

ACC 10000/145/484

ACC. CONSOLIDATED INSTRUCTIONS FOR ALIENED MILITARY COURTS

- 1 - 1 -

1764

RESTRICTED

ALLIED CONTROL COMMISSION

CONSOLIDATED INSTRUCTIONS
FOR ALLIED MILITARY COURTS

WITH

SPECIMEN FORMS AND
RULES OF PROCEDURE

2927 2927

10000/145/484

1 MAY 44

THIS FOLDER
CONTAINS PAPERS
FROM _____
TO _____ NO DATE
CATALOGUE- _____

AMENDMENTS TO CONSOLIDATED INSTRUCTIONS

The following amendments and additions to the Consolidated Instructions for Allied Military Courts will be made:

TABLE OF CONTENTS

- After Art. 4 insert: Art. 4-A: Arrest and trial of civilians bearing arms against the Allied Forces 18-A.*
- Art. 5: amend title to "War Crimes".*
- Art. 14: after "charges" insert "and sentences".*
- Art. 33: amend title to read "Informal Petitions: definition and disposal".*

FOREWORD

Page 7: para 4, line 4, delete "1st May 1944"; insert "1st November 1944".

NEW ARTICLE

Insert new Art. 4-A page 18-A.

REVISED ARTICLES

Remove existing articles 5, 33 and 35 and substitute new articles.

ADDITIONS AND AMENDMENTS

- Insert new page 34-A containing addition to Art. 12.*
- Insert new page 52-A and " containing respectively additions to Art. 20 under headings "Plea of not guilty" and "Verdict".*
- Insert new page 75-A containing addition to art. 30.*
- Insert amendments to Art. 7, Art. 14, Art. 16, Art. 18, Art. 20 (heading "arraignment") and Rule of Procedure 9 (b) by sticking them in booklet at appropriate places.*

ARTICLE 4-A. — Arrest and trial of civilians bearing arms against Allied Forces.

1. The question whether the Allied Military Government has the right to try in its Courts members of the civilian population who bear arms against the Allied Forces raises many difficult problems of international law.

2. Civilians are entitled to bear arms against the enemy if, but only if, they comply with the following conditions:

- a. (i) They are commanded by a person responsible for his subordinates; and
- (ii) They wear a fixed distinctive emblem recognizable at a distance; and
- (iii) They carry arms openly; and
- (iv) They conduct their operations in accordance with the laws and usages of war; and possibly also
- (v) They are resisting invasion by our forces;
- or
- b. They form part of a *levee en masse*.

3. a. Civilians bearing arms who comply with *a* or *b* above are entitled, on capture, to be treated as Prisoners of War: they may NOT be tried by an Allied Military Court.

b. Civilians bearing arms who do NOT comply with either *a* or *b* above may be prosecuted before an Allied Military Court. The charge should be laid under Proclamation I, Part II, Art. IV, Sec. (23).

4. It is not practicable here to discuss the various points arising out of para. 2 above. For such a discussion, see HQ ACC directive "Enemy partisans" reference ACC/4159/L of 14 Oct. 1944.

5. It is clearly of the utmost importance to the Allied Forces that unlawful sniping by civilians be suppressed: offenders convicted must be punished with all severity. It is, however, no less important to the Allied Forces that civilians who are lawfully bearing arms should NOT be prosecuted. Improper trial of persons who are entitled to be treated as Prisoners of War may bring about reprisals.

6. In any case of doubt, the case will be referred to HQ AC before a prosecution is instituted.

ARTICLE 5. — War Crimes.

1. The expression « War Crimes » for the purpose of these instructions means violation of the laws and customs of war, e. g., maltreatment in any way of prisoners of war or internees and similar offences of this general nature. It does NOT include current crimes against the Allied Forces such as wire cutting, sniping, etc. Italians who commit crimes against Italian nationals will not be considered as war criminals: they will be handed over to Italian Government representatives for trial. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported to CLA, HQ AC for his consideration.

