SVC 684

ROME

(PARAMOUNT TO CHIEF PATROL OF OUR MESSAGE 1853 DTG 061755A CHIEF FOUR
SERVICE 684)

THE UNDERSECRETARY FOR WAR REPORTS THAT ANG OFFICIALS IN COCABINA HAVE
DIRECTED THAT ITALIAN SOLDIERS WHO DESERTED IN THE PERIOD JULY 1941-SEPTEMBER
1941 BE NOT TRIED FOR DESSERTION BY ITALIAN ARMY COURTS MARTIAL. THE ATTITUDE
TAKEN BY ANG IS THAT THESE MEN MAY HAVE DESERTED AS A CONSEQUENCE OF EN-
COURAGEMENT GIVEN THEM BY ALLIED RADIO AND LEAFLETS. ANG FIFTEEN ARMY
GROUP CONCURS IN THIS VIEW POINT. CGC FIFTEEN ARMY GROUP CONSIDERS THAT
IT IS A QUESTION FOR DECISION BY COMMANDER IN CHIEF. THE ITALIAN ATTITUDE
IS THAT IF ANY DESERTED IN THE PERIOD IN QUESTION FOR REASONS OTHER
THAN COMRADES FOR WHICH THEY SHOULD BE AMENABLE TO MILITARY JUSTICE. THE
WAR MINISTRY CONSIDERS FAILURE TO PUNISH THESE MEN WILL DESTROY MILITARY
PRESTIGE AND DISCIPLINE. THE WAR MINISTRY SUGGESTS THAT TRIAL BE FORWARDED
AND THAT SUBSEQUENTLY AN ACT OF CLEMENCY BE CONSIDERED AND BE PROMULGATED

SECRET

IN FAVOR OF THE COLONIES. THE ALLIED CONTROL COMMISSION FORWARDED THIS
LETTER FOR YOUR DECISION WITH THE RECOMMENDATION THAT TREATY FOR DESTRUCTION
BE AUTHORIZED PERMITTING THE DEFENDENTS TO ABUSE THE EFFECT OF ALLIED
PROPAGANDA IN EVIDENCE AS A MITIGATING CIRCUMSTANCE. WE CAN WATCH THE
SENTENCES CLOSELY AND ENCOURAGE A LIBERAL POLICY OF CLEMENCY.

8253

SECRET

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PersonalSecret

26 Jan. 44.

Memo for Col. Upjohn —

Dear General —

Inclosed is the copy of your proposed cable from Toluna to Freedom or Italian deserters.

On my return here I found no action had been taken in the matter. I endeavored to have action taken as per draft cable inclosed — but ran into refusal to concure. Then it occurred to me that this was really a matter which should be sent back to Gen. H. Hq. in light of policy expressed in AFHQ EO 5. The JG agreed to that action, & we settled on that basis. Thus as long as I trust you secure freedom of action in the matter.

— * — 110

When I arrived here on the evening of Fri the 14th, I found Gen. Stalmer had been gone for two or three days — that the great men had decided

to go back to CES for authority to proceed on
basis of doc. of 22 Dec. Evidently, there was no
need to disturb you — & for myself I regretted
that I'd not been allowed to furnish my little visit
& see a bit of our operations. I shall seek an
opportunity for another trip.

— # —
This AFHQ ISO 5 seems to afford a
wonderful opportunity to empty my I N Pocket.

It was a great pleasure to be with you. I
appreciate your kindness. A rendezvous
Yours
Chab

101

*news from
from Italian*

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GRU/infy

HEADQUARTERS
ALLIED CONTROL COMMISSION

CABLE - OUTGOING

SECRET
ROUTINE
FROM PATIMA
TO FREEDOM FOR C IN C

Italian Army has instituted Court Martial proceedings for desertion against Italian soldiers who deserted the Italian Army while fighting the Allied Forces PD TO FREEDOM FOR C IN C FROM PATIMA SIGNED JOYCE PD Many of such soldiers deserted in response to appeals by Allies made by radio or dropping leaflets to lay down their arms PD

General Alexander is of opinion that such Court Martials should be prohibited but has asked us to obtain ruling from you before issuing instructions to Italian Government PD

It seems plain that all Italians who deserted in response to Allied appeals must be protected by Allies from consequences of desertion but in view of impossibility of ascertaining exact motives for desertion in each case we suggest we should give following instructions to Italian Government PD

All Courts Martial of Italian soldiers who deserted between 10 July and 8 Sept are prohibited but such prohibition is not repeat not to preclude Court Martial of Italian soldiers who failed to return to Italian Army in response to a Manifesto calling on them to return issued on October 6 PD

SECRET
(Equals British MOST SECRET)

406

10.1

SECRET

(Equivalent to SECRET)

DRAFT CABLE

To : Patina Secret

Repeat : Filtot Routine
 Fargo ~~to~~

Relayed to: Fairbanks

Following is reply to your 1856 of 6 January x We must not allow Italian soldiers to be punished for deserting in response to Allied appeals x In view of difficulty in ascertaining motive for desertion in particular case, following instructions should be given to Italian Government: Trial by court martial of Italian soldiers in respect of desertion between 10 July and 8 September is forbidden; but this does not preclude trial for failure to comply with Italian Government's manifesto of 6 October calling upon Italian soldiers to return to Army x

Coord with

G-1 (A)

JA

G-1 (B)

G-3

Distribution

G-1 (A)

JA

G-1 (B)

DJAG

G-3

AG Records.

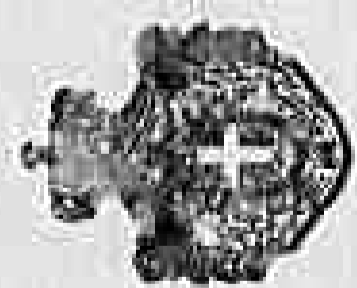
SECRET

(Equivalent to British MOST SECRET)

107

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P.M. 151, 126 dicembre 1943



COMANDO SUPREMO

ufficio affari vari

№ 3127 AV.

ALLA COMMISSIONE ALLEATA DI CONTROLLO

APC 394

O G G E T T O: Tribunali militari italiani. --

(riferimento 250.S - tribunali, del 7 corrente)

Con riferimento a quanto forma oggetto dello scambio di vedute circa i compiti e l'attività dei tribunali militari italiani, ritengo opportuno esporre il mio punto di vista in ordine alle norme stabilite dal Comando del XV Gruppo d'Armata.

1°) - Nella ho da proporre per quanto riguarda i civili, essendo essi sottoposti, nelle zone soggette al controllo delle autorità militari alleate, alla giurisdizione di queste per la durata dell'occupazione.

2°) - Le norme suddette, invece, riducono notevolmente l'importanza della nostra giurisdizione militare nei confronti degli appartenenti alle FV.AA. italiane.

Tale dato di fatto pregiudica la nostra disciplina militare che trova uno dei suoi principali fondamenti nel regolare esercizio dei poteri giurisdizionali da parte dei giudici militari italiani.

O G G E T T O: Tribunali militari italiani.--

(riferimento 250.5 - tribunali, del 7 corrente)

Con riferimento a quanto forma oggetto dello scambio di vedute circa i compiti e l'attività dei tribunali militari italiani, ritengo opportuno esporre il mio punto di vista in ordine alle norme stabilite dal Comando del XV Gruppo d'Armate.

1°) - Nulla ho da proporre per quanto riguarda i civili, essendo essi sottoposti, nelle zone soggette al controllo delle autorità militari alleate, alla giurisdizione di queste per la durata dell'occupazione.

2°) - Le norme suddette, invece, riguardano notevolmente l'importanza della nostra giurisdizione militare nei confronti degli appartenenti alle T.P.A.A. italiane.

Tale dato di fatto pregiudica la nostra disciplina militare che trova uno dei suoi principali fondamenti nel regolare esercizio dei poteri giurisdizionali da parte dei giudici militari italiani.

A mio avviso, ammessa la cobelligeranza e la presenza di militari italiani nelle zone occupate dalle forze alleate, devono anche esservi riconosciute la disciplina militare italiana e la particolare giurisdizione che ne assicura il rispetto. In caso contrario, l'esistenza delle forze armate cobelligeranti, ammesse in linea di principio, verrebbe implicitamente negata nella realtà.

Perchè la giurisdizione militare italiana possa raggiungere

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i suoi scopi occorre, soprattutto, non privare i giudici del necessario prestigio da cui debbono essere circondati.

3°) - Quanto al personale italiano impiegato dalle autorità militari alleate, cui eccenna il paragrafo b), nulla ho da osservare circa la necessità di ottenere il consenso del Governatore militare per procedere nei confronti dei civili; ma per procedere nei confronti dei carabinieri e degli agenti di polizia quel consenso non dovrebbe, invece, essere necessario. Questi militari, infatti, continuano a far parte delle FF.AA. italiane, qualunque sia il loro impiego e debbono perciò considerarsi direttamente sottoposti alla disciplina propria di queste e alla particolare giurisdizione che la garantisce.

Purtavia ad evitare un'azione svolta fuori della sfera di attività alleate, si potrebbe stabilire, a mio avviso, che i tribunali militari italiani diano immediatamente notizia al Governatore militare dei procedimenti da svolgere a carico di carabinieri, o agenti di polizia impiegati dalle FF.AA. alleate.

4°) - Il paragrafo d) ammette la possibilità che qualunque processo venga sottoposto, in qualsiasi momento, alle competenze di un tribunale militare italiano e attribuito a un altro tribunale.

Ritengo necessario far presente al riguardo che l'autorità dei tribunali militari italiani, la cui opera potrebbe essere interrotta in qualsiasi momento, rimarrebbe pregiudicata, e scapito sia della regolarità sia della celerità del procedimento.

5°) - La disposizione contenuta nel paragrafo e) abroge, implicitamente, tutte le modificazioni al libro IV del codice penale militare italiano di guerra, disposte con decreti emanati dopo la pubblicazione del codice.

Ritengo che la legislazione militare italiana dovrebbe essere accolta nella sua integrità, quale è attualmente. Le eventuali modifi-

la necessità di ottenere il consenso per procedere nei confronti dei carabinieri e degli agenti di polizia quel consenso non dovrebbe, invece, essere necessario. Questi militari, infatti, continuano a far parte delle FF.AA. italiane, qualunque sia il loro impiego e debbono perciò considerarsi direttamente sottoposti alle discipline proprie di queste e alla particolare giurisdizione che la garantisce.

Tuttavia ad evitare un'azione svolta fuori della sfera di attività alleate, si potrebbe stabilire, a mio avviso, che i tribunali militari italiani diano immediatamente notizia al Governatore militare dei procedimenti da svolgere a carico di carabinieri, o agenti di polizia impiegati dalle FF.AA. alleate.

4°) - Il paragrafo d) ammette la possibilità che qualunque processo venga sottratto, in qualsiasi momento, alle competenze di un tribunale militare italiano e attribuito a un altro tribunale.

Ritengo necessario far presente al riguardo che l'autorità dei tribunali militari italiani, la cui opera potrebbe essere interrotta in qualsiasi momento, rimarrebbe pregiudicata, a scapito sia della regolarità sia della celerità del procedimento.

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Ritengo che la legislazione militare italiana dovrebbe essere scelta nella sua integrità, quale è attualmente. Le eventuali modificazioni, che potrebbero convivere con suggerimenti delle autorità alleate, dovrebbero essere disposte dalle competenti autorità italiane.

Oltre a salvaguardare i principi relativi all'esercizio delle legislazione, sarebbe così evitata la disparità di trattamento che si potrebbe verificare se la procedura seguita dai tribunali militari italiani delle zone sottoposte alle giurisdizione del Comando del

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XV Gruppo d'Armata fosse diversa da quella seguita dagli stessi tribunali nelle altre zone dell'Italia liberata.

50) - La disposizione contenuta nel paragrafo f), che consente al Governatore militare di destinare uno o più ufficiali alleati e far parte dei tribunali militari italiani, ritengo debba essere oggetto di attempto esame.

In primo luogo va tenuto presente che l'applicazione della legislazione penale militare italiana è piuttosto complessa e richiede anche da parte dei magistrati una specifica preparazione. In secondo luogo, modificando il numero dei membri di un consiglio giudicante, se ne altera il funzionamento, specie per quanto riguarda la procedura da seguire nel pronunciare la sentenza; procedura che assume la massima importanza quando le decisioni debbano essere prese senza avere raggiunto l'unanimità.

Va osservato, inoltre, che non potrebbe parlarsi di tribunali militari italiani se anche una parte soltanto dei loro membri non fosse italiana, e che un tribunale la cui composizione potesse subire qualsiasi modificazione, perderebbe ogni autorità.

70) - Il paragrafo g) devolve al Governatore militare gli appelli contro le sentenze dei tribunali militari italiani fino a che non sarà costituito il tribunale supremo militare italiano.

Al riguardo faccio presente che è imminente la costituzione del tribunale supremo militare italiano per le terre liberate, che certamente inizierà la sua attività prima che si presentino le possibilità di proporre appello contro le prime sentenze che saranno pronunciate dai tribunali.

80) - Le disposizioni contenute nei paragrafi h) e j) diminuiscono notevolmente l'importanza delle sentenze dei tribunali militari italiani.

Se esse potessero essere modificate in qualunque senso dal Governatore militare, i poteri giurisdizionali sulle forze armate italiane

dei tribunali militari italiani, ritengo debba essere oggetto di attentato esame.

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7°) - Il paragrafo g) devolve al Governatore militare gli appelli contro le sentenze dei tribunali militari italiani fino a che non sarà costituito il tribunale supremo militare italiano.

Al riguardo faccio presente che è imminente la costituzione del tribunale supremo militare italiano per le terre liberate, che certamente inizierà le sue attività prima che si presenti la possibilità di proporre appello contro le prime sentenze che saranno pronunciate dai tribunali.

3°) - Le disposizioni contenute nei paragrafi h) e j) diminuiscono notevolmente l'importanza delle sentenze dei tribunali militari italiani.

Se esse potessero essere modificate in qualunque senso dal Governatore militare, i poteri giurisdizionali sulle forze armate italiane sarebbero in realtà esercitati da questo e l'opera dei tribunali militari italiani avrebbe solo carattere preparatorio. Ovè le sentenze da essi emanate potessero venire modificate in qualunque momento e per qualsiasi ragione, non raggiungerebbero mai l'autorità di cosa giudicata ("res iudicata") e perciò non potrebbero mai considerarsi vere e proprie sentenze.

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Confido, poi, che il Comando del XV Gruppo d'Armate non vorrà insistere sull'ultima parte del paragrafo j) che contempla l'esclusione, per sentenze gravi come quelle capitali, della conferma da parte del comandante dell'unità italiana cui il militare appartiene; conferma prevista dall'articolo 291 del codice penale militare di guerra e facilmente conciliabile con la conferma da parte del Governatore militare, se ritenuta necessaria.

In conclusione, rappresento l'opportunità che i tribunali militari italiani, qualunque sia la zona di loro competenza, esercitino la loro attività in base al vigente ordinamento della nostra giurisdizione, trasmettendo dettagliate notizie di ogni procedimento al Governatore militare alleato della zona.

In tal modo, sarebbero pienamente rispettati i fondamentali principi del diritto internazionale, che non amettono il funzionamento di un sistema giurisdizionale, modificandone la struttura e mutando, parzialmente ma profondamente, la legislazione da applicare.

Nello stesso tempo verrebbero accolte per la massima parte le proposte del Comando XV Gruppo d'Armate e sarebbe data, in un campo importante come quello della giustizia militare, una terribile prova della piena collaborazione tra le autorità alleate e quelle italiane.

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



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



DRAFT

*Maxwell
Taylor*

HEADQUARTERS
ALLIED CONTROL COMMISSION

John H. ...

2 January 1944.

SUBJECT: Italian Military Tribunals.

For Marshal A. Messe
Chief of Supreme General Staff.

I have received Your Excellency's letter of 26 Dec. 1943 (N. 3127 AV of Prot.) and am looking into the several points raised therein. Meanwhile, I should be glad to receive the assurance that Italian Military Tribunals are functioning with due regard to the rules in question.

MAXWELL D. TAYLOR
Brigadier General, U.S. Army.

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FROM COMANDO SUPREMO

N. 3127 AV of Prot.

26 December 1943

TO ALLIED CONTROL COMMISSION

SUBJECT: Italian Military Tribunals

In reference to the exchange of views on the functioning of the Italian Military Tribunals, the following expresses my opinion concerning the issue issued by the 15th Army Group.

1. No suggestions for what concerns civilians in the occupied zones as they are under Allied Military Control for the duration of the occupation.
2. For what concerns the military instead, the above mentioned rules hinder to a great extent the effectiveness of our own legal military courts.
3. The effect of this hinders the military discipline. The respect and powers of our military Tribunals must be maintained as it is one of the basic principles for discipline. It is my opinion that, once co-belligerency and the actual presence of Italian military in the areas occupied by Allied Forces have been established, then the Italian Military Tribunals should be given the respect and power to function under our own laws, which are the safeguards for the maintenance of discipline. Otherwise, the existing principles of co-belligerency would not exist in the true sense of the word.

In order that Italian legal power be effective, it is of the utmost importance that judges be not deprived of their prestige and powers.

For what concerns the Italian personnel in the employment of Allied Military Authorities, indicated in para b), I have no objection to the necessary consent from the Military Governor before charging ordinary civilians; but the consent should not be necessary for charging R. Carabinieri, or members of Police Forces. This military personnel as a matter of fact, belongs to the Italian Armed Forces, whatever be their temporary employment. Consequently they must be submitted to Italian military discipline and to its laws.

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1. No suggestions for what concerns civilians in the occupied zones as they are under Allied Military Control for the duration of the occupation.

2. For what concerns the military instead, the above mentioned rules hinder to a great extent the effectiveness of our own legal military courts.

3. The effect of this hinders the military discipline. The respect and powers of our military tribunals must be maintained as it is one of the basic principles for discipline. It is my opinion that, once co-belligerency and the actual presence of Italian military in the areas occupied by Allied Forces have been established, then the Italian Military Tribunal should be given the respect and power to function under our own laws, which are the safeguards for the maintenance of discipline. Otherwise, the existing principles of co-belligerency would not exist in the true sense of the word. In order that Italian legal power be effective, it is of the utmost importance that judges be not deprived of their prestige and power.

For what concerns the Italian personnel in the employment of Allied Military authorities, indicated in para b), I have no objection to the necessary consent from the Military Governor before charging ordinary civilians; but the consent should not be necessary for charging S. Carabinieri, or members of Police Forces. This military personnel as a matter of fact, belongs to the Italian Armed Forces, whatever be their temporary employment. Consequently they must be submitted to Italian military discipline and to its rules.

I would suggest however that, in order to avoid any action outside the sphere of Allied activities, directions be given that Italian Military Tribunals should inform the Military Governor whenever there is a charge against Carabinieri or members of Police Forces under the employment of Allied Forces.

4. Para d) says that the Military Governor may at any time withdraw a case from the Italian Military Tribunal and may order such case shall be heard and determined by such Tribunal as he may direct.

I deem it necessary to point out that the possibility of sudden interruption of proceeding would affect the authority of Italian Military Tribunals as well as hindering regularity and celerity of trials.

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5. Para e) cancels all the amendments of Book IV promulgated in various decrees issued after the date of publication of the Military Penal Code for War. It is my opinion that Italian Military procedure should be followed without court-martial, for, as it is now, any modification or change suggested by Allied authorities should be issued through the legal Italian authorities.

By following such a regular course:

first - the fundamental principles pertaining to the administration of military justice would remain intact;

second - we would avoid the danger of a difference between the procedure followed by Tribunal located in the 15th Army Group's area and that followed by the Tribunals in the other regions of liberated Italy.

6. Para f) says: Military Governor may appoint one or more officers of the Allied Forces to sit on any Italian Military Tribunal. I believe that such a point should be carefully considered.

First, for the application of the Italian Military penal law, which is rather complicated, a specific preparation is required.

Second, a modification in the number of judges alters the functioning of the Courts, specially for that which concerns the procedure of passing sentence: such procedure is of utmost importance, when a decision is not unanimous.

I further point out that if any member of an Italian Military Tribunal is not Italian, then such Military Tribunal ceases to be Italian, and that a modified Tribunal would lose its authority.

7. According to para g), all appeals are to be addressed to the Military Governor until it is possible to constitute the Tribunale Supremo Militare.

I point out that the constitution of the Tribunale Supremo Militare is imminent for the liberated territories and that its activities will certainly be initiated before there will be an opportunity for appeal to be heard of.