2. Allied Military Courts will NOT try any person charged with any war crime.

3. If any circumstances come to the knowledge of an AC-AMG officer which suggest that a war crime has been committed the following action will be taken:

a. The officer will render immediately and by the quickest available means a report to the SCAO or Regional Commissioner of the territory in which the crime is believed to have occurred. Such report will give the location of the alleged crime, with map-reference, and a very brief indication of the nature of the crime.

b. The SCAO or Regional Commissioner will report this information immediately and by the quickest available means to

(i) the Provost Staff of the formation, district or area responsible for the administration of the territory concerned; and

(ii) HQ AC (Legal Sub-Commission).

Reference should be made in the report to AFHQ, GRO N° 697 dated 1st September 1944.

4. No further action will be taken and no investigation will be held by any AC-AMG officer either for the purpose of examining witnesses or of collecting evidence.

1785

ARTICLE 7 (*add. after para. 4*).

5. If the representative of an intelligence branch states that in the course of trial an agent, whose identity it is desired to keep secret, may be called as a witness or may be mentioned in evidence in such a way as to disclose his identity, the Court may accept such statement as being reasonable grounds for holding the trial in camera.

ARTICLE 12 (add).

7. Proclamation No. 1, Part 2, Art. V, Sec. 45 (which makes it an offence to do any act to the prejudice of good order of the occupied territory or the safety or security of the Allied Forces or any member thereof) has been seriously abused.

No charge will be laid under this section unless the act complained of is within the wording and spirit of the section and there is no other and more specific provision of any proclamation or order under which a charge may be laid.

Further, no charge will be laid under this section based on facts which are also the basis of another and specific charge. The practice of adding a charge under this section by way of caution in case the prosecution fails to make out its case under the specific charge is incorrect and will be discontinued.

8. a. Where the facts disclose two quite separate offences (e. g., leaving the shore without authority and being in possession of firearms without a permit), it is correct to lay two separate charges.

b. Where, however, the facts constitute two or more offences of the same general nature (e. g., stealing and being in unlawful possession), the more serious offence only should be charged. If the prosecution is doubtful whether it can prove its case in regard to the more serious offence, then the less serious offence should be charged in the alternative.

EXAMPLE:

1st Charge: The accused stole property of the Allied Forces to the aggregate value of more than 10,000 Lire contrary to Proc., Art....., Sec.....

Particulars: On the 30th September 1944 the accused stole 30 pairs of boots, property of the Allied Forces, from No..... Depot, Naples.

Alternatively

2nd Charge: The accused wrongfully had in his possession property of the Allied Forces contrary to Proc....., Art....., Sec.....
Particulars: On the 30th September 1944 the accused had in his possession at X 30 pairs of boots, property of the Allied Forces.

The more serious charge should appear first.

ARTICLE 14 (add.)

- 4. *a.* Concurrent sentences do not exist under Italian law.
- b.* When an accused is convicted of more than one offence and each of such offences carries a detentive punishment of the same kind, the Court must impose one term covering all charges on which he has been found guilty (see Penal Code, Art. 73).
- c.* This term must be not less than the aggregate of the minimum penalties and not greater than the aggregate of the maximum penalties provided for such offences, nor must it exceed the limits laid down in Penal Code, Art. 78.
- d.* When the accused is similarly convicted, but the offences carry detentive punishments of a different kind (e. g., Reclusione, Reclusione Militare, Arresto or Ergastolo), the Court must impose penalties of the different kinds separately and in full (see Penal Code, Art. 74).

- 5. In the event of a conviction, the Court will annex as part of the Record, a short statement embodying the following:
 - a.* The article of the code under which the accused was convicted;
 - b.* The article of the code under which the sentence of the court was increased or decreased on account of any aggravating or mitigating circumstances;
 - c.* The findings of the Court on all questions of fact necessary to support the conviction under the specified article and the existence of such aggravating or mitigating circumstances.