8. Rules of para h) and j) reduce to a great extent the authority of Italian Military Tribunals. Should sentences be modified by the Military Governor, the legal powers of Italian Armed Forces would be in effect exercised by the Military Governor, and the action of Italian Military Tribunals would

27 Dec 1945
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8. Rules of para h) and j) reduce to a great extent the authority of Italian Military Tribunals. Should sentences be modified by the Military Governor, the legal powers on Italian Armed Forces would be in effect exercised by the Military Governor, and the action of Italian Military Tribunals would be limited to a work of preparation.

If sentences issued by Italian Military Tribunals were liable to be modified in whatever sense or reason, such sentences would never carry the authority of "res judicata", and consequently could never be considered as final and effective sentences.

I am confident that the 15th Army Group HQS will not insist on the last part of para j), which abolishes confirmation on the part of the Italian Officer commanding the Unit to which the culprit belongs. Such confirmation is decided by Article 191 of Military Penal Code for War, and is not antagonistic once the confirmation of Military Governor is requested. **1004** is considered necessary.

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Summing up, I point out the advisability for Italian Military Tribunals, whatever area they may be functioning in, to be allowed to follow the existing rules of Italian law, forwarding detailed reports of each trial to the Allied Military Governor of the zone.

In such a way the fundamental principle and rights of international law would be fully respected. Such principles do not admit the legality of the functioning of a law system when the legal structure is modified and when legal procedure is partially and/or deeply modified.

Upon the acceptance of the modification herein, then the remaining rules set up by the 15th Army Group would be agreed upon, and in such an important field as that of military justice this would be concrete evidence of full collaboration between Allied and Italian Authorities.

THE CHIEF OF GENERAL STAFF
(Marshal G. Messe)

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THE CHIEF OF GENERAL STAFF
(Marshal G. Messe)

UFFICIO COLLEGAMENTO

h.p.e.

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION II

Adm Div 3
2390 34

15 Jan 44

20 JAN 1944

101

Ref: 2201/11/54

Subject: Italian Military Courts.

To : Chief Legal Office, Legal Sub-Comm. AMG-ACC Naples.

Ref your ACC/L/304 of 6 Dec there are no Italian Military Courts functioning in the Province of Salerno.

627

D.E.S. Cousins
D.E.S. COUSINS, Lt. Col.,
RCLO

Copy.

101

Headquarters
Allied Military Government
Region II

101

8 Jan 44.

RE 2201/14/52

Subject: Italian Military Courts

To : Chief Legal Officer, Legal Sub-Commission, A.C.C.

File

Ref your ACC/L/304 of 6 Dec there are no Italian Military Courts functioning in the Province of Potenza, any cases arising there being referred to Bari or Taranto.

(sgd) P. BLACKHOUSE

Major, RASC.
A.R.C.L.O.

577

577

SECRET

(Equals British MOST SECRET)

ALLIED FORCES HEADQUARTERS
Military Government Section

26 January 1944

Subject: Trial of Italian Deserters.

To : Headquarters, A.F.C.

1. Attention is drawn to your message 1856 of 6 January, raising the question what attitude should be taken on a problem raised by the Italian Undersecretary of War, namely, what policy the Italian Government is to be permitted to apply to Italian soldiers charged with deserting the Italian Army prior to the armistice but at a time when Allied propaganda was directed toward inducing such desertion. While the matter was under consideration at this Headquarters, AFHQ, G.S. 5 of 2 January was issued, expressing the policy that the C.C. in C. AFHQ should act for the President of the A.C. in such matters as shall be delegated to him. It is believed that the instant case presents a matter which should be decided within the A.C.F., it is accordingly resubmitted to Hq. A.C. for consideration and action.

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

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

A. T. MITCHELL,
Colonel,

Acting Chief, Military Government Section.

Incls: as above.

SECRET

(Equals British MOST SECRET)

9.

COPY

SECRET

(2)

HEADQUARTERS
PENINSULAR BASE SECTION
Office of the Commanding General
APO 782

5 January 1944

General Antonio Basso
Commander of the Armed Forces of Campania

Dear General Basso:

Thank you for your letter of 4 January bringing to my attention the situation with regard to the arrest of deserters from the Italian Army. I fully understand your position.

Inasmuch as this is a matter which affects all of southern Italy and not only this, it is being handled by Allied Control Commission. I understand that General Joyce has taken it up with the Commander in Chief and no doubt a sound policy will soon be announced.

Very sincerely yours,

A. S. PACE
Brigadier General, USA
Commanding

439

SECRET

97

S E C R E T

CIT

ARMED FORCES OF CAMERON
INFORMAZIONI

PROG. SEGRETO

S E C R E T

To: (M) (S) (C)
A. S. (S) (C)
A. S. O. 752

Dear General,

On 23rd December 1943, an English major, in company of the mayor of S. Marino Vesuviano, going to the village of Palma Campania, imposed the release of Sibile Antonino, arrested for desertion, following the order of the Military Tribunal.

On 24th December 1943, Lieut. Disbix, of the U. S. Military police, imposed the release from the prison of Rodigliano d'Arce (Naples) of the arrested Riccardo Domenico and Andreatti Michele, for desertion, following orders of the Military Tribunals of the 7th Army and Bari respectively.

The said officer invited the Carabinieri Commander of Rodigliano d'Arce not to arrest other soldiers denounced for desertion considering that such crimes had been committed in favor of the Allies.

I have informed you about these facts, in order to point out the eventual consequences they could assume if they should represent a system.

Even considering, indeed, that those crimes have been committed in favor of the Allies (experience has shown their egotistical and not idealistic origin) and even recognizing that the Allies have drawn some benefits from these desertions, the crime is persistent and represents the offense to law; practically the failure of the restoration of law, if existent, could produce the most undesirable consequences.

In fact, the failure to give punishment for such desertions, the veto to the Carabinieri to execute arrests, ordered by our Military Tribunal, the consequent obstacle to the functioning of the latter, spread and consolidated will more the conviction that the Italian Authorities are valueless, with the well known results on public order.

In the particular emergency case, such a system mines the bases of every possible reconstruction of the Italian Armed Forces a fact, also those units which are collaborating with Allied troops.

This system would be of great damage and would have serious consequences in the rebuilding of our Country, in which also the Allies are deeply concerned; and for the Allied Forces themselves, who would not find from the military and civil authorities that energetic help they have the right to

S E C R E T

S E C R E T

A. W. PING

-2-

14 January 1942

attend and that only discipline can guarantee.

Dear General, I hope you agree with my point of view and I beg you, therefore, to examine the matter in the spirit of comprehension so that events of the kind will not be repeated.

Believe me,

Very sincerely yours

THE COMMANDING GENERAL
ANTONIO BASSO

MB

S E C R E T

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

CSB/gmf

20 January 1946

In reply
refer to: ACC/L/101.

SUBJECT: BERETTA Emilio

TO : HQ 2nd District.

1. Returned herewith documents on above subject which you
were kind enough to loan us.

G. R. URJOHN, Colonel
Chief Legal Officer, ACC.

Enclosures:

1. Letter from CC 276 P.S. Section
2. Summary of case.

19 JAN 1944
2297

100

To Col G Upjohn
HQ ACC

HEADQUARTERS
ALLIED MILITARY GOVERNMENTS
LEGAL SUB-COMMISSION

File.

AMG/AD06/L

101

16 January 1944

under
Italian Military
Prisoners.

SUBJECT: Status of Italian Military Personnel.

TO : RHQ (thru SCAG) Region I.

1. Reference your RHQ 013.13/WHJ dated 10 Jan 1944.
2. Before this HQ can undertake to consider your enquiry it is necessary that it have your definition of the term "unparoled Italian Military Personnel" and full facts as to persons included therein.

R.H. WIMSON
Lt. Col. GAC
Deputy Chief of Legal Officer.

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

603

19 JAN 1944

2717

File: RLE 013.13/WHJ 1st Ind.

ALLIED MILITARY GOVERNMENT SICILY REGION HQ.

10 January 1944

TO: AMG HQ., APO 394.

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

For Lt. Col. SCIENTI, ADAC:

WILLIAM R. JORDAN,
Lt. Col. G. A. C.,
Regional Legal Officer.

jd

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(COPY)

ALLIED MILITARY GOVERNMENT

19 JAN 1944

2297

CIVIL AFFAIRS OFFICE
PROVINCE OF TRAPANI
13 via regina margherita
(TRAPANI SICILY)

SCAO/3050/L
7 January, 1944

SUBJECT: Status of Italian Military Personnel.

TO : Legal Division, Sicily Region Hq.

THRU : RCAO, Sicily Region Hq.

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

J.A. LANGFITT
Lt. Col. J.A.G.D.
S.C.O., Trapani.

JAL/jjd
FORWARDED:

FLOYED E. THOMAS
Lt. Col. Inf.,
S.C.A.O., Trapani

sent to Maj. Doe

101

Memorandum on Interview with Brig. Iush, 26 Dec. 1943.

No civilian will be permitted to be tried by Italian Military Tribunals within the 15th Army Group area.

101

COPY

AMG HQ

Region Two

21 December 43

Ref: 2201/14/39

Subject: Italian Military Courts

To: Chief Legal Officer
Legal Subcommittee
ACC

1. The SLO for Catanzaro has asked me several questions concerning the Rules recently promulgated for the supervision of the work of Italian Military Courts.
2. The Procuratore of the Military Court at Catanzaro has not yet received any orders from his commanding officer concerning the rules or the procedure to be followed. Because the Rules were marked SECRET the SLO has hesitated to communicate their contents without receiving explicit authorization to do so. Would it be advisable to have the Rules distributed to the Italian General Staff, and by them passed down to the appropriate units?
3. In paragraph (g) does the "record" referred to consist merely of the verbale di dibattimento, or should all the papers be forwarded?
4. Has any officer as yet been appointed to exercise the powers of the Military Governor to examine and review the sentences of the Military Tribunals?
5. The SLO states that he had understood that the correct date of the Military Penal Code of War was 1 Oct 41 and not 20 Feb 41.

Mark DeW. Howe, Major AUS
RCLO, Region 2

83

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1305

101
Major Thibault 29 DEC 1943
Subject:- TRIAL OF ITALIAN DESERTERS. *9871*

H.Q. No.2 District, C.M.P.
Tele. No. Ext: 13574.
Ref: 30.A.

Allied Control
Commission.

27 Dec 43.

The attached 2201/14/35 of
18 Dec 43, from AMG, Region II, is
forwarded for action please.

[Signature]
Major-General.
G.O.C. No.2 District.,

T.O.O. 1500 A.

CONFIDENTIAL

Major Thibault
Please draft letter to
military mess by Lt 88
Gene Taylor.

262

29 DEC 1943
101
871

AMG
HEADQUARTERS
REGION 2

Ref. 2201/14/35

18 December 1943

Subj. Trial of Italian Deserters.

To: Headquarters
No. 2 Dist.
BARI

1. Recently we inquired of the Chief Legal Officer of AOC and AMG what policy he believed should be followed in Region II with respect to the trial by Italian Military Courts of Italian deserters who, in apparent response to Allied appeals, had deserted from the Italian army prior to the Armistice.

2. Replying to this inquiry the Chief Legal Officer says:
"It is of course entirely agreed that all Italian soldiers who deserted in response to our appeals must not be tried in respect of such desertion..."

3. In accordance with the C.L.O.'s further suggestions on the proper method of handling these cases, I respectfully request that orders be issued to the Italian troops in Region II, forbidding the trial of any soldiers for desertion in response to Allied appeals prior to the Armistice.

4. For your information we enclose a copy of the Rules for the Establishment of Italian Military Tribunals which were recently distributed to C.A.O.'s. in this Region on the instructions of HQ, AMG.

G. H. Mc Caffrey
G. H. McCaffrey
Lt. Col., Inf.
R.C.A.O.

GHM/pjh

SECRET COMINT BRITISH REPORT

Rules for the Establishment of Italian Military Tribunals

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

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

(i) No sentence of death imposed by an Italian Military Tribunal shall be executed until confirmed in writing by the Military Governor or by a

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

20 DEC 1943 871

- 2 -

shall be transmitted to the Military Governor and if such person is not brought to trial within twentyeight days from the date of service of such charges a report setting for the reasons for such delay shall be transmitted to the Military Governor.

Delay shall be transmitted to the Military Governor.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee.

ACC/gmf

29 December 1943.

In reply
refer to: ACC/L/101.

SUBJECT: Amendments to Codice Penale Militare.

TO : Commanding Officer, c/o Italian Liaison Section,
Allied Control Commission.

It would be appreciated if this Subcommittee could be supplied with the texts of all amendments or additions to the Codice Penale Militare since the Code was last published in 1941.

May this request please be treated as urgent.

A. R. THACKERAY, Major
Legal Subcommittee, ACC.

HEADQUARTERS
 ALLIED CONTROL COMMISSION
 Legal Subcommission

EB/gaf

Interview with Brig. Lush on 26 Dec. 1945.

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

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

See Stein
 (No civilian will be permitted
 to be tried by H. U. C. C. P. C.
 within the 15th Army Territory.)

83

304

HEADQUARTERS
ALLIED OFFENSE COMMISSION
Legal Subcommittee

100/32

101

23 December 1943.

In reply
refer to: 100/3/306.

SUBJECT: Discipline of Italian Deserters.

TO : Regional Chief Legal Officer, Region 2.

1. Ref. your letter 2201/14/35 dated 16 Dec. 43.
2. I find that under date of 14 December 1943 Col. Upjohn sent you a letter covering the question of Italian Deserters, which seems to answer fully your letter of 16 December 1943.

RICHARD H. WILSON, Lt. Col. GAC
Deputy Chief Legal Officer,
AGC.

82

201

101

Subject:- Italian Military Tribunals.

COPY

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/206/77.
16 December 1943.

Chief Legal Officer,
Legal Subcommittee,
Allied Control Commission,
BRINDISI.

The above mentioned subject was discussed recently with you at Brindisi and you arranged to ascertain the experience of Region II in applying the Rules for conduct of Italian Military Tribunals drafted by you and then you were to reconsider same.

2. The Italian Military Tribunal at Naples now desires Bando No. 1 to be published, and directions have been requested from this Headquarters by Region III.

3. It appears to me that a considerable amount of victimisation can take place under Bando No. 1 and I would prefer to see Italian Military Tribunals confined more to dealing with disciplinary offences within the Italian Army. Sabotage and other similar offences should in my opinion be tried by Allied Military Courts.

4. The matter is further complicated as, under a recent directive received by signal from AFHQ, the policy would appear to be that only offences by Italian soldiers who are NOT in a unit operating under our military orders will be dealt with by A.M. Courts.

5. I shall be obliged by hearing from you as soon as possible.

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

8

147

WEP/gmc

EMERGENCY
ALLIED CENTRAL COMMISSION
Factual Submissions

19 December 1945.

In reply
refer to: 40071/305.

SUBJECT: Russian Military Tribunals.

TO : Chief Legal Officer,
HQ AF, 1580 Army Group.

1. Further to our interview on Friday last it is confirmed that you will lay out the Rules for the conduct of Italian Tribunals in your area.

2. Enclosed for information is a copy of the letter to General *James* (of which case was sent to you before through *Incourt*). This letter was written when the position was misunderstood after the last conference with you here.

3. In answer to para 2 of your letter Ref 45/204/77 of 16 Dec 45 it is preferable not to publish any Rules - certainly not in view of the way this memo No. 1 is drawn to provide for jurisdiction over civil law under Article 1 thereof.

4. With reference to your para 4, a copy of the Rules are being sent to AFHQ. It is thought that they have not yet really considered

the matter.

In reply
refer to AXX/1/303.

SUBJECT: Vietnam Military Establishments.

TO : Chief Legal Officer,
HQ AFM, 15th Air Group.

1. Reference to our interview on Friday last it is confirmed that you will try out the Rules for the conduct of Military Tribunals in your area.
2. Enclosed for information is a copy of the letter to Marshall (of which zero was sent to you before through intermediaries). This letter was written when the position was misunderstood after the last conference with you here.
3. In answer to para 2 of your letter Reg MAC/206/77 of 15 Dec 63 it is preferable not to publish any Rules - certainly not in view of the way this Radio No. 1 is shown to provide for jurisdiction over civilians under article 1 covered.
4. With reference to your para 4, a copy of the Rules are being sent to him. It is thought that they have not yet really considered the matter.

Enclosed:
Copy of letter to
Marshall House.

G. D. HERRING, Colonel,
Chief Legal Officer, AFM

8J

Fast Air Courier.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

ART/gmf

19 December 1943.

In reply
refer to: ACC/I/100.

SUBJECT: Italian Courts Martial.

TO : Allied Force Headquarters.
(For Colonel G. Fairman, J.A.G. Dept.).

We enclose a copy of the Rules which have been established by agreement with the Italian Government for the holding of Courts Martial in occupied territory which XVth Army Group have agreed to carry out in their area.

G.R. URJOHN, Colonel
Chief Legal Officer, ACC.

Enclosed:
Copy of Rules.

73

101 0

all. n° 1 all' 100356 del 16/11/41
del Comando Supremo

VARIANTI ED AGGIUNTE AL CODICE PENALE MILITARE DI PACE

ARTICOLI DEL C.P.M.P.

- 1) art. 77-79-80-81-84
Alto tradimento

- 2) art. 164-165-166
Della distruzione, alienazione, sequestro o ritenzione di effetti militari.

620

VARIANTI ED AGGIUNTE

R.D.L. 9 dicembre 1941

ART. III

Per i delitti preveduti dall'art. 77 del C.P.M.P. in relazione agli articoli 277-281-288 del codice penale, nonché dall'articolo 81 quando il fatto è commesso contro la Corona, il Governo del Re Imperatore o le forze armate dello Stato, e degli articoli 79-80 dello stesso C.P.M.P. e articoli 76-77-87 C.P.M.G. non si può procedere senza l'autorizzazione del ministro di grazia e giustizia e norma dell'art. 313 del codice penale.

Parimenti non si può procedere senza tale autorizzazione per i delitti preveduti dall'art. 84 del predetto C.P.M.P. e dagli articoli 51-54 C.P.M.G. quando è commesso a danno di uno stato estero alleato o associato, a fine di guerra, allo stato italiano.

Decreto del Capo del Governo 2 febbraio 1943 (G.U. 9-2-1943 N. 32).

ART. I

Quando l'alienazione di armi od oggetti di armamento, preveduti dall'art. 164 del codice penale militare di pace è commessa in territorio dichiarato o considerato in stato di guerra, ovvero, fuori di tale territorio da militari appartenenti al comando, corpo, reparto servizio mobilitato, si applica la reclusione militare non inferiore a cinque anni.

Se il fatto ha carattere di particolare gravità per le sue circostanze o modalità, o per la sua natura, specie e qualità delle cose alienate, si applica la pena di morte.

Le pene stabilite dai due commi precedenti si applicano anche quando l'alienazione concerne armi od oggetti costituenti armamento militare di cui il colpevole sia comunque venuto in possesso.

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ART. II

Quando l'alienazione di vestiario od equipaggiamento militare preveduta dall'art. 165 C.P.M.P. è commessa nelle circostanze di luogo e di persone indicate nel primo comma dell'articolo precedente, la pena è della reclusione militare sino a tre anni.

Se ricorre la circostanza aggravante preveduta dal secondo comma dell'articolo precedente, la pena è della reclusione militare da uno a dieci anni.

ART. III

Le pene stabilite dai due articoli precedenti si applicano anche a chiunque, nel territorio dichiarato o considerato in stato di guerra, acquista o a qualsiasi titolo ritiene alcune delle cose provenienti dai resti rispettivamente preveduti dagli articoli stessi.

- 3) Art. 183
Manifestazioni e grida
sediziose.

Bando N.1 del Comando Supremo 4 ottobre 1943

ART. III

Le pene previste dall'art. 183 C.P.M.P. per il reato di manifestazioni e grida sediziose sono aumentate nel minimo a cinque anni e nel massimo a quindici anni di reclusione militare.

- 4) Art. 212
Istigazione a commettere
resti militari.

Bando del Capo del Governo 2 febbraio 1943
(G.U. 9-2-1943 N.32).

ART. IV

Chi istiga un militare a commettere alcuno dei delitti previsti dagli articoli 1 e 2 di questo bando -(vedi N.2)- è punito, se l'istigazione non è accolta, ovvero se l'istigazione è accolta, ma il delitto non è commesso, con la reclusione militare sino a dieci anni.

Tuttavia la pena da applicare è sempre inferiore alla metà della pena stabilita per il delitto al quale si riferisce l'istigazione.

- 5) Art. 243
Abbandono di servizio da
parte del mobilitato civile.

R.D.L. 15 marzo 1943 N.313 (G.U. 8-5-1943 N.107) disposizioni penali concernenti gli appartenenti a stabilimenti statali ed ausiliari di produzione di guerra.

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ART. I

Chiunque, appartenendo al personale di uno stabilimento statale od ausiliario di produzione per la guerra si assente senza autorizzazione dallo stabilimento per oltre un giorno ovvero, essendone legittimamente assente non vi rientra senza giusto motivo, nel giorno successivo a quello prefissogli è punito con la reclusione fino a sei mesi.

La richiesta di procedere ai sensi del secondo comma dell'art. 260 del codice penale militare di pace, è fatta dall'ufficiale che ha la direzione dello stabilimento statale a cui il colpevole appartiene, ovvero, se il colpevole appartiene ad uno stabilimento privato dichiarato ausiliario, dal capo della delegazione interprovinciale del ministero della produzione bellica, da cui dipende lo stabilimento stesso.

Le disposizioni di questo articolo non si applicano quando il fatto costituisce il reato previsto dall'articolo 243 del C.P.M.P.

ART. II

La cognizione del reato preveduto dall'articolo precedente appartiene ai tribunali militari.

ART. III

Il presente decreto si applica durante l'attuale stato di guerra e fino a sei mesi dopo la sua cessazione e sarà presentato alle assemblee legislative per la sua conversione in legge.

6) Art. 382
Casi del giudizio per decreto.

Bando del Capo del Governo 8 marzo 1942 (G.U. 14/3/1942) estensione della facoltà di smettere decreti penali ai presidenti dei tribunali di guerra.

ART. I

Nei procedimenti per il reato previsto dall'art. 2 del bando 29 settembre 1941 N. 79 - (1) - il Pubblico Ministero se, in seguito all'esame

Art. 251
Violazione di disposizioni dell'autorità statale preposta alle fabbrica_

NOTA - (1) - Bando del Capo del Governo 29 settembre 1941 N. 79 (G.U. 30/9/1941 N. 231)

= 4 =

degli atti e delle investigazioni che reputa necessarie, ritiene che all'imputato possa essere inflitta la pena dell'arresto in misura non superiore ad un anno o la pena dell'ammenda può chiedere al presidente del tribunale militare di guerra competente che pronunci la condanna per decreto senza procedere al dibattimento.

Si osservano per il relativo procedimento le disposizioni dei codici penali militari.

zioni di guerra.

SEGUE NOTA

ART. I

Chiunque nei territori in stato di guerra clandestinamente o con inganno si introduce o tenta introdursi in luoghi di deposito o in magazzini di munizioni, di esplosivi, di carburanti, di armi, di equipaggiamenti militari o di altro materiale di interesse militare, in centrali elettriche o in stabilimenti adibiti alle fabbricazioni di guerra, nelle stazioni radio trasmittenti è punito, se il fatto non costituisce più grave reato, con la reclusione da uno a cinque anni.

ART. II

Chiunque contravviene ai provvedimenti emanati dall'autorità militare per tutelare, nei luoghi in stato di guerra, la sicurezza delle opere o stabilimenti militari o comunque di pubblico interesse, delle vie di comunicazione o di trasporto e delle relative stazioni, delle dighe dei canali, delle linee telegrafiche o telefoniche, delle centrali elettriche e degli elettrodotti e di ogni altro impianto o stabilimento di pubblico interesse, è punito, se il fatto non costituisce più grave reato con l'arresto fino a due anni e con l'ammenda fino a L.5000.

La stessa pena si applica a chiunque contravviene ai provvedimenti emanati dall'autorità militare per vietare o regolare, nei luoghi in stato di guerra, l'accesso, la sosta o il transito nelle stazioni ferroviarie o nelle strade ferrate o lungo le coste.

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7) Art. 382
Casi di giudizio per
decreto.

Bando del Capo del Governo 14 maggio 1943
(G.U. 22/5/1943 N. 119)

Casi di giudizio per decreto.

ART. I

Nei procedimenti davanti a tribunali militari di guerra può procedersi a giudizio per decreto, oltre che in casi previsti dall'art. 382 del G.P.M.F. anche relativamente ai reati per i quali la legge stabilisce una pena detentiva non superiore nel massimo a cinque anni o una pena pecuniaria, sola o congiunta ad una pena detentiva non superiore nel massimo a cinque anni, se il Pubblico Ministero ritiene che all'imputato possa essere inflitta una pena detentiva in misura non superiore ad un anno o una pena pecuniaria in misura non superiore a L. 2000 sola o congiunta ad una pena detentiva in misura non superiore ad un anno.

Agli effetti del comma precedente per determinare la pena stabilita dalle leggi per il reato non si tiene conto dell'aumento di pena previsto dall'art. 47 G.P.M.F.

8) Reati previsti dalle leggi sulla disciplina dei cittadini in tempo di guerra.

Bando del Capo del Governo 29 aprile 1942
(G.U. 9/5/1942 N. 111)

ART. V

Davanti ai tribunali militari di guerra può procedersi al giudizio per decreto anche per i reati preveduti dalle leggi sulla disciplina dei cittadini in tempo di guerra punibili con pena pecuniaria o con pena detentiva non superiore nel massimo ad un anno sola o congiunta a pena pecuniaria, sempre che si ritenga di infliggere una pena pecuniaria ovvero una pena detentiva non superiore a sei mesi, sola o congiunta ad una pena pecuniaria.

Per i procedimenti si osservano le disposizioni dei codici penali militari.

VARIANTI ED AGGIUNTE AL CODICE PENALE MILITARE DI GUERRAARTICOLI DEL C.P.M.G.

- 1) Art. 29-30
Dal differimento, dalla esecuzione delle pene detentive ad accessorie.

VARIANTI ED AGGIUNTE

Bando del Capo del Governo 1 ottobre 1941 (G.U. 1/10/1941 N.232)

Differimento dell'esecuzione delle pene.

ART. I

Per il differimento dell'esecuzione delle pene detentive e delle pene restrittive della capacità giuridica, inflitte o da infliggere a militari appartenenti e reperti mobilitati dovunque dislocati si applicano, in luogo delle disposizioni degli articoli 29 e 32 del C.P.M.G./ quelle degli articoli 9 e 10 del bando 24 aprile 1941 - (1) -

NOTA - (1) - Bando del Capo del Governo 24 aprile 1941 (G.U. 28/4/1941 N.100)

ART. IX

Il differimento della esecuzione della pena ai sensi dell'articolo 10 della legge 9 luglio 1940 N.924 può essere ordinato soltanto relativamente ai militari che appartengano ad un corpo di spedizione o di operazione militare.

Fuori del caso preveduto nel comma precedente, l'esecuzione della pena detentiva per durata non superiore a dieci anni inflitta a militari, può essere differita o sospesa, con decreto del Pubblico Ministero competente, per il condannato che successivamente alla condanna sia destinato ad un corpo di operazione o di spedizione militare; ferme, anche in questo caso, restando le disposizioni dell'articolo 12 della legge 9 luglio 1940 N.924.

Il ministro da cui dipende il militare o il comandante supremo, quando trattasi di militare da esso dipendente, può, sentito il Regio Avvocato Generale militare ordinare che sia differita o sospesa

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Per il differimento della esecuzione delle pene accessorie e per ogni altro effetto derivante dal differimento della esecuzione delle pene detentive, si applicano le disposizioni del C.F.M.G., anche se la esecuzione della pena inflitta sia stata differita a norma del bando indicato nel precedente comma.

Sospensione della esecuzione della pena.

ART. II

Per la sospensione della esecuzione delle pene inflitte o da infliggere a militari si applicano le disposizioni degli articoli 9 e 10 del Bando 24 aprile 1941.

Le disposizioni dagli articoli 30, 31, 33, 35, 36, 38, 39, 40, 41, C.F.M.G. relative agli effetti derivanti dal differimento della esecuzione delle pene, si applicano anche nei confronti dei militari per i quali sia stata disposta la sospensione della esecuzione della pena ai sensi dell'articolo 9 del bando 24 aprile 1941.

Diserzione immediata.

ART. III

Relativamente al militare appartenente ad un corpo di operazione o di spedizione militare che si trovi assente senza autorizzazione al momento della partenza del corpo, restano in vigore per quanto concerne la sanzione penale e le condizioni richieste per la sospensione del procedimento, le disposizioni degli articoli 4 e 5 del bando 24 aprile 1941 (vedi N.5)

Segue nota -

sa l'esecuzione delle pene detentive temporanee di qualsiasi durata, inflitte ai militari appartenenti o successivamente destinati a corpi di operazione o spedizione militare.

ART. X

Il provvedimento di differimento o di sospensione dell'esecuzione della pena a norma dell'art. precedente, è revocato, qualora il condannato cessi di appartenere ad un corpo di spedizione od operazione militare, tranne che tale cessazione dipenda da inabilità conseguente a lesioni personali riportate od a infermità contratte in fatti d'armi o in servizio di guerra.

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2) Art. 51-54-76-77-87

Dei reati contro la fe-
deltà e la difesa mili-
tare.

R.D.L. 9 dicembre 1941.

ART. III

Per i delitti preveduti dall'art. 77 del co-
dice penale militare di pace in relazione
agli articoli 277-281-288- del codice penale,
nonchè dell'art. 81 quando il fatto è commesso
contro la Corona, il Governo del Re Imperato-
re o le forze armate dello stato, e degli
articoli 79-80 dello stesso C.P.M.F. e arti-
coli 76-77-87 C.P.M.G. non si può procedere
senza l'autorizzazione del Ministro di gra-
zia e giustizia e norme dell'art. 313 del co-
dice penale.

Parimenti non si può procedere senza ta-
le autorizzazione per i delitti preveduti dal-
l'articolo 84 del predetto C.P.M.F. e degli
articoli 51-54 C.P.M.G. quando è commesso a
danno di uno stato estero alleato o associa-
to, a fine di guerra, allo stato italiano.

3) Art. 144

Diserzione in presenza
del nemico.

Bando del Capo del Governo 29 marzo 1943
(G.U. 7/4/1943 N. 80).

ART. I

Agli effetti della legge penale sono consi-
derati in ogni caso alla presenza del nemico
i militari appartenenti a reparti destinati
alla copertura costiera o alla difesa contra-
aerea o antiparacadutista, che, in rapporto
alla dislocazione ed ai compiti di essi, so-
no designati con provvedimento dello stato
maggiore del R. Esercito, della R. Marina e del-
la R. Aeronautica, secondo la rispettiva com-
petenza.

4) Art. 146

Diserzione fuori della
presenza del nemico.

Bando N. 1 del Comando Supremo 4 ottobre
1943.

ART. IV

Il militare che essendosi sbandato dal pro-
prio reparto in dipendenza dalle circostanze
verificatesi dopo l'8 settembre 1943; non si
costituisca all'autorità militare italiana
appena possibile e comunque non oltre cinque
giorni da quello in cui il territorio nel
quale il militare si trova è stato occupato
dalle forze italiane ed anglo americane, è

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considerato disertore e punito con le pene sancite dall'art. 146 del C.F.M.G. aumentate da un terzo alla metà.

5) Art. 150
Diserzione immediata.

Bandò del Capo del Governo 24/5/1941
(G.U. 28/4/1941 N.100)

ART. IV

Diserzione immediata.

Selvo che il fatto non costituisca più grave reato, il militare appartenente o destinato ad un corpo di spedizione o di operazione militare che, senza autorizzazione, si trova assente al momento della partenza del corpo è punito con la reclusione militare da cinque a quindici anni.

La pena è della reclusione militare non inferiore a dieci anni, se il colpevole era già altra volta incorso nel reato di diserzione.

Si applica la pena della morte con fucilazione nel petto, se il colpevole è incorso per la seconda volta nel reato preveduto dal primo comma di questo articolo.

ART. V

Sospensione dei procedimenti per diserzione.

Per il reato preveduto dall'articolo precedente, non ha luogo la sospensione del procedimento ai sensi delle vigenti leggi, salvo che il comandante dell'unità presso cui è costituito il tribunale militare stabilisca diversamente.

La disposizione di cui al comma precedente si applica anche relativamente ai procedimenti per ogni altro reato di diserzione per il quale la legge stabilisca la pena di morte.-(vedi anche N.1)-

6) Art. 283
Disposizioni speciali per i tribunali militari di guerra straordinari.

R.D. 29 luglio 1943 N.668

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ART. I

Il Tribunale speciale per la difesa dello stato istituito con la legge 25 novembre 1926 N.2008 è soppresso.

La cognizione dei reati già spettante al tribunale predetto è devoluta, durante lo stato di guerra ai tribunali militari, secondo la rispettiva competenza territoriale. La devoluzione ha luogo anche per i procedimenti in corso.

Relativamente ai predetti reati i tribunali militari procederanno in ogni caso, durante lo stato di guerra, col rito di guerra.

ART. II

Nei procedimenti relativi ai reati devoluti alla competenza di tribunali militari a norma dell'articolo precedente il giudice militare può valersi della facoltà prevista dall'articolo 233 C.P.M.G.

Per gli stessi procedimenti che siano in corso alla data di entrata in vigore del presente decreto l'autorità giudiziaria militare può concedere la libertà provvisoria anche se alla data suddetta sia già stato disposto il rinvio a giudizio.

ART. IV

Quando sia ritenuto opportuno un giudizio immediato a scopo di esemplarità, il comandante dell'unità presso cui è costituito il tribunale militare, che sarebbe competente, secondo le norme ordinarie, può disporre la convocazione di un tribunale militare che proceda nei modi e con le norme stabilite dagli articoli 283 secondo comma, 284 e 285 del C.P.M.G. e dagli articoli 84 secondo comma, 86 - 87 e 88 dell'ordinamento giudiziario militare per giudicare le persone arrestate perchè imputate di reati soggetti alla giurisdizione militare di guerra unibile con la pena detentiva o con pene più gravi.

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L'ordine di convocazione del tribunale indicato nel comma precedente non può essere dato dopo che nel procedimento già iniziato nei modi ordinari l'istruttoria sia stata chiusa.

Nel caso di convocazione del tribunale indicato nel primo comma del presente articolo restano validi gli atti di istruzione eventualmente compiuti con le forme ordinarie.

Bando N.1 del Comando Supremo 4 ottobre 1943.

ART. I

I tribunali militari di guerra straordinari, nei territori dichiarati "zona di operazioni" oltre quanto stabilito, dall'articolo 283 C.P.M.G. sono competenti a conoscere dei seguenti reati, semprechè siano commessi da militari:

- a) no documento alle operazioni militari (art. 52 C.P.M.G.);
- b) intelligenza e corrispondenze con il nemico nelle ipotesi previste dal 1° e 2° capoverso dell'art. 54 C.P.M.G.;
- c) abbandono del comando, nelle ipotesi previste dal 1° e 2° capoverso dell'art. 94 C.P.M.G.;
- d) resa avvenuta a causa di rivolta o di altri reati (articolo 105 C.P.M.G.);
- e) incitamento alla resa (articolo 109 C.P.M.G.);
- f) manifestazioni di codardia (articolo 110 C.P.M.G.);

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- g) comandante che non tiene il posto di combattimento, nella ipotesi prevista dal capoverso dell'art.120 C.P.M.G.
- h) disobbedienza (art.173 C.P.M.P. art.47 C.P.M.G.);
- i) rivolta (art.174 C.P.M.P., art.47 C.P.M.G.)
- l) ammutinamento (art.175 C.P.M.P. art.47 C.P.M.G.);
- m) insubordinazione con violenza (art.186 C.P.M.P. art.47 C.P.M.G.);
- n) insubordinazione con minacce e ingiuria art.189 C.P.M.P. art.47 C.P.M.G.;
- o) manifestazione a grida sediziose art.183 C.P.M.P. art.47 C.P.M.G.;

I tribunali predetti potranno essere convocati quando si tratti di giudicare dei seguenti reati anche se commessi da civili:

- a) distruzione o sabotaggio di opere o altre cose militari (art.158 C.P.M.G.);
- b) aiuto al nemico dei suoi disegni politici (art.58 C.P.M.G.);
- c) aiuto o informazioni a spie o altri agenti nemici (art.62 C.P.M.G.);

Per tutti i reati punibili con la morte e per quelli elencati in questo articolo, i tribunali militari di guerra straordinari possono essere convocati anche quando l'imputato non sia stato arrestato in flagranza.

ART. III

(ultimo capoverso) - Le pene previste per tutti i reati elencati all'art.1 sono aumentate da un terzo alla metà.

7) Esecuzione immediata.

Bando N.1 del Comando Supremo 4 ottobre 1943.

ART. V

Per determinazione dell'ufficiale più elevato in grado o più anziano presente al fatto, sarà passato immediatamente per le armi il militare colto nell'atto di commettere uno dei seguenti reati:

- a) abbandono del corpo per combattere contro lo Stato (art.50 C.P.M.G.);

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- b) aiuto al nemico (art. 51 C.P.M.G.);
- c) intelligence e corrispondenze col nemico quando queste abbiano prodotto danno alle FF.AA. dello Stato (art. 54 parte 1^a C.P.M.G.);
- d) spionaggio militare (art. 59 C.P.M.G.);
- e) abbandono del comando durante il combattimento o in presenza del nemico (art. 94 parte 1^a C.P.M.G.);
- f) resa (art. 103 C.P.M.G.);
- g) manifestazioni arbitrarie per arrendersi (art. 108 C.P.M.G.);
- h) abbandono del posto durante il combattimento (art. 119 C.P.M.G.);
- i) comandante che non tiene il posto di combattimento quando ciò avviene con dolo (art. 120 C.P.M.G.);
- l) diserzione al nemico (art. 143 C.P.M.G.);
- m) diserzione in presenza del nemico (art. 144 C.P.M.G.);
- n) saccheggio (art. 186 C.P.M.G.);

8) Forniture militari

Bando 24 aprile 1941 (G.U. 28-4-1941 N.100)

Inadempienza di contratti di forniture militari.

ART. I

Chiunque, non adempiendo gli obblighi che gli derivano da un contratto di forniture o di appalto, fa mancare in tutto o in parte, cose od opere destinate ai bisogni delle forze armate dello stato è punito con la reclusione da cinque a quindici anni.

Se la fornitura è soltanto ritardata si applica la reclusione da tre a dieci anni.

Se la fornitura è ritardata per colpa, si applica la reclusione da uno a sette anni.

La stessa disposizione si applica ai subfornitori, ai mediatori e rappresentanti dei fornitori allorchè essi violando i loro obblighi contrattuali, hanno cagionato l'inadempienza del contratto di fornitura.

ART. II

Chi commette frode nella specie, qualità, quantità delle cose od opere indicate nell'artico-
b.

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lo precedente, è punito con la reclusione non inferiore a quindici anni.

Se della frode è derivato grave accimento alla salute dei combattenti ovvero alle operazioni militari, la pena è delle ergastolo, e, se ricorrono inoltre circostanze di particolare gravità della pena di morte con degradazione.

ART. III

La competenza a conoscere dei reati preveduti dai due articoli precedenti appartiene ai tribunali di guerra.

9) Dispersione di armi ed equipaggiamento.

Bando 7 luglio 1942 (G.U. 13 luglio 1942 U.9).

ART. I

Il militare che per colpa, disperde, in tutto o in parte le armi, le munizioni di guerra, i materiali o altri oggetti che, a norma dei regolamenti, gli sono forniti dall'amministrazione militare è punito con la reclusione militare fino ad un anno.

Il reato previsto dal comma precedente è punito a richiesta del comandante del corpo da cui dipende il militare colpevole, osservate le disposizioni dell'art. 269 del C.P.M.P.

10) Devoluzione dei poteri ed attribuzioni del comandante supremo al capo di stato maggiore generale.

Bando 1° agosto 1943

I poteri delle attribuzioni che spettano al comandante supremo, ai sensi degli articoli 29, 34, 76, 242, 245, e 292 C.P.M.C. degli articoli 61, 63, 65, 68, 82 e 91 dell'ordinamento giudiziario militare e dell'articolo 9 del Bando 24 aprile 1941 sono esercitate dal capo di stato maggiore generale.

11) Cognizione dei tribunali militari per trasgressioni ad ordinanza di polizia.

R.D.L. 29-7-1943 N. 668

ART. III

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La cognizione delle trasgressioni alle ordinanze di polizia emanate dall'autorità militare in seguito al passaggio all'autorità stessa dei poteri della tutela dell'ordine

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pubblico, ai sensi dell'art. 217 del testo
unico delle leggi di pubblica sicurezza, ap-
partiene ai tribunali militari.