1769

ARTICLE 16.

Delete para. 2

Amend para. 3 to para. 2

Add new para. 3 as follows:

3. In some offences, a particular mental element is an essential ingredient. For example, under proclamation I, Art. IV (22), possession of a counterfeit note is NOT an offence unless the accused knew it to be false; and under *ibid.* Art. I (espionage), clandestine collection of information is not an offence unless there exist also the intention to communicate it to the enemy.

The presence or absence of this mental element is normally a matter of inference to be made by the Court from the facts before it: therefore the prosecution should adduce in evidence all available facts which may help the Court to make the correct inference.

1770

ARTICLE 18 (add.).

i. To order a proper payment for costs of attendance to be made to any witness.

Normally NO costs of attendance will be allowed to a witness. In exceptional cases, however, when a witness has been put to a substantial expense (e. g., by reason of having been obliged to make a long journey or pay for lodging) or when earning power has been substantially affected, the Court or the Provincial Legal Officer may, on application by the prosecution or defense, order that a payment be made to a witness of a sum sufficient to prevent any real hardship. No scale is laid down. Each such case will be dealt with on its individual merits. The sum ordered to be paid will be sufficient, and only sufficient, to prevent any real hardship.

Arrangements for making such payments will be made with the appropriate Finance Officer.

ARTICLE 20. — Under "Arraignment", after third paragraph, add.

When the accused is charged with alternative charges:

- a. If the accused pleads guilty to the more serious charge, the Court will accept the plea and the other charge will be dropped;
- b. If the accused pleads not guilty to the more serious charge but guilty to the less serious charge, the Court will either:
 - (i) enter a plea of "not guilty" on both charges and direct that the trial shall proceed on both such charges;
or
 - (ii) ask the prosecutor whether he considers that on the evidence available such pleas can be properly accepted, and if the prosecutor does so consider, the Court shall thereupon enter an acquittal of the accused in respect of the more serious charge and shall enter, and proceed upon, a plea of guilty in respect of the less serious charge.

In all cases involving security considerations (e. g., where the accused is charged with espionage, sabotage or kindred offences), the Court will warn the accused at the time of arraignment that, even if acquitted, he may be interned if considered a danger to Allied security. The Court will also explain to him that internment is distinct from imprisonment.

1772

Addition to ARTICLE 20 Plea of Not Guilty sub-para. "h"
PAGE 52.

If the Court rules that no case has been made out, the accused will be found NOT GUILTY and acquitted.

If, upon argument by the defense, the Court rules that there is a prima facie case, there are two courses open to the defense, viz.:

- (i) To rest on the submission: in which case the defense may make a closing speech, but may not call evidence. The prosecution may reply to the closing speech and the Court will then give judgment.

Of course, in the event of conviction, the accused may submit a petition for review challenging the ruling of the Court; or

- (ii) To call evidence for the defense, in which case such evidence forms part of the record of the case and will be considered to see if there was evidence to support the conviction. If this course is adopted it is NOT open to the defense on Petition for Review to take the point that the ruling of the Court was wrong and that evidence called by the defense is therefore to be excluded.

1773

Addition to ARTICLE 20 Verdict, PAGE 53.

When the accused is charged with two or more offences in the alternative, he cannot be found guilty of more than one of these charges, even though conviction on the one necessarily implies guilt on the other or others. The Court should find the accused guilty of one charge and one charge only and dismiss the others (as to pleas on alternative charges, see above under « Arraignment »).

1774

ARTICLE 30 (add).

6. The note of the evidence must contain all material facts, and irrelevant detail should be omitted. It should consist of the answers, or summaries of the answers, given by each witness and should be in the first person.

Different paragraphs with appropriate headings must be allotted to examination, cross-examination, re-examination and questions by the Court:

Example: 1st witness No. 1545232 Pte Blank, etc.