R D L 9 Dec 1941

New Banco del Cabo for 2 Feb 1943
(RU 9.2.1943 No 32)

New Banco No 1 del Cam Sur 4 Oct 1943

~~del Cabo for 2 Feb~~

New R D L 15 Mar 1943 N. 313 (RU. 8.5.1943)
~~But this was considered but found ok - unimpaired falls remains~~

~~New Banco del Cabo for 8 May 1942 (RU 14.3.1942)~~

Banco Cap for 29 Sept 1941 N. 79
(GU 30.9.1941. N. 231)

New Banco del Cabo for 14 Aug 1943 (RU 22.5.1943
N. 119)

was not already

~~New Banco del Cabo for 29 Apr 1942 (RU. 9.5.1942.
N. 111)~~

" " 41 Oct 1941 (RU 1.10.1941 N. 232)

" " 24 Apr 1941 (RU. 28.4.1941/100)

New " 29 Mar 1943 (RU 7.4.1943 N. 80)

" " 24 May 1941 (RU 28.5.1941. N 100)

" " 29 Jul 1942 N. 608

(RD)

New Banco del Cam Sur. No 1, 4 Oct 1943

New Banco 7 Jul 1942 (RU 13 Jul 1942 N. 9)

New Banco 1 Aug 1943

New R D L 29-7-1943 N. 608

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~~New Bando del Capo for~~
Banco Cap for 29 Sept 1941 N. 79
(GO 30.9.1941. N. 231)

New Bando del Capo for 14 May 1943 (RO 22.5.1943
N. 119)

~~to be provided~~ ^{noted above}
New Bando del Capo for 29 Apr 1942 (R.U. 9.5.1942.
N. 111)

" " 4 1 Oct 1941 (RO 1.10.1941. N. 232)
" " 4 24 Apr 1941 (R.U. 28.4.1941/100)

New " " 29 Mar 1943 (RO 7.4.1943 N. 80)
" " 24 May 1941 (R.U. 28.4.1941. N. 100)

New **(RD)** 29 June 1942 N. 668
New Bando del Cap Com Sup. No 1, 4 Oct 1943

New Bando 7 June 1942 (RO 13 June 1942 N. 9)

New Bando 1 Aug 1943

New RDL 29-7-1943 N. 668

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232
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U.S. SECRET Equals British MOST SECRET

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

AWG/4086/L

SUBJECT:- Discipline of Italian Deserters.

TO :- Colonel G. H. John,
R.Q., A.C.C. Brindisi.

7th December 1943

1. Enclosed are, (a) communication dated 27 Nov. 43 received from Major Howe, R.C.L.C., Region II, together with a copy of a letter from Lt. Col. Rock, SIAO, Calabria, therein referred to, and, (b) communication dated 29 Nov. 43 reference 2291/11/26 from Major Howe.
2. Under date of 21st November 1943 you forwarded RHM Region II a directive containing rules under which Italian Military Tribunals may function.
3. The first mentioned enclosure seems to assume that all Italian desertions were of solicitation of United Nations, which would appear doubtful. It would seem that if the Italian Army is to be an effective instrument of co-belligerency it must retain power to punish deserters. Accordingly a question of high policy may be involved.
4. The second mentioned enclosure deals with the question of delegation of duties of review which we have previously discussed as well as a matter of policy to be pursued.
5. For above reasons and because of your prior conversation at Brindisi the enclosures are sent to you for your disposition and instructions.

RICHARD H. WISNER,

Lieutenant-Colonel,
Acting Deputy Chief Legal Officer.

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U.S. SECRET Equals British MOST SECRET

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U.S. SECRET Equals British MOST SECRET

S E C R E T

- - - - -

Subject: Discipline of Italian Deserters.

29 Nov. 43.

A.M.G. H.Q.

Region 2.

Ref: 2201/14/29

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

1. There is enclosed herewith a copy of a communication which the SCAO for Calabria has recently addressed to the Commanding General of 31 Corps.

2. The undersigned has informally advised the SCAO that in his opinion the views expressed in the letter and the action taken by the SCAO are entirely proper. This was done without the benefit of knowledge of the terms of the Armistice, but it seemed evident that the policies of A.M.G. would be clearly circumvented if the Italian Military authorities are permitted to follow the course which the SCAO has been informed they are following.

3. If this matter has not already been brought to your attention it would be appreciated if you could give it your attention in order that the SCAO may know what course to pursue in any future situation which may involve this problem.

(sgd) Mark. DeW. Howe.

Major. AUS
RCLO, Region 2.

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U.S. SECRET Equals British MOST SECRET

U.S. SECRET Equals British MOST SECRET

COPY

Subject:- Disciplinary Measures for Italian Deserters.

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

20 Nov. 43.

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

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

(sgd) P. Rodd. Lt. Col.

Senior Civil Affairs Officer, Calabria.

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U.S. SECRET Equals British MOST SECRET

COPY/

Subject:- Review of Judgments of
Italian Military Courts.

29th November 1943

A.M.G. H.Q.

Region 2.

Ref: 2201/14/26

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

1. In Paragraph (f) of the recently promulgated Rules for Establishment of Italian Military Tribunals it is provided that until it is impossible (sic) to constitute the Tribunals Supreme Military all appeals from an Italian Military Tribunal shall be addressed to the Military Government.
2. There has recently come to our attention the petition of an Italian soldier who, before the date of occupation was sentenced to eight years' imprisonment for a very minor offence which is alleged to have been committed by the order of the soldier's commanding officer. We are anxious to know what, if any, powers analagous to those which are used in granting liberazione condizionale in civil cases. It is hoped that some procedure for dealing with such cases as this may promptly be set up at the Provincial or Regional level.

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

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

Fleet

AKG/4006/L

SUBJECT: Discipline of Italian Deserters.

TO : R.C.L.O. (thru CCMO) Region II.

7th December 1943

Your letter of 29 November 1943, reference no. 2201/11/26 and your letter of the same date reference no. 2201/11/29 arrived in the absence of Colonel Spohn who is on the mainland.

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

RICHARD H. WILKIN,

Lieutenant-Colonel,
Acting Deputy Chief Legal Officer.

104

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

gmv/gmf

14 December 1943.

100-41101

In reply
refer to: 100-41101.

SUBJECT: Discipline of Italian Deserters.

TO : Regional Chief Legal Officer, Region 2 (the RMAC).

I have considered your letter 2201/1/29 dated 29 Nov. 43 en-

closing copy of letter from Lt. Col. Rodi to G.O.C. 31 Corps Italian

Army, and have the following observations to make.

1. The Articles Terms did not ban any form of Italian Court Mar-
tial Procedure but of course such Courts Martial could, in occupied terri-
tory, only take place with the consent of the Allied Military Government.

In fact Rules for the regulation of Italian Courts Martial have now been
circulated to you.

2. I have not seen the contents of the leaflets dropped nor
heard the relevant radio appeals but subject to any particular statement
that may have been made as to the effects of desertion the legal position
is that deserters, in response to leaflets, etc., remain soldiers of the
Italian Crown and could not be treated as of civilian status but as
prisoners of war - possibly on parole.

In view of the status of co-belligerency granted to the
Italians it is essential that all such deserters should be treated as
members of the Italian Army and compellible to rejoin by the Italians.

3. It is of course entirely agreed that all Italian soldiers

100-41101

SUBJECT: Discipline of Italian Deserters.

TO : Regional Chief Legal Officer, Region 2 (the R.C.O.).

I have considered your letter 2203/14/29 dated 29 Nov. 43 en-

closing copy of letter from Lt. Col. Rodà to G.O.C. 31 Corps Italian Army, and have the following observations to make.

Dr. Archibald

1. The Justice Terms did not ban any form of Italian Court Martial Procedure but of course such Courts Martial could, in occupied territory, only take place with the consent of the Allied Military Government. In fact Rules for the regulation of Italian Courts Martial have not been circulated to you.

2. I have not seen the contents of the leaflets dropped nor heard the relevant radio appeals but subject to any particular statement that may have been made as to the effects of desertion the legal position is that deserters, in response to leaflets, etc., remain soldiers of the Italian Crown and ought not to be treated as of civilian status but as prisoners of war - possibly on parole.

In view of the status of co-belligerency granted to the Italians it is essential that all such deserters should be treated as members of the Italian Army and compellable to rejoin by the Italians.

3. It is of course entirely agreed that all Italian soldiers who deserted in response to our appeals must not be tried in respect of such desertion so that their position in effect is that, though compellable to rejoin, they cannot be punished for their desertion. In my view, the proper course is for the appropriate AMC officer to give an order to the G.O.C. 31 Army Corps and to any other military units within your Region under the rules for the establishment of Italian Military Tribunals withdrawing all cases of desertion in response to Allied radio and leaflet

appeals from the competence of Italian Military Tribunals. See Rule (a).

If you have copies of any leaflets which were distributed I should like to see one.

I wish to make it plain that the defenses mentioned in para 3 is only available to those who deserted in response to our appeals which were made, of course, before and at the date of the Armistice. It should not be used as a cover for subsequent desertion in Allied occupied territory.

G. B. WHELAN, Colonel
Chief Legal Officer, IACC

were made, of course, before and at the time of the apprehension. It was not to be used as a cover for subsequent desertions in Allied occupied territory.

G. R. UFFIN, Colonel
Chief Legal Officer, APO

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File 44-10000-10000
101

MEMORANDUM
ARMED SERVICES COMMISSION
Legal Subdivision

DATE

21 December 1943

Re reply
number 44-10000-10000

SUBJECT: Detention of Italian Menstrues.

TO : Brigadier General Legal Officer, Division 1 (Main Bldg).

I have considered your letter 2211/12/43 dated 20 Nov. 43 enclosing copy of letter from Lt. Col. Smith to D.S.O., 51 Corps Italian Army, and have the following observations to make.

1. The authorities listed will not try men of Italian Court Martial exposure but of course such Courts Martial could, in occupied territory, only have place with the consent of the Allied Military Government. In that event the Department of Italian Courts Martial have not been constituted to you.

2. I have not seen the contents of the authorities proposed nor have the relevant rules applied but subject to any particular statement that may have been made as to the extent of duration the legal position is that generally, in respect to Lofoten, etc., would entitle of the Italian Crown and ought not to be treated as of civilian status but as prisoners of war - possibly on parole.

An idea of the status of saboteurs granted to the Italians is so concerned that all such detainees should be treated as members of the Italian Army and amenable to orders by the Italians.

SUBJECT: *Indecencies of Italian Soldiers.*

TO : *Regional Chief Legal Counsel, Region 2 (Area 2540).*

2 Lines enclosed per letter 2311/11/73 dated 29 Nov. 45 enclosing copy of letter from Lt. Col. Dotti to G.O.C., 31 Army Italian Army, and have the following characteristics to note.

1. The activities herein are not per se acts of Italian Court Martial procedure but of course such Courts Martial could, in occasional instances, only take place with the consent of the Allied Military Government. In such instances for the Regulation of Italian Courts Martial laws are being circumvented by you.

2. I have not seen the contents of the incidents implied nor heard the relevant radio reports but subject to my particular statement that my laws have been used as to the extent of absorption the legal position in that Department, in response to conflicts, etc., would nullify of the Italian Government and ought not to be treated as of civilian status but as persons of war - possibly en masse.

In view of the nature of co-soldiering pointed to the Italians it is essential that all such personnel should be treated as members of the Italian Army and acceptable to justice by the Italians.

3. It is of course entirely agreed that all Italian soldiers who deserted in response to our appeals must not be taken in sympathy of such the extent as that their position in effect is that, though compelled to do so, they cannot be punished for their desertion. In my view, the proper course in for the approximately 100,000 deserters to give an order to G.O.C., 31 Army Corps and to any other military units within

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1546

your Nation under the rules for the Establishment of Italian Military
Prisoners withholding all cases of desertion in response to Allied
solic and further requests from the cooperation of Italian Military
units. See memo (a).

If you have copies of any letters which were distributed I should
like to see one.

I wish to make it plain that the defense mentioned in para 3 is
only available to those who served in response to our appeals which were
made, of course, before and at the date of the capitulation. It should not
be used as a cover for subsequent desertions in Allied occupied territory.

C. J. BRUCE, Colonel
Chief Legal Advisor, APO.

I wish to advise it please that the document mentioned in para 3 is only available to those who deserted in response to our appeals which were made by our radio, before and at the time of the operation. It should not be used as a cover for subsequent desertion in Allied occupied territory.

C. R. TAYLOR, Colonel
Chief Legal Advisor, ACO.

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APC 394

MDE/nd

In reply refer to:
259.5 - Tribunals

7 December 1943

SUBJECT: Competence of the Italian Military Tribunal of Naples.

TO : His Excellency, Marshal Messe,
Chief of the Supreme General Staff.

1. Further to my letter of 30 November 1943 in reply to yours dated 25 November 1943, Prot. N. 2064/AV/E, I have pleasure in advising you that the General Officer, Commander-in-Chief, 15th Army Group, has now agreed to the establishment of rules for the functioning of Italian Military Tribunals. I enclose herewith a copy of these for your information, and so that the Tribunals may function as desired.

2. Insofar as concerns the rendering to the Allied Military Governor of the information and returns called for under these rules, please refer in the first place to the Allied Military Government Headquarters of the area in which the court is situated.

For the Deputy President, Allied Control Commission:

MAXWELL D. TAYLOR
Brigadier General, USA

1 Incl:
Rules for Military Tribunals

FOR LEGAL SUB-COMMISSION FILES

(40)

52

SECRET.

file

SUBJECT:- sabotage of Communications.

No 2 District CMB.

PO22/8 20

9 100-43.

INFO.

ACC.

Copy to:- 5 AA Dec.

Enclosed is an instruction to units in No. 3 sub Area etc.

Kindly see that the widest publicity is given to this instruction among Italian Military and Civil Authority.

A. S. Math

h Lt. Col. *h*
GB.

TR 1300 A.

Send Matulation for 53

SUBJECT:- Salvo of Communications

SECRET.

To:- 69 H.A.A. Regt.
 70 H.A.A. Regt.
 69 H.A.A. Regt.
 22 L.A.A. Regt.
 75 L.A.A. Regt.
 323 S.L. Bty.
 968 S.L. Bty.

S.A.A. Brigade,
 C.A.F.

0/4/43

7 Dec '43.

1. There has recently been a marked increase in the number of Sec. Operational telephone lines cut and removed, particularly in the LXXX Area. Such reported acts of wilful sabotage cannot be considered as the pranks of irresponsible elements but as a part of a deliberate plan on the part of Axis sympathisers to hinder the prosecution of the war.
2. Units will take all practicable steps to prevent sabotage including the provision of armed patrols at night along operational lines. Personnel will be instructed to shoot to kill any person seen tampering with any telephone lines.
3. Any person captured when engaged on such acts of sabotage will not be handed over to the civilian authorities but will be brought to this HQ for disposal.
4. The contents of this letter will be brought to the notice of all ranks.
5. Axial Italian A.A. personnel will also be made aware of these content and advised in their own interests, not to approach telephone lines especially at night, except by authorised routes.

(Signed) 7777777777777777
 Major R.A.,
 Brigade Major, S.A.A. Brigade.

Please forward copy of this letter to Legal Subm mission for files.

DRAFT

HEADQUARTERS
ALLIED CONTROL COMMISSION

In reply
refer to:

101

December 1943.

TO : The Chief of the General Staff
Marshal of Italy Giovanni Messe.

SUBJECT: Competence of the Italian Military Tribunal of Naples.

1. Further to my letter of 30 Nov. 1943 in reply to yours dated 25 Nov. 1943 Prot. N.2094/AV/2 I have pleasure in advising you that the General Officer, C-in-C, XVth Army Group has now agreed to the establishment of rules for the functioning of Italian Military Tribunals. I enclose herewith a copy of these for your information, and so that the Tribunals may function as desired.

2. In so far as concerns the rendering to the Allied Military Governor of the information and returns called for under these rules, please refer in the first place to the Allied Military Government Headquarters of the area in which the court is situated.

MAXWELL D. TAYLOR
Brigadier General U.S. Army

1 Enclosure;
Rules for Military Tribunals.

TO : The Chief of the General Staff
Marshal of Italy Giovanni Messe.

SUBJECT : Competence of the Italian Military Tribunal of Naples.

1. Further to my letter of 30 Nov. 1943 in reply to yours dated 25 Nov. 1943 Prov. N. 2004/AV/2 I have pleasure in advising you that the General Officer, G-in-C, XVth Army Group has now agreed to the establishment of rules for the functioning of Italian Military Tribunals. I enclose herewith a copy of these for your information, and so that the Tribunals may function as desired.

2. In so far as concerns the rendering to the Allied Military Governor of the information and returns called for under these rules, please refer in the first place to the Allied Military Government Headquarters of the area in which the courts is situated.

MAXWELL D. TAYLOR
Brigadier General U.S. Army

1 Inclosure:
Rules for Military Tribunals.

51

(20)

101
Copy

HEADQUARTERS) ART/gmf
ALLIED CONTROL COMMISSION
Legal Subcommission.

6 December 1943.

In reply
refer to: ACC/L/304.

SUBJECT: Italian Military Courts.

TO : Chief Legal Officer, Region II.

1. It is desired to obtain information regarding the working of Italian Military Courts, if any, in your Region particularly as to types of Tribunal set up and places at which sitting - also classes of cases being dealt with, and any other points you deem of sufficient interest to include in your report.

2. We have tried to get you on the telephone via Potenza but the Italian exchange declare that there is no telephone line in operation to that town.

A.R. THACKRAH, Major
for Chief Legal Officer, ACC.

COPY

120 394

In reply refer to:
250.5

30 November 1943

SUBJECT: Competence of the Italian Military Tribunal of Naples.

TO : His Excellency, Marshal Messe,
Chief of the Supreme General Staff.

1. On receipt of your letter of 25 November 1943 Prot. N. 2061/AV/E I caused enquiries to be made of the 37 Army Group and am informed that it is desired in principle that the Italian Military Tribunal shall function as soon as possible with jurisdiction over Italian military personnel.
2. I have been assured that the consideration of the question by having the attention of the proper Department and that a prompt action will be required.

For the Deputy Spicilant, Allied Control Commission:

HAROLD G. WRIGHT
Major General, USA

SUBJECT: Competence of the Italian Military Tribunal of Naples.
TO : His Excellency, Marshal Messe,
Chief of the Supreme General Staff.

1. On receipt of your letter of 23 November 1945 Prot. N. 2084/V/E I caused enquiries to be made of the IV Army Group and am informed that it is desired in principle that the Italian Military Tribunal should function as soon as possible with jurisdiction over Italian military criminals.

2. I have been assured that the consideration of the question as having the attention of the proper department and that a prompt solution will be reached.

For the Deputy President, Allied Control Commission

HARVEY D. MILLER
Deputy Chief General, USA

SECRET

COPY.

Subject:- Italian Military Tribunals.Lt. Col.,
15 Army Group,
C.M.F.

To:-

Colonel G. Upjohn,
Legal Sub-Commission,
Headquarters, Allied Military Government,
PALERMO.Ref. 20/206/15
25 November 43.

Reference your letter of 13 November on the above subject and draft enclosed by you, I have now had an opportunity of considering the same. I have also discussed the draft with Shields as the problem of these Tribunals has arisen in Naples. I have the following observations to make.

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

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

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

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

L8

(Sgd) H.E. ROWE.

Lt. Colonel,
Chief Legal Officer.

HER/ES.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

GRU/gaf

15 January 1944.

In reply
refer to: ACC/1/101.

SUBJECT: Italian Military Tribunals.

TO : Chief Legal Officer, 15th Army Group, HQ AMG.

Ref your AMG/206/654 dated 10 Jan 44 this matter must obviously be clarified and will be taken up together with other matters affecting this thorny subject at the earliest possible moment with the new Deputy President.

G. R. URJICH, Colonel
Chief Legal Officer, AMG

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

GCH/gaf

14 January 1944.

In reply
refer to: ACC/I/101.

SUBJECT: Italian Military Tribunals.

TO : Regional Chief Legal Officer, Region 2 (thru RCMO).

1. Ref Major P. Backhouse's letter 2201/11/49 dated 4 Jan 44.
2. The whole matter of the Italian Military Courts is under consideration and is being discussed with the Italian authorities. As soon as an agreement has been reached on the functioning of Italian Military Courts in Occupied Territory, further revised instructions will be forwarded to you.

*I hope to come over to Anversa's office
on Tuesday*

G. B. URSCHEI, Colonel
Chief Legal Officer, AMG

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subject: Italian Military Tribunals
 Ref: Major P. ...
 The subject matter of the Italian Military Courts
 is under consideration and is being discussed with
 the Italian authorities. As soon as an agreement has been
 reached on the functioning of Italian Military Courts
 in occupied territory, further instructions will be
 forwarded to you — To RCHO Army II
 (Att' R540)

Gerold 8/1/44
This is in line with
what you are working on, so
I pass it along

RHJ

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION II

4 Jan 44

Ref: 2201/14/49

Subject: Italian Military Courts.

To : The Chief Legal Officer, Legal Sub-Commission, ACC

1. Ref your ACC/L/304 of 6 Dec., there is only one Military Court in Calabria. This sits at Catanzaro, and its correct description is "Tribunale Militare Territoriale di Guerra presso il XXXI Corpo D'Armata". It started functioning on 7th October, and a copy of its statistics is enclosed.

2. It deals exclusively with crimes committed by military personnel, all civilians being remanded to the civil tribunals. Where crimes have been committed by civilians and the military in conjunction, the case is discussed between the SLO at Catanzaro and The Procuratore Militare.

3. In one case where the Military were ringleaders the case was sent to the Military Court, proceedings against the civilians being dropped as their offences were of small account. The civilian courts had for trial 257 cases in which civilians and the military were involved.

4. Under Italian Law it appears that soldiers and civilians cannot, where their crimes are connected, be tried separately. Apart from altering the law therefore, either the Military Court or the Civil Courts must be given power to try both soldiers and civilians, and you may think it best that such cases should go before the Civil Courts, provided they are cases in which the civilian's offence cannot be overlooked. Would you give a ruling on this point, as in 19 cases action has been suspended pending such ruling.

5. Almost all soldiers who have committed crimes against the C.P. (e.g. murder, rape, theft, etc.) have been sent for trial to the Civilian Courts.

P. Backhouse
P. BACKHOUSE
Major, RASC
ARCOLO

TRIBUNALE MILITARE TERRITORIALE DI GUERRA

di Cosenza con sede in Catanzaro

STATISTICA

DENUNCIE PRESENTATE A QUESTO TRIBUNALE DEL 9 SETTEMBRE 1943

AL 26 NOVEMBRE 1943.-

I°) DENUNCIE RELATIVE AL REATO DI DISERZIONE

Evese

Forza armata di appartenenza	Esercito n°	76
	Marina "	-
	Aviazione "	2
	Totale n°	78

Forza armata di appartenenza	Esercito n°	6667
	Marina "	-
	Aviazione "	51
	Totale n°	6718 (I°)

IN ATTESA EVASIONE

(I°) di cui n. 2453 sospese per difficoltà d'istruttoria e n. 62 espese ai sensi art. 243 C.E.M.G. (diserzione)

II°) DENUNCIE RELATIVE AL REATO DI VARIE SPECIE

EVASE

Forza armata di appartenenza	Esercito n°	72
	Marina "	-
	Aviazione "	-
	Totale n°	72

Forza armata di appartenenza	Esercito n°	462
	Marina "	-
	Aviazione "	-
	Totale n°	462

IN ATTESA DI EVASIONE

1563

I°) DENUNCIE RELATIVE AL REATO DI DISSEMINAZIONE

Evase

Forza armata di appartenenza	Esercito	n°	76
	Marina	"	-
	Aviazione	"	2
	Totale	n°	78

Forza armata di appartenenza

Esercito	n°	6667
Marina	"	-
Aviazione	"	51
Totale	n°	5718 (I°)

IN ATTESA EVASIONE

(I°) di cui n. 2453 sospese per difficoltà d'istruttoria e n. 62 sospese ai sensi art. 243 C.P.M.G. (diserzione)

II°) DENUNCIE RELATIVE AL REATO DI MARIR SPENCIE

EVASE

Forza armata di appartenenza

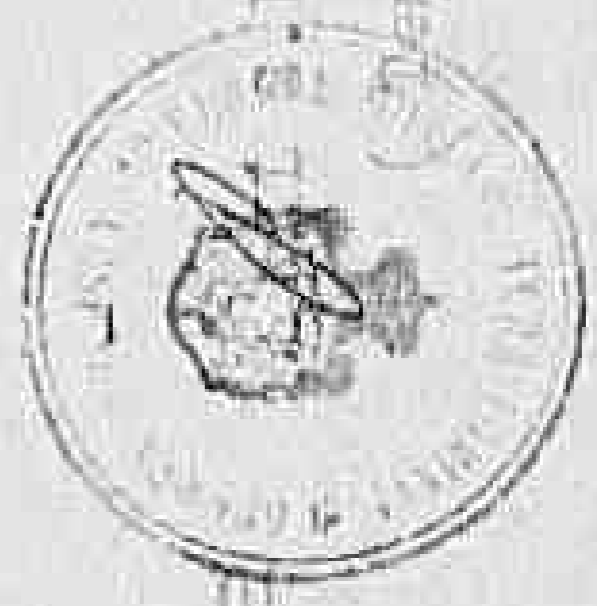
Esercito	n°	72
Marina	"	-
Aviazione	"	-
Totale	n°	72

Forza armata di appartenenza

Esercito	n°	462
Marina	"	-
Aviazione	"	-
Totale	n°	462

IN ATTESA DI EVASIONE

Ceranzano, 5 dicembre 1943.-



PER COPIA CONFORME
 AL GENERALE CARO
 (Maresciallo di Campagna)
 S. RUCCHICCIATORE MILITARE DEL RE
 (Ten. Col. Domenico Di Fallico)

Caro

M...

Subject:- Jurisdiction over Italian Military Personnel.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/206/154
10 January 1944.

101
Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission,
BRINDISI.

In your communication of 28 Dec 43 to General Taylor concerning the arrest of Lt. Grimaldi you suggested in the second sub-paragraph of paragraph 2 that the Rules which are in process of final drafting governing the Italian Military Tribunals deprive the Allied Military Courts of jurisdiction in the first instance over Italian Military personnel, and that it is only after charges have first been presented to the Italian Military authorities that AMG courts can hear charges that a Proclamation offense has been committed.

2. This is not my interpretation of the proposed Rule. That Rule provides merely that "where an offense charged (in an Italian Military Court) is also an offense against any Proclamation or Order issued or which may hereafter be issued by the Military Governor or under his authority" a report of the charge shall be made to the Military Governor. I have not read into this proposed Rule any implication that whenever a Proclamation offense is committed by an Italian Officer or soldier AMG must refer the charge to the Italian Military Courts. Such an implication seems to be clearly unwarranted, for it would make superfluous in many cases the later report by the Italian Military authority to the Military Governor.

3. A signal from AFHQ dated 7 Dec 43 stated that Italian Military and Naval personnel who are not carried on the rolls of an Italian unit that has been offered to and accepted by the Allied Forces and is under the military command of those forces, are subject to the jurisdiction of Allied Military Courts.

4. Because it is obviously desirable that we both interpret the proposed Rule similarly I should be grateful if you would give the question further consideration.

Ward Howard

Major, A.U.S.,
Chief Legal Officer.

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TRIBUNALE MILITARE TERRITORIALE DI GUERRA
di Cosenza con sede in Catanzaro

STATISTICA

DENUNCIE PRESENTATE A QUESTO TRIBUNALE DEL 9 SETTEMBRE 1943

AL 26 NOVEMBRE 1943.-

I°) DENUNCIE RELATIVE AL REATO DI DISERZIONE

Forza armata di appartenenza	Esercito	n° 76
	Marina	-
	Aviazione	2
	Totale	n° 78

Forza armata di appartenenza	Esercito	n° 6667
	Marina	-
	Aviazione	51
	Totale	n° 6718 (I°)

IN ATTESA DI EVASIONE

(I°) di cui n. 2452 sospese per difficoltà d'istruttoria e n. 62 sospese ai sensi art. 243 C.I.M.G. (diserzione)

II°) DENUNCIE RELATIVE AL REATO DI VARIO SENILE

Forza armata di appartenenza	Esercito	n° 72
	Marina	-
	Aviazione	-
	Totale	n° 72

Forza armata di appartenenza	Esercito	n° 462
	Marina	-
	Aviazione	-
	Totale	n° 462

IN ATTESA DI EVASIONE

101

I°) DENUNCIE RELATIVE AI REATI DI DISERZIONE

Evase

Forze armate di appartenenza	Esercito n°	76
	Marina "	-
	Aviazione "	2
	Totale n°	78

IN ATTESA EVASIONE

Forza armata di appartenenza	Esercito n°	6667
	Marina "	-
	Aviazione "	51
	Totale n°	6718 (I°)

(I°) di cui n. 2453 sospese per difficoltà d'istruttoria e n. 62 sospese ai sensi art. 243 D.P.M.G. (diserzione)

II°) DENUNCIE RELATIVE AI REATI DI VARIE SPECIE

EVASE

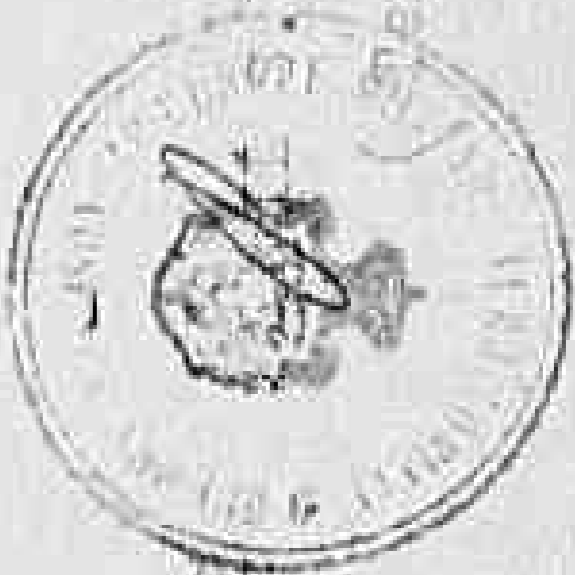
Forza armata di appartenenza	Esercito n°	72
	Marina "	7
	Aviazione "	1
	Totale n°	72

Forza armata di appartenenza	Esercito n°	462
	Marina "	-
	Aviazione "	-
	Totale n°	462

IN ATTESA DI EVASIONE

Catanzaro, 5 dicembre 1943.

PER COPIA CONFORME
 IL CONSIGLIERE CAPO
 (Ten. Col. Domenico Di Tullio)



Caro

Di Tullio

45

39

Subject:- Jurisdiction over Italian Military Personnel.

AMG HQ.,
15 Army Group,
C.M.F.

Ref. AMG/206/154
10 January 1944.

101
Chief Legal Officer,
Legal Sub-Commission,
Allied Control Commission,
BRINDISI.

In your communication of 28 Dec 43 to General Taylor concerning the arrest of Lt. Crimaldi you suggested in the second sub-paragraph of paragraph 2 that the Rules which are in process of final drafting governing the Italian Military Tribunals deprive the Allied Military Courts of jurisdiction in the first instance over Italian Military personnel, and that it is only after charges have first been presented to the Italian Military authorities that AMG courts can hear charges that a Proclamation offense has been committed.

2. This is not my interpretation of the proposed Rule. That Rule provides merely that "where an offense charged (in an Italian Military Court) is also an offense against any Proclamation or Order issued or which may hereafter be issued by the Military Governor or under his authority" a report of the charge shall be made to the Military Governor. I have not read into this proposed Rule any implication that whenever a Proclamation offense is committed by an Italian Officer or soldier AMG must refer the charge to the Italian Military Courts. Such an implication seems to be clearly unwarranted, for it would make superfluous in many cases the later report by the Italian Military authority to the Military Governor.

3. A signal from AMHQ dated 7 Dec 43 stated that Italian Military and Naval personnel who are not carried on the rolls of an Italian unit that has been offered to and accepted by the Allied Forces and is under the military command of those forces, are subject to the jurisdiction of Allied Military Courts.

4. Because it is obviously desirable that we both interpret the proposed Rule similarly I should be grateful if you would give the question further consideration.

Ward Howe

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Major, A.U.S.,
Chief Legal Officer.

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

APP/ gmc

23 December 1943.

In reply refer to: Acc/c/101

MEMORANDUM:

TO : Brigadier General Maxwell D. Taylor.

1. Flying of the Italian National Flag now permissible.

The Proclamation No. 14, Article III, dated 7 Dec. 1943 provides as follows:-

"In view of the status of unbelligerency which has been granted to Italy, Article VI of Proclamation 11 shall be amended to read as follows:-

Display of Flags & Singing of National Anthems.

"The public display of any flag or colors of any nation which is at present actively prosecuting war against Great Britain or the United States and the public singing and playing of the National Anthem and any other patriotic or political song or music of any such country are prohibited."

2. Case of Lieut. GIVINDI MISSIE.

This would appear to be a case of preventive detention by the British police for motives of security as opposed to any charge with object of trial before a Military Tribunal. Such action for security reasons is normal but in cases where the person concerned is an officer on active service with the Italian forces it seems advisable to inform the Italian Military authorities at the time of taking preventive measures, in accordance with their request.

If on the contrary it is intended to charge this officer before a Military Tribunal, then the proper jurisdiction would be that of an Italian Military Tribunal. When the Rules issued by AMG for the supervision of such Courts would enable the case to be withdrawn on the authority of the Allied Military Governor should such steps be deemed necessary.

A. R. THORNTON, Major
Legal Subcommission, ACC.

In reply
refer to: ACC/6/101

MEMORANDUM:

TO : Brigadier General Maxwell D. Taylor.

1. Flying of the Italian National Flag non permissible.

MG Proclamation No. 14, Article III, dated 7 Dec. 1943 pro-
vides as follows:-

"In view of the status of cobelligerency which has been granted
to Italy, Article VI of Proclamation 11 shall be amended to read as follows:-

Display of Flags & Singing of National Anthems.

"The public display of any flag or colors of any nation which
is at present actively prosecuting war against Great Britain or the United
States and the public singing and playing of the National Anthem and any
other patriotic or political song or name of any such country are prohibited."

2. Case of Lieut. GENERALE Fidele.

This would appear to be a case of preventive detention by the
British police for motives of security as opposed to any charge with object
of trial before a Military Tribunal. Such action for security reasons is
normal but in cases where the person concerned is an officer on active ser-
vice with the Italian forces it seems advisable to inform the Italian mili-
tary authorities at the time of taking preventive measures, in accordance
with their request.

If on the contrary it is intended to charge this officer ^{before}
a Military Tribunal, then the proper jurisdiction would be that of an Ital-
ian Military Tribunal when the Rules issued by AMF for the supervision of such
Courts would enable the case to be withdrawn on the authority of the Allied
Military Governor should such steps be deemed necessary.

A. R. THORP, Major
Legal Substitution, AGC.

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Memo.

Day declared was on
January 13 0 at 43

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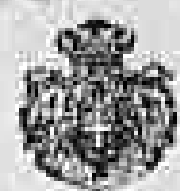
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Col. [unclear]

10 JAN 16 1944



MINISTERO DELLA GUERRA

GABINETTO

101

N. 88/c. di prot.

P.M. 107

" 7 gennaio 1944

OGGETTO:

ALLA COMMISSIONE ALLEATA DI CONTROLLO

BRENDISI

Si invia - per conoscenza - copia del foglio N.664/II Gabinetto, all'oggetto: Misure di clemenza e revisione procedimenti pendenti.-

GENERALE ALIBERTI

Aliberti

442

10 JAN 1944 1692
101

MINISTERO DELLA GUERRA
Gabinetto

Prot. N. 664/II

P.M. 107 30 dicembre 1943

OGGETTO: Misure di clemenza e revisione procedimenti pendenti. -

- AL COMANDANTE FT. AA. DELLA CAMPANIA
- AL COMANDANTE MILITARE DELLA SARDEGNA (XIII C.A.)
- AL COMANDANTE DEL IX CORPO D'ARMATA
- AL COMANDANTE DEL XXXI CORPO D'ARMATA
- AL COMANDANTE DEL LI CORPO D'ARMATA

NAPOLI
P.M. 50
P.M. 67
P.M. 114
P.M. 410

e, per conoscenza:

- ALL'UFFICIO DI S.E. IL 1° AIUTANTE DI CAMPO
GENERALE DI S.M. IL RE
- ALL'UFFICIO DI S.E. IL 1° AIUTANTE DI CAMPO
GENERALE DI S.A.R. IL PRINCIPE DI PIEMONTE
- AL COMANDO SUPREMO
- AL MINISTERO DELLA MARINA
- AL MINISTERO DELL'AERONAUTICA
- ALL'ISPettorato GENERALE DELL'ESERCITO
- ALLO STATO MAGGIORE R. ESERCITO

P.M. 151
P.M. 151
P.M/151
P.M. 151
P.M. 151
P.M. 151
P.M. 151

.....

Gli eventi determinatisi nel territorio liberato dopo il 24 luglio ed il successivo armistizio consigliano di:

- procedere ad un sollecito riesame dei numerosi procedimenti pendenti a carico di militari, presso tutti i tribunali militari (territoriali e di guerra);
 - favorire per i condannati che se ne siano resi meritevoli provvedimenti di grazia Sovrana. -
- La revisione deve essere estesa oltre che a processi per i quali l'azione penale non sia ancora stata disposta dal Comandante di G.U. competente, anche a quelli per i quali l'azione penale, sebbene autorizzata, non abbia avuto ancora pratica conclusione.

Pertanto ordino:

- 1°) - I procuratori militari di tutti i tribunali inizino subito il riesame di tutti i procedimenti penali comunque pendenti, con criterio di massima larghezza ed indulgenza, tenendo conto dell'ambiente nel quale l'infrazione penale si verificò, ambiente completamente diverso da quello odierno e che comunque non intacchino la figura morale dell'imputato nella sua veste di cittadino e di soldato.

NAPOLI
P.M. 50
P.M. 67
P.M. 114
P.M. 410

P.M. 151
P.M. 151
P.M. 151
P.M. 151
P.M. 151
P.M. 151

OGGETTO: Misure di elemezza e le
 AL COMANDANTE FT. AA. DELLA CAMPANIA
 AL COMANDANTE MILITARE DELLA SARDEGNA (XIII C.A.)
 AL COMANDANTE DEL IX CORPO D'ARMATA
 AL COMANDANTE DEL XXXI CORPO D'ARMATA
 AL COMANDANTE DEL LI CORPO D'ARMATA

e, per conoscenza:

ALL'UFFICIO DI S.E. IL 1° AIUTANTE DI CAMPO
 GENERALE DI S.M. IL RE
 ALL'UFFICIO DI S.E. IL 1° AIUTANTE DI CAMPO
 GENERALE DI S.A.R. IL PRINCIPE DI PIEMONTE
 AL COMANDO SUPREMO
 AL MINISTERO DELLA MARINA
 AL MINISTERO DELL'AERONAUTICA
 ALL'ISPettorato GENERALE DELL'ESERCITO
 ALLO STATO MAGGIORE R. ESERCITO

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- 2°) - I procuratori stessi propongano al comandante della G.U. competente la revoca dell'ordine di a procedere ove già impartito o la archiviazione dei procedimenti per i quali tale ordine non fosse ancora stato chiesto o concesso con la conseguente liberazione degli imputati detenuti. -
- 3°) - Dal beneficio dovranno essere esclusi gli imputati non meritevoli di

./.

considerazione per cattivi precedenti, gravità del reato in rapporto al grado rivestito dall'imputato.-

4°)-Entro il 30 gennaio p.v. i comandi di G.U. in indirizzo mi invieranno:

- a) elenco nominativo dei militari che hanno beneficiato del provvedimento, indicando per ognuno generalità complete, reato del quale era imputato (brevissima sintesi del fatto), precedenti disciplinari;
 - b) statistica (numerica) dei casi che rimangono ancora da esaminare e per i quali dovrà seguire appena possibile segnalazione analoga al precedente comma a).
- 5°)-I procuratori militari ed i comandanti di istituti di pena proponghino la liberazione dei condannati meritevoli, provocando anche d'ufficio la grazia Sovrana.

Con l'occasione preavviso che è in corso il provvedimento di nomina del procuratore generale e l'istituzione di un tribunale militare supremo per le terre liberate.-

IL SOTTOSGREGARIO DI STATO

-F.to T. Orlando -

P.c.c.

IL CAPO UFFICIO

(Ten.Colonnello S.M. A. Gualano)

F.to Gualano

P.M. 107 30 Dec. 43.

The events occurring in liberated territory after 24 July and the Armistice which followed indicate the following as advisable:

To proceed to a careful reexamination of the numerous cases pending against military personnel in all Military Tribunals (territorial or war).