Exam. in Chief (Direct): On 1st October 44 I was on guard duty at.....

Cross-exam.: I was present when the accused was searched.

Re-exam. (Re-direct): I received my orders from the guard commander.

By the Court: The spot where I challenged the accused was 500 yards within the prohibited zone.

7. a. In all General Military Court cases and in all Superior Court cases in which a total sentence in excess of 5 years is imposed, the Court will include as part of the record a statement of its findings on any material question of fact particularly on such questions as may be in dispute. It is NOT necessary that this statement be incorporated in the public announcement of its decision.

b. The object of this statement is to supply information to the reviewing authority. Frequently there is a serious conflict of evidence on some vital element in the case, e. g., in a case in which an Allied soldier is killed in a fight, the conduct of the soldier prior to the fight is most material: had he been behaving quietly or in a noisy or drunken way? Had his manner been hostile or offensive? Or had he actually threatened or used force against the accused or members of the accused's family? It is the duty of the Court, having heard the evidence and seen the witnesses, to decide

1773

such questions of fact. The statement is required to inform the reviewing authority of such findings: it should be as short as possible provided that it fulfils the above requirements.

8. In any case in which a Court, for some special reason or on account of some special circumstances, imposes a sentence either heavier or lighter than normally would be imposed, the Court will make a note on the record to that effect and will state the nature of such reason or circumstances.

1776

ARTICLE 32.

Para. 3 (a) (2) and para. 3 (b) (2): For « jointly » substitute « together ».

At end of para. 3, add:

For the purpose of the above rules the length of the term of imprisonment is the term which will actually be served. Thus

(a) In cases where a fine has been imposed with a prison term in default and at the time of review the fine is unpaid, the term which will (or, if the time for payment has not expired, may) actually be served is the term in default plus the basic term of imprisonment, if any;

(b) In cases where concurrent sentences are imposed which are individually below two years, the term is less than two years even if the individual sentences aggregate more than two years.

ARTICLE 33. — "Informal Petitions":
meaning and disposal thereof.

1. *Scope of Article.*

The rights of a person convicted by an Allied Military Court to present a petition are defined and limited by Proclamation I and R. P. No. 23. See also Art. 32 above.

This article is concerned with other petitions which may be presented by the accused or by his avvocato, relations or influential friends, asking for pardon, grace, suspension or commutation of the sentence, conditional liberty or some other form of clemency, which are hereinafter referred to generically as "Informal Petitions".

Informal Petitions in Cases where Death Sentence Imposed.

Informal petitions against a death sentence will be dealt with as follows: —

a. If there is time to forward the petition to HQ AC and to receive an answer before the date fixed for the execution, the petition will be forwarded to CLA HQ AC by the quickest possible means.

b. If time does not so permit the Regional Commissioner will consider the petition. If on its face it purports to raise any point which was not raised at the trial or in the petition for review, or if the Regional Commissioner thinks necessary he will send a signal to CLA HQ AC stating briefly the substance of the point raised: the CLA HQ AC will then take such action as he deems necessary. If the petition is merely a protestation of innocence or a request for clemency, the Regional Commissioner will take no action and the arrangement for the execution will proceed.

2. *Disposal of Informal Petitions in other Cases.*

Normally these petitions have no merit. However, certain cases of injustice or undue hardship have been brought to light through them and therefore they cannot be ignored. The proce-

ture to be adopted in dealing with such petitions is set out below. It is emphasized that the sentence of an Allied Military Court is always imposed on the assumption that it will be served in full and is, in the opinion of the Court which heard the evidence and saw the accused, the penalty that the offence merits; therefore action will be taken under the following provisions only when necessary to remedy a case of real injustice or undue hardship.