To make available for those who have been convicted and who may have made themselves deserving thereof, the provisions for Sovereign clemency.

The revision must extend in addition to the cases for which penal action may not yet have been taken by the Commander of the Grande Unita having jurisdiction, to those for whom penal action although authorized, has not yet resulted in any practical conclusion.

Accordingly I order:

(1) The military procuratori of all tribunals are to undertake immediately the reexamination of all criminal cases wherever pending, upon the criterion of the widest and most indulgent basis, having regard for the environment in which the penal infraction took place, an environment completely different from that of today and which in any event does not reflect upon the moral standing of the accused in his capacity as a citizen or a soldier.

(2) The procuratori themselves shall propose to the Commander of the Grande Unita having jurisdiction the revocation of the order to proceed where already issued, or the filing of such proceedings for which such order has not yet been requested or allowed with the consequent liberation of the accused being detained.

(3) From this benefit must be excluded the accused who are undeserving because of previous bad records or seriousness of the crime in relation to the rank of the accused.

(4) By 30 January/next the Commanders of the Grande Unita concerned will send me:

(a) a list of names of those members of the military personnel who have benefited by these provisions, setting forth for each one his complete personal data, the crime of which he was accused, (very brief summary of facts), disciplinary record.

(b) numerical list of cases remaining for examination for which there should be followed as soon as possible the procedure mentioned in (a).

(5) The procuratori militari and the commanders of correctional establishments shall propose the liberation of deserving convicted cases, invoking Sovereign clemency on their own responsibility.

I take this opportunity to advise you that there is about to be made the nomination of the procuratore generale and the institution of a Supreme Military Tribunal for the liberated territories.

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The Undersecretary of State
F. to T. Orlando

6 JAN 1944

MDT/rjo

In reply refer to:
251.2

6 January 1944

MEMORANDUM FOR: Colonel Upjohn, Legal Subcommittee, A.C.C.

With reference to the attached letter on the subject of Italian Deserters, please notify the Chief Legal Officers, Regions I and II, that your letter is withdrawn as the matter is being submitted to AFHQ for final decision.

For the Deputy President, Allied Control Commission:

MAXWELL D. TAYLOR
Brigadier General, USA

1 Incl:
Ltr, Legal Subcomm.
No. ACC/L/101, 30 Dec 43

31

100

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommission

GHI/gaf

7 January 1944.

In reply
refer to: ACC/1/100.

SUBJECT: Italian Deserters.

TO : Chief Legal Officers, Regions 1 & 2.

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

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

G. R. WARREN, Colonel
Chief Legal Officer, ACC.

Copy to: ACC HQ
ACC HQ 15 Army Gp.

1109

101

HEADQUARTERS ALLIED CONTROL COMMISSION

MDT/hjp

APO 394

In reply refer to:
251.2

6 January 1944

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For the Deputy President, Allied Control Commission:

MDT
MAXWELL B. TAYLOR
Brigadier General, USA

1 Incl:
Ltr, Legal Subcomm.
No. ACC/L/101, 30 Dec 43

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U. S. SECRET

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8 JAN 1944

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JAN 06/1954

FREEDOM RPT FILPOT RPT PAROO

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THE UNDERSECRETARY FOR WAR REPORTS THAT AMG OFFICIALS IN CALABRIA HAVE DIRECTED THAT ITALIAN SOLDIERS WHO DESERTED IN THE PERIOD JULY TENTH DASH SEPTEMBER EIGHTH BE NOT REPEAT NOT TRIED FOR DEFECTION BY ITALIAN ARMY COURTS MARTIAL PD PAROO TO FREEDOM RPT FILPOT FOR AMG RPT PAROO FOR SPOOFED FROM FATIMA SIGNED JAYCE PAROO THE ATTITUDE TAKEN BY AMG IS THAT THREE MEN MAY HAVE DESERTED AS A CONSEQUENCE OF THE URAGE-MENT GIVEN THEM BY ALLIED RADIO AND LEAFLETS PD AMG FIFTEENTH ARMY GROUP CONCURS IN THIS VIEW POINT PD GOC FIFTEEN ARMY GROUP CONSIDERS THAT IT IS A QUESTION FOR DECISION BY THE COMMANDER IN CHIEF PD THE ITALIAN ATTITUDE IS THAT FOR IF ANY DESERTED IN THE PERIOD IN QUESTION FOR REASONS OTHER THAN COMRADES FOR WHICH THEY SHOULD BE AMENABLE TO MILITARY JUSTICE PD THE WAR MINISTRY CONSIDERS THAT ^{failure} TO TRY TO PUNISH THESE MEN WILL DESTROY MILITARY PRESTIGE AND DISCIPLINE PD THE WAR MINISTRY SUGGESTS THAT TRIAL BE PERMITTED AND THAT SUBSEQUENTLY AN ACT OF CLEMENCY BE CONSIDERED AND BE PROMULGATED IN FAVOR OF THE CALPRIYS PD THE ALLIED CONTROL COMMISSION FORWARDS THIS MATTER FOR YOUR DECISION WITH THE RECOMMENDATION THAT THE TRIALS FOR DEFECTION BE AUTHORIZED PERMITTING THE DEFENDANTS TO ADDUCE THE EFFECT OF ALLIED PROPAGANDA IN EVIDENCE AS A MITIGATING CIRCUMSTANCE PD WE CAN WATCH THE SENTENCES CLOSELY AND ENCOURAGE A LIBERAL POLICY OF CLEMENCY

AUTHENTICATED:

35

DISTRIBUTION:
2 - AG Files
1 - Diary

MAXWELL D. TAYLOR
Brigadier General, USA

406

HEADQUARTERS
ALLIED CONTROL COMMISSION

ART/gar

5 January 1944.

SUBJECT: Disciplinary Measures Against Italian Deserters.

For Marshall A. Harbo
Chief of Supreme General Staff.

I have received a memorandum from General Orlando transmitted through the Italian Liaison Officer with this Commission, dated 21 Dec. 1943 (M. 0046/ IP) (di Prot.) calling my attention to instructions issued by an officer of Allied Military Government in regard to the measures to be adopted for dealing with certain classes of absentees from the Italian Forces.

Your Excellency will appreciate, I am sure, the fact that the Allies are most anxious that all Italian soldiers who laid down their arms in response to the United Nations appeals by means of leaflets dropped from the air, radio-cast or other forms of invitation, should receive special consideration, and that accordingly members of the Italian Armed Forces who deserted between 10 July and 8 September 1943, inclusive, shall not be punished for desertion except those who deserted to the German or other hostile army.

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

I shall be glad to receive your assurance that all Italian Commanders concerned with such special cases have been given the instructions, and to receive confirmation of this in order that the Allied Military Government may be informed thereon.

MARSHAL D. TAYLOR
Brigadier General, U.S. Army.

Chief of Supreme General Staff.

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I shall be glad to receive your assurance that all Italian Commanders concerned with such special cases have been given due instructions, and to receive confirmation of this in order that the Allied Military Government may be informed thereof.

HARVEY D. TAYLOR
Brigadier General, U.S. Army.

346

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8 JAN 1944
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101

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ADMINISTRATIVE DIRECTORATE
APO 512

FDG/wb

AMG/O15./AD

3 January 1944

SUBJECT: Italian Military Courts.

TO: Advance Command Post;
Allied Control Commission,
BRINDISI. (att: Legal Sub-commission).

1. Forwarded as a matter originating in your office.

For the Commanding Officer:

R.R. Cripps
R.R. CRIPPS,
Lt. Colonel,
for the Administrative Director.

Incl: 1. Letter 2201/14/46 dated 30 Dec. 43 from Region 11.

4/5

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION II

30 Dec 43

Ref: 2201/14/46

Subject: Italian Military Courts.

To : Chief Legal Officer, Legal Sub-Commission, ~~ACC~~ ACC

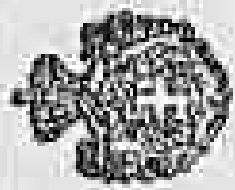
Ref your ACC/L/304 of 6 Dec there are no Italian
Military Courts functioning in the Province of Matera.

Mark D. Howe
MARK D. HOWE
Major, AUS
RLO

508- 459

Adm *8 Dec 1943* *1968*
AFPS

101
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MINISTERO DELLA GUERRA

GABINETTO

n. 259/c di prot.

P.M. 107 11, 29 Dicembre 1943

PROMEMORIA PER IL SIG. GENERALE MAXWELL D. TAYLOR -
CAPO DI S.M. DELLA COMMISSIONE ALLEATA DI CONTROLLO.

L'Ecc. ORLANDO mi ha pregato di
comunicarVi che l'Ecc. il Generale di Corpo D'Armata
Camillo MERCALLI, attualmente a disposizione del
Ministero, è stato designato per la Presidenza del
costituendo Tribunale Supremo Militare.-

Colgo l'occasione per inviarVi cordiali
saluti e rinnovare fervidi auguri.-

GENERALE DI BRIGATA
A. ALIBERTI

GABINETTO

n° 259/c di prot.

P.M. 107 li, 29 Dicembre 1943

PROMEMORIA PER IL SIG. GENERALE MAXWELL D. TAYLOR -
CAPO DI S.M. DELLA COMMISSIONE ALLEATA DI CONTROLLO.

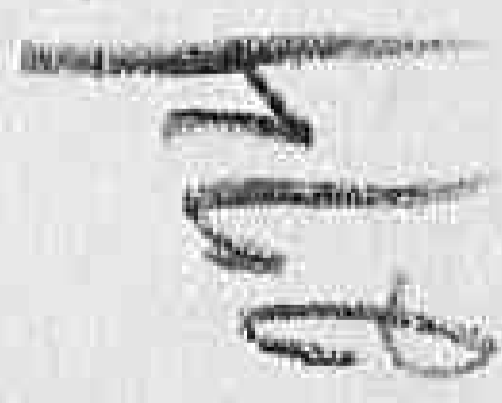
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saluti e rinnovare fervidi auguri.-

GENERALE DI BRIGATA
A. ALIBERTI



32



100

10



To Col Appeler

29 Dec.

Wanted to be with you
call on you personally
understand all of the
instructions

No 259

Memo for Genl Taylor

His Ex. Orlando has asked me to inform you that
Lt. Genl Camillo Meccoli, at present in the service of
the ministry, has been designated President of the Supreme
Military Tribunal in process of organization.

I seize this occasion to send you my cordial
greetings and warmest good wishes.

Big Genl A. Alberti

101



MINISTERO DELLA GUERRA
GABINETTO

101
Al M. della Guerra
To Col. Uff. Torino
mm

PROMEMORIA PER IL GENERALE ALIBERTI

Vi prego di voler informare il Generale TAYLOR che il Tribunale Supremo Militare in corso di costituzione sarà dislocato a Ostuni (prov. di Brindisi).-

Al detto Tribunale compete l'esame di tutti i ricorsi relativi ai giudizi emessi dai Tribunali Militari di tutte le Forze Armate.-

GENERALE ORLANDO

Generale Orlandi

GABINETTO

PROMEMORIA PER IL GENERALE ALIBERTI

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GENERALE ORLANDO

Orlando

30

299

Copy 101

AMC
Headquarters
Region 2

Ref: 2201/14/36

19 Dec 43

Subject: Trial of Italian Deserters

To: Chief Legal Officer
Legal Sub-Commission
ACC

I have received your instructions as to the procedure and policy to be followed in dealing with the above mentioned problem. Your views have been communicated to the G.O.C. No. 2 District, who is the officer commanding XXXI Army Corps, with the RCO's request that appropriate orders be issued to the Italian troops in Region 2.

Mark DeW. Howe, Major, AUS,
RCLO, Region 2

23

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N/S

101

BANDO N. 1

(Norme relative alla convocazione dei Tribunali Militari di Guerra straordinari. Aggravamento delle pene per taluni reati militari).

NOI CAVALIERE DI GRAN GROCE

GENERALE D'ARMAIA

VITTORIO AMBROSIO

CAPO DI STATO MAGGIORE GENERALE

- Visto l'articolo 1 del Bando del Comandante Supremo delle F.V.A.A. 30 settembre 1943, n. 137, col quale si delega al Capo di Stato Maggiore Generale facoltà di emanare bandi;
- Visti gli articoli 17 - 20 - 283 - 284 - 285 - 290 - G.P.M.G.;
- Visto l'art. 14 dell'ordinamento Giudiziario Militare di Pace e gli articoli 84 - 85 - 86 - 37 - 88 dell'ordinamento Giudiziario di Guerra approvati con R.D. 9/9/1941;
- Visto l'art. 4 del R.D.L. 29/7/1943 n. 668;

O R D I N A M E N T O

Art. 1.

I Tribunali Militari di Guerra Straordinari, nei territori dichiarati "zona di operazioni", oltre quanto stabilito, dall'art. 283 c.p.m.g. sono competenti a conoscere dei seguenti reati, semprechè siano commessi da militari:

- a) novero alle operazioni militari (art. 52 c.p.m.g.);
- b) intelligenza e corrispondenza con il nemico nelle ipotesi previste dal 1 e 2 capoverso dell'art. 54 c.p.m.g.;
- c) abbandono del comando, nelle ipotesi previste dal 1 e 2 capoverso dell'art. 94 c.p.m.g.;
- d) resa avvenuta a causa di rivolta o di altri reati (art. 105 c.p.m.g.);
- e) incitamento alla resa (art. 109 c.p.m.g.);
- f) manifestazioni di codardie (art. 110 c.p.m.g.);

GENERALE D'ARMAIA
VITTORIO AMBROSIO
CAPO DI STATO MAGGIORE GENERALE

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- Visto l'art. 14 dell'ordinamento Giudiziario Militare di Pace e gli articoli 84 - 85 - 86 - 87 - 88 dell'ordinamento Giudiziario di Guerra approvati con R.D. 2/9/1941;
- Visto l'art. 4 del R.D.L. 29/7/1943 n. 668;

O R D I N A M E N T O

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- d) resa avvenuta a causa di rivolta o di altri reati (art. 105 c.p.m.g.);
- e) incitamento alla resa (art. 109 c.p.m.g.);
- f) manifestazioni di codardia (art. 110 c.p.m.g.);
- g) comandante che non tiene il posto di combattimento, nella ipotesi prevista del capoverso dell'art. 120 c.p.m.g.);
- h) disobbedienza (art. 173 c.p.m.g., art. 47 c.p.m.g.);
- i) rivolta (art. 174 c.p.m.g., art. 47 c.p.m.g.);

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- l) ammutinamento (art. 175 c.p.m.g., art. 47 c.p.m.g.);
 m) insubordinazione con violenza (art. 136 c.p.m.g., art. 47 c.p.m.g.);
 n) insubordinazione con minaccia e ingiuria (art. 139 c.p.m.g., art. 57 c.p.m.g.);
- o) manifestazioni e grida sediziose (art. 183 c.p.m.g., art. 47 c.p.m.g.);
 I tribunali predetti, potranno essere convocati quando si tratti di giudicare dei reati seguenti, anche se commessi da civili:
- a) distruzione e sabotaggio di opere o altre cose militari (art. 158 c.p.m.g.);

- b) aiuto al nemico nei suoi disegni politici (art. 58 c.p.m.g.);
 c) aiuto o informazioni a spie o altri agenti nemici (art. 62 c.p.m.g.);
- Per tutti i reati punibili con la morte e per quelli elencati in questo articolo, i tribunali militari di guerra straordinari possono essere convocati anche quando l'imputato non sia stato arrestato in flagranza.

Art. 2

Per la convocazione e la costituzione dei tribunali militari di guerra straordinari, nonché per la procedura che essi debbono seguire valgono le norme attualmente vigenti; tuttavia la convocazione può avvenire anche per ordine dei Comandanti di Presidio militare che risiedono al grado di generale sempre che nel territorio del presidio non risieda un comando di divisione o di altra maggiore unità.

Quando l'imputato appartenga alla R. Aeronautica i competenti comandi di Squadra Aerea richiederanno al Comando di Corpo d'Armata competente per territorio la convocazione del tribunale Militare di Guerra straordinario.

Analogamente agiranno i Comandi di Marina fuori delle ipotesi nelle quali è previsto la competenza del Tribunale di Bordo.

Art. 3

Le pene previste dall'art. 183 c.p.m.g., per il reato di manifesta-

o) manifestazioni e grida sediziose (art. 183 c.p.m.g., art. 47 c.p.m.g.);
I tribunali predetti, potranno essere convocati quando si tratti di giudicare dei reati seguenti, anche se commessi da civili:
a) distruzione e sabotaggio di opere o altre cose militari (art. 158

c.p.m.g.;

b) aiuto al nemico nei suoi disegni politici (art. 58 c.p.m.g.);

c) aiuto o informazioni a spie o altri agenti nemici (art. 62 c.p.m.g.);

Per tutti i reati punibili con la morte e per quelli elencati in questo articolo, i tribunali militari di guerra straordinari possono essere convocati anche quando l'imputato non sia stato arrestato in flagranza.

Art. 2

Per la convocazione e la costituzione dei tribunali militari di guerra straordinari, nonché per la procedura che essi debbono seguire valgono le norme attualmente vigenti; tuttavia la convocazione può avvenire anche per ordine dei Comandanti di Presidio militare che rivestano il grado di generale sempre che nel territorio del presidio non risieda un comando di divisione o di altre maggiore unità.

Quando l'imputato appartenga alla R. Aeronautica i competenti comandi di Squadra Aerea richiederanno al Comando di Corpo d'Armata competente per territorio la convocazione del tribunale Militare di Guerra straordinario.

Analogamente agiranno i Comandi di Marina fuori delle ipotesi nelle quali è previsto la competenza del Tribunale di Bordo.

Art. 3

Le pene previste dall'art. 183 c.p.m.g. per il reato di manifestazioni e grida sediziose sono aumentate nel minimo a 5 anni e nel massimo a 15 anni di reclusione militare.

Le pene previste per tutti i reati elencati all'art. 1 sono aumentate da un terzo alla metà.

././.

Art. 4

Il militare che essendosi sbandato dal proprio reparto in dipendenza delle circostanze verificatesi dopo l'8 settembre 1943 non si costituisce all'autorità militare italiana appena possibile e comunque non oltre 5 giorni da quello in cui il territorio nel quale il militare si trova è stato occupato dalle forze italiane e anglo-americane, è considerato disertore e punito con le pene sancite dall'art. 145 c.p.m.g. aumentate da un terzo alla metà.

Art. 5

Per determinazione dell'ufficiale più elevato in grado o più anziano presente al fatto, sarà passato immediatamente per le armi il militare colto nell'atto di commettere uno dei seguenti reati:

- a) abbandono del Corpo per combattere contro lo Stato (art. 50 c.p.m.g.);
- b) aiuto al nemico (art. 51 c.p.m.g.);
- c) intelligenze o corrispondenze col nemico quando queste abbiano prodotto danno alle F.F.A.A. dello Stato (art. 54 parte 1 c.p.m.g.);
- d) spionaggio militare (art. 59 c.m.r.g.);
- e) abbandono del comando durante il combattimento o in presenza del nemico (art. 94 parte 1 c.p.m.g.);
- f) resa (art. 102 c.p.m.g.);
- g) manifestazioni arbitrarie per arrendersi (art. 108 c.p.m.g.);
- h) abbandono del posto durante il combattimento (art. 119 c.p.m.g.);
- i) comandante che non tiene il posto di combattimento, quando ciò avvenga con dolo (art. 120 c.p.m.g.);
- l) diserzione al nemico (art. 143 c.p.m.g.);
- m) diserzione in presenza del nemico (art. 144 c.p.m.g.);
- n) saccheggio (art. 136 c.p.m.g.);

Art. 6

Il presente Bando entra immediatamente in vigore.

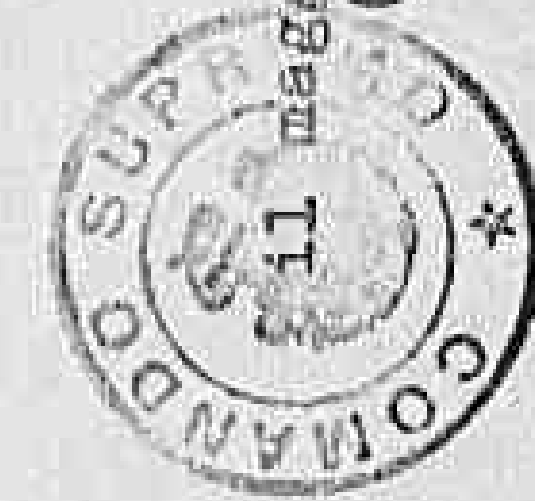
oltre 5 giorni da quello in cui il territorio nel quale il militare si trova è stato occupato dalle forze italiane e anglo-americane, è considerato disertore e punito con le pene sancite dall'art. 146 c.p.m.g. su mentate da un terzo alla metà.

Art. 5

- Per determinazione dell'ufficiale più elevato in grado o più anziano presente al fatto, sarà passato immediatamente per le armi il militare colto nell'atto di commettere uno dei seguenti reati:
- a) abbandono del Corpo per combattere contro lo Stato (art. 50 c.p.m.g.);
 - b) aiuto al nemico (art. 51 c.p.m.g.);
 - c) intelligenze o corrispondenze col nemico quando queste abbiano prodotto danno alle F.F.A.A. dello Stato (art. 54 parte 1 c.p.m.g.);
 - d) spionaggio militare (art. 59 c.m.p.g.);
 - e) abbandono del comando durante il combattimento o in presenza del nemico (art. 94 parte 1 c.p.m.g.);
 - f) resa (art. 103 c.p.m.g.);
 - g) manifestazioni eritriche per arrendersi (art. 108 c.p.m.g.);
 - h) abbandono del posto durante il combattimento (art. 119 c.p.m.g.);
 - i) comandante che non tiene il posto di combattimento, quando ciò avvenga con dolo (art. 120 c.p.m.g.);
 - l) diserzione al nemico (art. 143 c.p.m.g.);
 - m) diserzione in presenza del nemico (art. 144 c.p.m.g.);
 - n) saccheggio (art. 186 c.p.m.g.);

Art. 6

Il presente Bando entra immediatamente in vigore.
La pubblicazione avrà luogo mediante radiodiffusione, inserzione sui giornali ed affissione per mezzo di manifesti murali.



P.C.U.
il magg. s. S.M. capo ufficio
(Renzo Rocca)

Dem. Rocca

Comando Supremo 4 ottobre 1943

26

F/to A M B R O S I O

101 25 novembre 1943

AL ALTA COMMISSIONE ALIEMATA DI CONTINGGIO

COMANDO SUPREMO

PIRISI

ufficio affari vari

Prot. N. 200/AV/2

OGGETTO: competenza del tribunale militare italiano di Napoli.

Il Comando IV.44. della Campania ha segnalato che il Comando IV Gruppo Armate Anglo-Americane, mentre ha subito irato il tribunale militare italiano di Napoli a definire le cause civili rimaste in sospeso all'atto dell'armistizio, ritiene che il tribunale stesso sia incompetente riguardo ai reati dei civili e dei militari che siano stati commessi nell'ambito della sua giurisdizione.

A parere di questo comando, se l'esclusione di competenza non essere emessa per quanto riguarda i reati commessi dai civili, non sembra invece giustificata per quanto la tutto ei reati commessi dai militari italiani,

Finché questi rimangono militari essi dovrebbero essere sottoposti alla disciplina delle IV.44. Italiane e, quindi, anche alle giurisdizioni speciali istituite per i membri di esse.

Se i poteri civili delle autorità militari italiane possono essere subito talune limitazioni in seguito all'occupazione, sembra tuttavia opportuno che dette autorità conservino i poteri militari in relazione alla presenza delle IV.44. italiane nel territorio occupato.

I militari italiani, appunto perché riconosciuti tali anche se si trovano nel territorio italiano occupato, dovrebbero essere sottoposti esclusivamente alla giurisdizione del tribunale militare italiano competente.

Il Comando F.F.A.A. della Guardia ha segnalato che il Comando XV Gruppo Amate Anglo-Americane, mentre ha autorizzato il tribunale militare italiano di Napoli a definire le cause civili rimaste in corso all'atto dell'armistizio, ritiene che il tribunale stesso, sia incompetente riguardo ai reati dei civili e dei militari che siano stati commessi nell'ambito della sua giurisdizione.

A parere di questo comando, se l'esclusione di competenza può essere ammessa per quanto riguarda i reati commessi dai civili, non sembra invece giustificata per quanto ha tratto ai reati commessi dai militari italiani.

Finché questi rimangono militari casi dovrebbero essere sottoposti alla disciplina delle F.F.A.A. italiane e, quindi, anche alle giurisdizioni speciali istituite per i membri di esse.

Se i poteri civili delle autorità militari italiane possono avere subito talune limitazioni in seguito all'occupazione, sembra tuttavia opportuno che dette autorità conservino i poteri militari in relazione alla presenza delle F.F.A.A. italiane nel territorio occupato.

I militari italiani, appunto perché ricompresi tali anche se si trovano nel territorio italiano occupato, dovrebbero essere sottoposti esclusivamente alla giurisdizione del tribunale militare italiano competente.

Sarebbe opportuno conoscere al riguardo il punto di vista di codesta commissione.

IL SOTTOCOMANDO ITALIA
CAPO DI STABILIMENTO CAFFARELLI 23
(Giovanni Leone)

TERMINATION

P.L. 151 25 November 1943.

STAFF OFFICER
Office of Bureau Affairs

Proc. N. 2024/151/3

TO THE ARMS CONTROL COMMISSION
RUMANIA

SUBJECT: Conference of the Italian Military Tribunal of Naples.

The Council of our Armed Forces of Romania has informed us that while the Anglo-American Council of IV Army Group has authorized the Italian Military Tribunal of Naples to complete cases left in abeyance at the time of the Armistice, it maintains that this court itself is incompetent in reference to offenses committed by civilian and military personnel within the limits of its jurisdiction.

According to this Council, if the exclusion of the competence may be admitted as to the offenses committed by civilians, such exclusion does not appear to be justified as to offenses committed by Italian military personnel.

So long as this personnel retains its military character they should be kept under the discipline of the Italian Armed Forces and therefore also under the special jurisdictions instituted for their members.

If the civil persons of the Italian military authorities might have been some that curtailed in consequence of the occupation, it seems erroneous advisable that these authorities should keep the military power in view of the presence of Italian troops in occupied territory.

Italian military personnel, because they are recognized as such even if they are in Italian occupied territory, should be put exclusively under the jurisdiction of the competent Italian military court.

We would be glad to know the views of the Commission on this matter.

THE MARSHAL OF ITALY
CHIEF OF GENERAL STAFF

General Meese

1801

OFFICE OF DUNSTON AFFAIRS

Prot. # 2002/07/2

TO THE ATTORNEY GENERAL, COMMISSIONER
FEDERAL

SUBJECT: Competence of the Italian Military Tribunal of Naples.

The Council of our Armed Forces of Genoa has informed us that while the Anglo-American Command of XV Army Group has authorized the Italian Military Tribunal of Naples to complete cases left in abeyance at the time of the Armistice, it maintains that the court itself is incompetent in reference to offenses committed by civilian and military personnel within the limits of its jurisdiction.

According to this Council, if the omission of the competence may be admitted as to the offenses committed by civilians, such omission does not appear to be justified as to offenses committed by Italian military personnel.

So long as this personnel retains its military character they should be kept under the discipline of the Italian Armed Forces and therefore also under the special jurisdictions instituted for their members.

If the civil powers of the Italian military authorities might have been somewhat curtailed in consequence of the occupation, it seems however, beyond reasonable that these authorities should keep the military powers in view of the presence of Italian troops in occupied territory.

Italian military personnel, because they are recognized as such even if they are in Italian occupied territory, should be put exclusively under the jurisdiction of the competent Italian military court.

We would be glad to hear the views of the Commission on this matter.

THE HONORABLE THE JUDGE
CHIEF OF GENERAL STAFF

Stonard House

SECRET equals British Secret. | I

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
A.P.O. 512

LEGAL SUB-COMMISSION.

Subject:- Italian Military Tribunals.

18 Nov 43.

Dear Rowe,

Following our conversation in relation to the above I now enclose a revised draft of rules to which I take it you will give the necessary circulation, in 15 Army Gp A.M.T. area.

Yours,

(Sgd) GERALD DEVOIN.

Lt. Col. H. E. Rowe.,
Chief Legal Officer,
15 Army Group.

P.S. The question of permitting Military Tribunals to sit has also arisen in Region II. Will you please obtain from G.O.C. in C 15 Army Gp an authorization delegating his powers under the enclosed rules to Regional C.A.O. with power to subdelegate to a judicial officer not below the rank of Major.

Information on Italian Military Tribunals

Supplied by Capt. ASCIANO of the REPARTO PERSONALE, UFFICIO CINEFILIA, STANO MAGGIORIE, at a meeting held on 24 Nov. 1945.

The following are the Italian Military Tribunals in the Allied held territory:

1. Unoccupied Territory.

All courts in that territory sit as military war tribunals under Military Penal Code of War.

(a) Territorial Military War Tribunal of Taranto.

Has territorial jurisdiction over the Provinces of Brindisi, Taranto, Lecce and the entire Region of Lucania. As to the offenses committed by naval personnel also over the Provinces of Bari and Foggia.

Tries cases involving both naval and army and airforce personnel.

If naval personnel is involved the entire court consists of members of the Navy. Similarly, if the defendant belongs to the ^(in ex. law 700) army, his judges are Army officers.

One section of the Taranto Tribunal sits in Lecce.

(b) Territorial Military War Tribunal of Bari:

Tries cases involving Army personnel only (including Air Force).

(c) Territorial Military War Tribunal at Catanzaro (Calabria).

Has territorial jurisdiction over the Region of Calabria. Deals with Army personnel only.

2. Occupied Territory (excepting Sicily).

(a) Territorial Military War Tribunal of Avezzano (now probably at Naples).

Has territorial jurisdiction over the Campania Region. The informant did not recall whether it deals with both naval and army personnel.

1. Unoccupied Territory.

All courts in that territory sit as military war tribunals under Military Penal Code of War.

(a) Territorial Military War Tribunal of Taranto.

Has territorial jurisdiction over the Provinces of Brindisi, Taranto, Lecce and the entire Region of Lucania. As to the offenses committed by naval personnel also over the Provinces of Bari and Foggia.

Tries cases involving both naval and army and airforce personnel. If naval personnel is involved the entire court consists of members of the Navy. Similarly, if the defendant belongs to the Army, his judges are Army officers.

One section of the Taranto Tribunal sits in Lecce.

(b) Territorial Military War Tribunal of Bari:

Tries cases involving Army personnel only (including Air Force).

(c) Territorial Military War Tribunal at Catanzaro (Calabria).

Has territorial jurisdiction over the Region of Calabria. Deals with Army personnel only.

2. Occupied Territory (excepting Sicily).

(a) Territorial Military War Tribunal at Avellino (now probably at Naples). Has territorial jurisdiction over the Campania Region. The informant did not recall whether it deals with both naval and army personnel.

(b) The 7th Army stationed in Campania had its own Military War Tribunal sitting at Martina Franca. Since the Army is allegedly being dissolved, the Tribunal will probably not exist any longer.

Note: The Government is preparing a decree whereby the extraordinary jurisdiction of the military tribunals over civilians in minor matters will be curtailed.

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3. What is the composition of the Court? Who appoints the judges and are they specifically appointed for each case or do the same judges sit for all cases?

4. Does the sentence of the Court take effect immediately on being pronounced or does it have to be confirmed by a "confirming" officer? If so, who is this officer?

yes

5. Is there any preliminary judicial investigation of the case before formal charges are made. If so, what rights has the accused during such investigation.

yes

6. Who prosecutes on behalf of the Crown.

Attorney

7. Is the accused entitled to be present at all times during the trial and is he entitled to be legally represented. If he is not legally represented is an officer assigned to defend him.

yes

8. Is evidence produced for the prosecution as in ordinary Italian criminal cases and is the accused or his representative entitled to cross-question the witnesses for the prosecution.

yes

9. Is the accused entitled to call evidence in support of his own case.

yes

10. Is the accused allowed to give evidence.

yes

11. Can the accused be compelled to give evidence.

no

12. What right of appeal has the accused. If there is a Court of Appeal how is it constituted.

how

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13. Can the prosecution appeal against a finding of the Court. *Yes*
14. Does a death sentence have to be confirmed by anyone and if so, when. *Yes*

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13. Can the prosecution appeal against a finding of the Court. *Yes*
14. Does a death sentence have to be confirmed by anyone and if so, when. *Yes*

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

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

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

I. Assumptions:

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

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

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

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

2. It seems that the King, acting under a special law declared a state of siege (Stato d'assedio) in Italy at the time of Marshal Badoglio's becoming head of the Government. Under the state of siege the Military takes over the entire civil administration and the Military Tribunals try all criminal offenses against both civil and military ^(both) offenses committed by either military personnel or by civilians. It is assumed that each state has ceased or will cease at the time when the Military Tribunals are reopened.

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

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

1. Military War Tribunals of Army, of Army Corps and Fortresses Tribunals. Roughly speaking, they try military offenses committed by the personnel of military units at which the repressive Tribunal was established. (Art 251 RSM). The Fortresses Tribunal ^(in Art 251 RSM) under every attack tries all persons within the fortress for any crime (Art 253 RSM).

2. Territorial Military War Tribunals (Tribunali Militari Territoriali de

Guerra). They adjudicate military offenses committed by persons other than those indicated under (1); offenses committed by enemy prisoners of war during captivity, offenses against land and seagoing war vessels by military personnel, or by other persons belonging to enemy armed forces, and crimes committed by Italian prisoners during their captivity by the enemy. (Art 232 FMV).

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

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

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

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

The military war tribunals have jurisdiction over:

1. Military crimes by whomsoever committed in the territories deemed or considered to be in a State of War.

2. Crimes set out in the second penal law committed by military persons in territories indicated in preceding paragraph.

These courts try (e) military offenses committed whether on board ship or on land by crew members of warships, (b) military offenses committed by any person on board a warship, (c) all offenses committed within of territorial waters by crew members of a warship, (d) military offenses committed by any person embarked upon a merchant ship in convoy escorted by warships, (e) certain offenses committed by certain personnel of national merchant ships in cases specified by statute, (f) certain military offenses (breach, ^{of a ship} ~~violation~~, etc.) committed by any person in an Italian or foreign port occupied by naval forces, (g) some cases of minor practical importance. (Art 277 & 278 MILA, Art 263 PMSV).

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

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

The military war tribunals have jurisdiction over:

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

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

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

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

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

(In addition to instances enumerated in Art 230) the Military War Tribunals are given exclusive jurisdiction over certain groups of military offenses by whomsoever committed and connected with espionage, divulging of secrets information, falsification of official writings or conduct of war etc.)

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

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

- 1. According to Art 7, only the following are considered to be military personnel (militant):

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

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

2. by persons in private service of those mentioned in the preceding paragraph or by any other person who for whatever reason follows the State armed forces according to a law or to regulations approved by Royal Decree. (In addition to instances enumerated ^{above} in Art 23) the Military War Tribunals are given exclusive jurisdiction over certain groups of military offenses by whatever committed and connected with espionage, divulging of certain information, publication of critical writings or conduct of war etc.)

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

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

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

- a. Members of the Royal Army.
- b. Members of the Royal Navy.
- c. Members of the Royal Air Force.
- d. Royal Reserve Guards.
- e. Those "militarized" (militarizati).
- f. Any other person who by force of law acquires the character of ^{subordinate} "militarized" (subordinatizati) personnel (civilian).
- g. Members of detachments of volunteers authorized to take part in the war.

(4) The term "militarized" or "asculitizati" not defined in either

Law (Art 10, 11, 12)

(a) It seems that any kind of law must be enacted to fall within the scope of the constitution of the country and to the fact that their recruitment, organization, military service and equipment come under control of the Ministry of War. They will also be under Art 7 (above under 1) as part of the armed forces of the country (above under 2).

(b) The Voluntaria for the Armada Basinica has been part of the armed forces and as such comes under Art 7 (above under 1).

(c) The status of Corpo de Agenti de Publica Segurita (Body of Public Security Agents) is new to the Military tribunals as to be regulated by special laws. They are partly uniformed, sometimes organized in a military manner and given military training (e.g. in Spain). There are also some heavily armed mobile battalions of police agents which at work are attached to units of the army.

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

17. Main features of the proceedings before Military Tribunals of War (for the organization of Military Tribunals see law on Judicial Organization).

1. Methods of initial investigation conducted by police or military prosecutor (All prosecutors militares del Re) are presented to the Comandante of the unit at which the Military Tribunal has been established. He decides whether further proceeding should be initiated.

2. In affirmative cases the prosecutor (sometimes at his will whether a formal or merely summary preliminary investigation should be undertaken).

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

3. There can be no arrest without warrant except in cases of arrest in flagrante.

4. The defendant has no right to assistance by a counsel during the preliminary investigation. At the trial, however, he must have a counsel under penalty of nullity. Before trial the defendant is given opportunity to examine and copy all records. He is given formal notice of the charges and of the date of the trial.

5. The trial must be held in defendant's presence as a rule. The provisions of common penal code apply to the judgment in contumacia. The defendant has a right to offer evidence on his behalf. The rules of the common penal code of procedure apply with few, not particularly important, exceptions to the conduct of trial.

6. An extraordinary tribunal has jurisdiction to try offenses punishable by death provided that the defendant has been sentenced in flagrantie and the sentence authorized to act as such court by the law of Judicial Military organization decides that the case should be tried by such court because of necessity of immediate judgment for the purpose of giving a deterrent example. (art 233 text). The jurisdiction of such court is limited to the case for which it has been convened. The court will act in presence of equal number of defendant is assisted by a counsel. The president informs the defendant on the charges and then the discussion proceeds in the form prescribed for ordinary military tribunals.

7. (a) There is no appeal against the preliminary judgment of the investigating judge pronouncing the results of the preliminary investigation.

penalty of nullity. Before trial the defendant is given opportunity to examine and copy all records. He is given formal notice of the charges and of the date of the trial.

5. The trial must be held in defendant's presence as a rule. The provisions of common penal code apply to the defendant's in articulation. The defendant has a right to offer evidence on his behalf. The rules of the common penal code of procedure apply for, not particularly important, exceptions to the conduct of trial.

6. An Extraordinary War Tribunal has jurisdiction to try offenses punishable by death provided that the defendant has been arrested in flagrant and the offender authorized to act up such court by the law of judicial military organization decides that the case should be tried by such court because of necessity of immediate judgment for the purpose of giving a deterrent example. (Art 23 2007). The jurisdiction of such court is limited to the case for which it has been convened. The court will sit in presence of armed units. Defendant is assisted by a counsel. The president informs the defendant on the charges and then the discussion proceeds in the form prescribed for ordinary military War Tribunals.

7. (a) There is no appeal against the preliminary judgment of the investigating judge pronouncing the result of the preliminary investigation.

(b) There is no appeal against judgments rendered by Military War Tribunals of Army, Army Corps, Northern Tribunals, Naval War Tribunals or Extraordinary War Tribunals.

(c) In certain cases there is a recourse to the Supreme Military Tribunal from judgments rendered by the Territorial Military War Tribunals. (In cases of certain crimes of law, both in substantive and procedural sense.)

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

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

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

12 Nov. 43.

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exercise his right of making such proposal. In the latter case the Prosecutor
will provide for the execution of the judgment.

(Military offences are all of cases declared to be such by the

PROSECUTOR and in the special laws.)

12 Nov. 43.

WJ/CAF

14

GIURISDIZIONE DEI TRIBUNALI MILITARI
 DA GUERRA ITALIANI

I Tribunali Militari di Guerra non hanno mai una giurisdizione così vasta da ~~coprire~~ ^{completare} per intero quella dei Tribunali Penali ordinari.--

Ad essi appartiene la cognizione :

- a) Dei reati militari commessi tanto da militari che da civili nei territori in istato di guerra o considerati tali, o anche fuori di detti territori quando da essi possa derivare danno alle operazioni militari di guerra o alla condotta della guerra in generale.
- b) Di tutti i reati preveduti dalla legge penale comune (Codice Penale Ordinario e leggi speciali penali) commessi da militari nei territori in istato di guerra o considerati tali; ma il giudice militare può per ragioni di convenienza, ordinare la rimessione dei procedimenti all'autorità giudiziaria penale ordinaria.
- c) Dei delitti, preveduti dal codice penale comune, contro la personalità dello Stato, contro la Pubblica Amministrazione, contro l'ordine pubblico, contro le persone, contro il patrimonio, commessi da civili durante il dichiarato stato di guerra o lo stato di pericolo che lo ha preceduto. -- Generalmente in questo caso però i tribunali militari rimettono i procedimenti ai Tribunali Penali ordinari.
- d) Di tutti i reati (militari o non militari) commessi da prigionieri di guerra in potere o in custodia dallo Stato Italiano.
- e) Dei reati contro le leggi e gli usi della guerra commessi dagli appartenenti alle forze ~~armate~~ ^{armate} nemiche.
- f) Di qualunque reato commesso nei territori dell'operazione militari dalle persone estranee alle forze armate dello Stato, che per qualsiasi titolo sia trovino in rapporti, anche indiretti, di servizio, di impiego, prestazione di opera, fornitura, requisizioni e simili con le forze armate suddette e da chiunque sia addeito al privato servizio di tali persone o abbia una qualunque mansione al seguito delle forze armate.
- g) Di qualunque reato preveduto dalla legge penale militare e dalla legge penale comune italiana commesso dagli abitanti del territorio occupato dalle forze armate dello Stato Italia-

17 Nov 43

ne così vasta da ~~comprenderla~~ ^{comprenderla} per intero quella dei Tribunali Penali ordinari.

Ad essi appartiene la cognizione :

- a) Dei reati militari commessi tanto da militari che da civili nei territori in istato di guerra o considerati tali, o anche fuori di detti territori quando da essi possa derivare danno alle operazioni militari di guerra o alla condotta della guerra in generale.
- b) Di tutti i reati preveduti dalla legge penale comune (Codice Penale Ordinario e leggi speciali penali) commessi da militari nei territori in istato di guerra o considerati tali; ma il giudice militare può per ragioni di convenienza, ordinare la rimessione dei procedimenti all'autorità giudiziaria penale ordinaria.
- c) Dei delitti, preveduti dal codice penale comune, contro la personalità dello Stato, contro la Pubblica Amministrazione, contro l'ordine pubblico, contro le persone, contro il patrimonio, commessi da civili durante il dichiarato stato di guerra o lo stato di pericolo che lo ha preceduto. -- Generalmente in questo caso però i tribunali militari rimettono i provvedimenti ai Tribunali Penali ordinari.
- d) Di tutti i reati (militari o non militari) commessi da prigionieri di guerra in potere o in custodia dello Stato Italiano.
- e) Dei reati contro le leggi e gli usi della guerra commessi dagli appartenenti alle forze ~~armate~~ armate nemiche.
- f) Di qualunque reato commesso nei territori della operazioni militari dalle persone estranee alle forze armate dello Stato, che per qualsiasi titolo si trovino in rapporti, anche indiretti, di servizio, di impiego, prestazione di opera, fornitura, requisizioni e simili con le forze armate suddette e da chiunque sia adetto al privato servizio di tali persone o abbia una qualunque mansione al seguito delle forze armate.
- g) Di qualunque reato preveduto dalla legge penale militare e dalla legge penale comune italiana commesso dagli abitanti del territorio occupato dalle forze armate dello Stato Italiano a danno delle forze armate di occupazione o delle persone al loro seguito oppure commesso da questo persone a danno degli abitanti del territorio occupato.

Si omettono gli altri casi.

AGGRAVAMENTO DELLE PENE

I minimi ed i massimi delle pene previste per i singoli reati vengono, indipendentemente dalla qualità di militare o civile dell'imputato, triplicate per qualunque reato quando sia stato commesso approfittando dello stato di guerra.

COSTITUZIONE DEI TRIBUNALI MILITARI DI GUERRA

Ciascun Tribunale Militare ordinario di guerra ha un'organico di:

- Un Presidente di grado non inferiore a Colonnello -
- Sei Giudici, compreso il relatore appartenente al Corpo della Giustizia militare, dei quali almeno due Ufficiali Superiori e gli altri capitani. di guerra
- Ciascun Tribunale Militare ordinario ~~comprende~~ giudica con l'intervento del Presidente e di quattro giudici, compreso il relatore, designati dal Presidente, dei quali uno Ufficiale Superiore.

Ma se l'imputato ha grado di capitano o superiore la composizione del Tribunale è così modificata:

GRADO DELL'IMPUTATO	GRADO DEL PRESIDENTE	GRADO DEI GIUDICI
1) Capitano o grado corrispondente	Generale di Brigata o Grado corrispondente	3 Ufficiali Superiori
2) Maggiore o grado corrispondente	Generale di Brigata o corrispondente	3 Colonnelli o Ten. Colonnelli o gradi corrispondenti
3) Ten. Col. o grado corrispondente	Generale di Brigata o Grado corrispondente	3 colonnelli o gradi corrispondenti
4) Colonnello o grado corrispondente	Generale di Divisione o Grado corrispondente	3 generali di brigata o gradi corrispondenti
5) Generale di Brigata o grado corrispondente	Generale di Corpo d'Armata o grado corrispondente	3 generali di Divisione o grado corrispondente
6) Generale di Divisione o grado corrispondente	Generale d'Armata o grado corrispondente	3 generali di Corpo d'Armata o grado corrispondente
7) Generale di Corpo d'Armata o grado corrispondente	Generale d'Armata o grado corrispondente	3 Generali d'Armata o gradi corrispondenti

COSTITUZIONE DEI TRIBUNALI MILITARI DI GUERRA

Ciascun Tribunale Militare ordinario di guerra ha un'organico di:

- Un Presidente di grado non inferiore a Colonnello
 - Sei Giudici, compreso il relatore appartenente al Corpo della Giustizia militare, dei quali almeno due Ufficiali Superiori e gli altri capitani.
 - Ciascun Tribunale Militare ordinario ~~di guerra~~ ~~di guerra~~ giudica con l'intervento del Presidente e di quattro giudici, compreso il relatore, designati dal Presidente, dei quali uno Ufficiale Superiore.
- Ma se l'imputato ha grado di capitano o superiore la composizione del Tribunale è così modificata:

GRADO DELL'IMPUTATO	GRADO DEL PRESIDENTE	GRADO DEI GIUDICI
1) Capitano o grado corrispondente	! Generale di Brigata o ! Grado corrispondente	! 3 Ufficiali Superiori
2) Maggiore o grado corrispondente	! Generale di Brigata o ! corrispondente	! 3 Colonnelli o Ten. Colonnelli o gradi corrispondenti
3) Ten. Col. o grado corrispondente	! Generale di Brigata o ! Grado corrispondente	! 3 colonnelli o gradi corrispondenti
4) Colonnello o grado corrispondente	! Generale di Divisione o ! Grado corrispondente	! 3 generali di brigata o gradi corrispondenti
5) Generale di Brigata o grado corrispondente	! Generale di Corpo d'Armata o grado corrispondente	! 3 generali di Divisione o grado corrispondente
6) Generale di Divisione o grado corrispondente	! Generale d'Armata o grado corrispondente	! 3 generali di Corpo d'Armata o grado corrispondente
7) Generale di Corpo d'Armata o grado corrispondente	! Generale d'Armata o grado corrispondente	! 3 generali d'armata o gradi corrispondenti

Negli altri casi il Presidente e il ^{no} giudice deve essere di grado almeno uguale a quello dell'imputato o possibilmente più anziani. Quando l'imputato è un ufficiale Generale il giudice relatore deve essere un consigliere relatore della Magistratura Militare.

Il Presidente e un giudice diverso del relatore devono appartenere alla stessa forza armata alla quale appartiene il Comando presso cui è costituito il Tribunale. - Degli altri due giudici diversi dal relatore, almeno uno deve appartenere alla stessa forza armata alla quale appartiene l'imputato. -

L'Ufficio di Presidente e giudice dei Tribunali Militari di guerra è conferito a tempo indeterminato; ma per i giudizi a carico di ~~ufficiali di grado inferiore al capitano~~ di capitano o di ufficiale di grado superiore al Presidente ed il giudice vengono designati volta per volta estratti a sorte fra gli ufficiali che abbiano il grado prescritto secondo la tabella che precede. -

I Tribunali militari di guerra straordinari sono composti del Presidente e di quattro giudici. - Le funzioni di presidente sono esercitate dall'Ufficiale più elevato in grado dopo quello che convoca il Tribunale. Sono giudici tre ufficiali dei gradi stabiliti secondo le norme già dette per i tribunali ordinari, a cominciare dai più anziani e un ufficiale giudice relatore per Corpo della Giustizia Militare.

La designazione avviene, volta per volta che il Tribunale ~~deve~~ convocato.

ESECUTIVITA' DELLE SENTENZE PRONUNCIATE DAI TRIBUNALI MILITARI DI GUERRA

Contro le sentenze dei Tribunali Militari di Guerra dell'Armata, di Corpo d'Armata, di Piazza forte, di Bordo e straordinari non è ammessa alcuna impugnazione.

Le sentenze perciò sono immediatamente eseguibili, e non ~~che non~~ ~~comunicare la pena di morte nel qual caso, ove sia presentata domanda di grazia, l'esecuzione può essere sospesa per disposizione del Comandante dell'unità prescelta cui è convulente il tribunale del comandante supremo. -~~

Contro le sentenze dei Tribunali militari di guerra è ammesso il ricorso al Tribunale Militare Supremo di guerra. In questo caso la sentenza di ricorso è eseguita dopo che sia stata ~~notificata~~ dalla notificazione al condannato della sentenza di rifatto.

Se comminava la pena di morte e sia presentata domanda di grazia, l'esecuzione può essere sospesa per disposizione del Comandante dell'unità presso cui è costituito il Tribunale e del Comandante Supremo. - ~~Caso~~ Se comminava la pena di morte e non è presentata domanda di grazia, dopo 24 ore dalla pronuncia

ufficiali di grado superiore il Presidente ed il giudice vengono nominati volta per volta estratti a sorte fra gli ufficiali che abbiano il grado prescritto secondo la tabella che precede.

I Tribunali militari di guerra straordinari sono composti del Presidente e di quattro giudici. Le funzioni di presidente sono esercitate dall'Ufficiale più elevato in grado dopo quello che convoca il Tribunale. Sono giudici tre ufficiali dei gradi stabiliti secondo le norme già dette per i tribunali ordinari, a cominciare dai più anziani e un ufficiale giudice relatore del Corpo della Giustizia Militare.

La designazione avviene, volta per volta che il Tribunale ~~è~~ convocato.

ESECUTIVITA' DELLE SENTENZE
PRONUNCIATE DAI TRIBUNALI MILITARI DI GUERRA

Contro le sentenze dei Tribunali Militari di Guerra dell'Armata, di Corpo d'Armata, di Piazza forte, di Bordo e straordinari non è ammessa alcuna impugnazione.

Le sentenze perciò sono immediatamente eseguibili, a meno che non ~~comincino~~ la loro esecuzione nel qual caso, ove sia presentata domanda di grazia, l'esecuzione può essere sospesa per disposizione del Comandante della unità presso cui è costituito il tribunale ~~del comandante~~ ^{Comandante} supremo.

Contro le sentenze dei Tribunali militari di guerra è ammesso il ricorso al Tribunale Militare Supremo di guerra. In questo caso le sentenze di ricorso ~~è~~ eseguibili dopo che sia stata notificata ~~al Comandante~~ ^{al Comandante} se si tratti di pena di morte dopo trascorse 24 ore dalla notificazione al condannato della sentenza di ricorsto.

Se comminasse la pena di morte e sia presentata domanda di grazia, l'esecuzione può essere sospesa per disposizione del Comandante dell'unità presso cui è costituito il Tribunale o del Comandante Supremo. Se comminasse la pena di morte e non si presentasse domanda di grazia, la sentenza può essere eseguita dopo 24 ore dalla pronuncia. Contro le sentenze dei tribunali militari territoriali ~~di~~ ^{di}

guerra e armamento, il ricorso al Tribunale Militare Supremo di guerra. In quanto caso la sentenza è esecutibile dopo che sia stata notificata al condannato la sentenza di ricorso del ricorso e, a 24 ore dalla pronuncia di morte, dopo trascorsi 24 ore dalla notificazione al condannato della sentenza di ricorso, e meno che non si sia sospensione per presentazione di domanda di grazia.

101

R. MISSIONE MILITARE ITALIANA
PRESSO IL COMANDO IN CAPO DELLE FORZE ALLEATE

N. 513 di Prot. SEGRETO - Algeri, 14 Novembre 1943

OGGETTO : Militari italiani in Corsica -

AL COMANDO IN CAPO ALLEATO

A seguito del mio promemoria in data 3 novembre
Vi informo che il comando delle FP.AA. della Sardegna ha comu-
nicato che, in seguito a trattative svolte, e' stato stabilito
che i militari accusati di reati in Corsica verranno giudicati
dai Tribunali Italiani.-

Il rappresentante del Comando Alleato in Sardegna
ha fatto presente che gli alleati si riservano pero' di chie-
dere, ove necessario, il trasferimento temporaneo in Corsica del
Tribunale di Guerra Italiano.-

IL GENERALE CAPO DELLA MISSIONE
- G.Castellano -

/s/ (?)

10

R. MISSIONE MILITARE ITALIANA
PRESSO IL COMANDO IN CAPO DELLE FORZE ALLEATE

Algiers November 14, 1943

SUBJECT: Military personnel in Corsica.

TO A. F. H. Q.

Following my aide-memoire of 8 november I wish to inform you that the H.Q. of the Italian Armed Forces in Sardinia has communicated that subsequent to agreements reached, it has been decided that Italian military personnel charged with crimes in Corsica will be judged by Italian Tribunals.

The representative of A.F.H.Q. in Sardinia, has stated that the Allies reserve the right whenever necessary, to ask the temporary transfer to Corsica of the Italian War Tribunal.

THE GENERAL CHIEF OF ITALIAN MISSION
- G. Castellano -

/s/ (?)

COPY

COORDINATING ROUTE SLIP

Date
Originated: 12 November 1943

File No.

SUBJECT: Trial of Italian soldiers in Corsica

No.	Section of Origin	Pass To	Date
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1	SGS	MGS	12 Nov 1943
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The attached paper is forwarded for necessary action.

For and in the absence of Colonel GILMER:

J.E.B., JR.

1 Incl.
memo fr. Italian Military Mission
dtd. 8 Nov. 1943 - subj. as above.

2	MGS	MGS	12 Nov '43
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1. Returned, suggesting reference to J.A.

2. Corsica is not a concern of MGS - see cable 1048 of 8 October - and the matter has already been referred to the J.A. and investigated by him - see 151 of 27 Oct. and 404 of 7 30 Oct.

For the Chief, M.G.S.

CF/adt Incls. W/C

C.F.

R. MISSIONE MILITARE ITALIANA
FRESO IL COMANDO IN CAPO DELLE FORZE ALLEATE

Algiers November 14, 1943

SUBJECT: Military personnel in Corsica.

TO A. F. H. Q.

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THE GENERAL CHIEF OF ITALIAN MISSION
- G. Castellano -

/s/ (?)

COPY

COORDINATING ROUTE SLIP

Date

Originated: 12 November 1943

File No.

SUBJECT: Trial of Italian soldiers in Corsica

No.	Section of Origin	Pass To	Date
1	SGS	MG5	12 Nov 1943

The attached paper is forwarded for necessary action.

For and in the absence of Colonel GILMER:

J.F.B., JR.

1 Incl.

memo fr. Italian Military Mission
 dtu. 8 Nov. 1943 - subj. as above.

2	SGS	SGS	12 Nov '43
---	-----	-----	------------

1. Returned, suggesting reference to J.A.

2. Corsica is not a concern of MG5 - see table 4248 of 8 October - and the matter has already been referred to the J.A. and investigated by him - see 151 of 27 Oct. and 4044 of 30 Oct.

For the Chief, M.G.S.

CF/mt Incl. B/C

C.F.

COPIA

R. MISSIONE MILITARE ITALIANA
FRESSO IL COMANDO IN CAPO DELLE FORZE ALLEATE

N. 464 de prot. Algeri, li 8 novembre 1943.

OGGETTO: Militari italiani in Corsica.

AL COMANDO IN CAPO ALLEATO

- - -

Il Comando Supremo e' stato informato dal Comando delle Forze Armate della Sardegna che l'autorita' francese intende di proporre al Governo di Algeri il deferimento al tribunale francese di militari italiani, imputati dell'uccisione di civili in Calvi (Corsica). Poiche' tali reati furono commessi durante l'occupazione militare italiana, la cognizione di essi, a norma dell'art. 235 C.P.M.G., e' di competenza del Tribunale di Guerra Italiano.

Poiche' le autorita' francesi vorrebbero negare tale diritto, il Comando Supremo mi incarica di voler interessare codesto Alto Comando perche' voglia intervenire al riguardo.

E cio' perche' una procedura diversa sarebbe di grave pregiudizio al diritto legale italiano ed avrebbe ripercussioni dolorose per le truppe italiane che sono ancora in Corsica.

Nella questione e' stato messo al corrente anche il Comandante del XV Gr. Armate Anglo-Americano.

Grato per quanto sara' fatto pregherei volermi dare un cortese cenno di riscontro.

Allego copia dell'art. 235 del Codice Penale Militare di Guerra Italiano.

Il Comando Supremo e' stato informato dal Comando delle Forze Armate della Sardegna che l'autorita' francese intende di proporre al Governo di Algeri il deferimento al tribunale francese di militari italiani, imputati dell'uccisione di civili in Calvi (Corsica). Poiche' tali reati furono commessi durante l'occupazione militare italiana, la cognizione di essi, a norma dell'art.235 C.P.M.G., e' di competenza del Tribunale di Guerra Italiano.

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Allego copia dell'art. 235 del Codice Penale Militare di Guerra Italiano.

IL GENERALE CAPO DELLA MISSIONE
(G. Castellano)

R. MISSIONE MILITARE ITALIANA
FRESSO IL COMANDO IN CAPO DELLE FORZE ALLEATE

Algiers November 8, 1943

SUBJECT: Italian soldiers in Corsica

TO A. F. H. Q.

The Italian High Command has been informed by the Command of Armed Forces in Sardinia that French Authorities in Corsica intend to propose to the Government in Algiers that some Italian soldiers, accused of having killed some civilians in Calvi (Corsica), may be tried by a French Tribunal.

As the crimes of which they are accused were committed during Italian occupation of Corsica, they should be brought for trial before the Italian War Tribunal, in accordance with Para. 235 of the Military Penal Code of War.

As the French authorities want to refuse this right, the Italian High Command has ordered me to call the attention of your High Command in order to obtain your intervention in this matter.

If a different procedure were to be followed, it would be of grave prejudice to the Italian Penal Institutions and it might have painful repercussions on the Italian troops now staying in Corsica.

This matter has also been referred to the Commanding General of the 15th Group of Anglo-American Armies.

Grateful for what may be done, I beg you to kindly give answer.

Attached a copy of Para. 235 of the Italian Military Penal Code of War.

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This matter has also been referred to the Commanding General of the 15th Group of Anglo-American Armies.

Grateful for what may be done, I beg you to kindly give answer.

Attached a copy of Para. 235 of the Italian Military Penal Code of War.

THE GENERAL CHIEF OF ITALIAN MISSION
- G. Castellano -

PAPA 235 OF ITALIAN MILITARY PENAL CODE OF WAR (C.P.M.G.)

(Military occupation)

In the territories of Enemy States occupied by Armed Forces of the State of Italy, it is the right of the Military Tribunals of War to try the crimes which come under Italian Penal Military law and Italian common Penal Law, when said crimes are committed by inhabitants of the occupied territory against occupying Armed Forces or against persons belonging to them or depending from them because they are at their service or are following them; and when said crimes are committed by persons belonging to or depending from the occupying forces against the inhabitants of the occupied territory.

In case of concurrence of persons above mentioned with the inhabitants of occupied territories in committing one same crime or more crimes connected with one-another, the trial of the crimes against all the accused belongs to Italian Military Tribunal of War.

The same may be applied when Italian Armed Forces are staying in foreign territory under military occupation for reasons different than war.

which come under Italian Penal Military law and Italian common Penal Law, when said crimes are committed by inhabitants of the occupied territory against occupying Armed Forces or against persons belonging to them or depending from them because they are at their service or are following them; and when said crimes are committed by persons belonging to or depending from the occupying forces against the inhabitants of the occupied territory.

In case of concurrence of persons above mentioned with the inhabitants of occupied territories in committing one same crime or more crimes connected with one-another, the trial of the crimes against all the accused belongs to Italian Military Tribunal of War.

The same may be applied when Italian Armed Forces are staying in foreign territory under military occupation for reasons different than war.

Subject :- Italian Military Tribunals.

SECRET

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

2 Nov. '43.

Chief of Allied
Military Mission, BRINDISI.

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

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

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

BHR/emb.

Major-General,
Deputy Chief Administrative Officer.

COPY/gmf

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BHR/emb.

COPY/gmf

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

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

3. The court has three categories of officials:-

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

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

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

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

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

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

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

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

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

A.M.C.
Region 3 HQ
15.10.43.

COPY/gmf

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