3. a. *Informal Petitions received within a Region.*

An informal petition received within a region will be forwarded to the Regional Commissioner for his consideration. If he is of the opinion that such a petition calls for action then:

- (i) If the case was originally reviewed at HQ AC, he will forward the petition with the record of the case, his reasons for considering action necessary and his recommendations, for action by HQ AC.
- (ii) If the case was reviewed at Regional HQ, action will be taken by or on behalf of the Regional Commissioner without reference to HQ AC, unless the Regional Commissioner wants guidance on a point of principle or general interest.

b. *Informal Petitions received at HQ AC.*

- (i) HQ AC will forward to the appropriate Regional Commissioner any informal petition which appears to require action. The Regional Commissioner on receipt of the petition, will act as laid down in para. 3 (a) (i) or para. 3 (a) (ii) above depending on whether review took place at HQ AC or Regional HQ.
- (ii) HQ AC will dispose of any informal petition which discloses no grounds for action either by notifying the petitioner directly or by sending the petition, with the decision taken, to the Regional Commissioner for onward transmission.

4. *Informal Petitions presented through Italian Channels.*

Italian authorities have no power to vary in any way any sentence of an Allied Military Court, whether held in Military Government Territory or in Italian Government Territory (as to which see Art. 3).

This applies to sentences imposed in Territory which, at the date of trial was in Military Government Territory but which subsequently is restored and becomes Italian Government Territory.

In spite of the above, innumerable petitions are presented to the Italian Authorities. All practicable steps will be taken to check this practice; in particular, it will be made known that such petitions are eventually forwarded by the Ministry of Justice to HQ AC where they are treated in the same way as other informal petitions.

ARTICLE 35. — Release of Prisoners Pending Review.

1. If, in any case tried before an Allied Military Court, the Regional Commissioner or the Regional Legal Officer is of opinion that an injustice has been done to an accused, he may direct that the serving of a sentence of imprisonment or the payment of a fine be postponed until the case has been reviewed by the appropriate authority.
2. In any case in which an Allied Military Court has imposed a sentence not exceeding three months a Provincial Commissioner or a Provincial Legal Officer may direct as above if he is of the opinion:
 - a. That the accused has been wrongly convicted, or
 - b. That on Review the sentence will be reduced to a period less than the time required for the case to be reviewed by the appropriate authority.
3. An authorized officer giving any such direction shall impose such terms and conditions (including the giving of security) as he may consider necessary to ensure the availability of the accused upon completion of the Review.
4. The power hereby granted is discretionary: it will be used sparingly and only when necessary to avoid a substantial injustice.
5. In any case in which this power is exercised all officers concerned will use their best endeavours to secure that the case is reviewed as soon as possible.

Rules of procedure: Rule 9. — *Delete (b) as printed; substitute:*

b. At the close of the case for the prosecution the defense may submit that in respect of one or more of the charges there is no case to answer. The Court shall listen to and give a ruling upon such submission. If no such submission is made the Court of its own motion may rule that in respect of one or more charges there is no case to answer.

In respect of any charge in which the Court rules that there is no case to answer, the accused shall be found NOT GUILTY and such acquittal shall be entered in the Record.

If the motion of the defense is rejected the defense may:

- (i) Rest on its motion: in which case no further evidence may be called, but in the event of conviction a Petition for Review may include the argument that the motion was wrongly rejected; or
- (ii) Call evidence for the defense; in which case such evidence forms part of the record of the case and it is NOT permissible to seek on Petition for Review to exclude such evidence on the ground that the motion was wrongly rejected.

At this stage in the proceedings the Court may direct that one or more further charges be preferred against the accused and in such case shall grant such adjournment as may be required to prepare the defense thereto.

RESTRICTED

ALLIED CONTROL COMMISSION

CONSOLIDATED INSTRUCTIONS
FOR ALLIED MILITARY COURTS

WITH

SPECIMEN FORMS AND
RULES OF PROCEDURE

1 MAY 44

TABLE OF CONTENTS

	PAGE
Foreword by Executive Commissioner	7
Note	8
Art. 1. Definitions	9
Art. 2. Constitution and Convening of Courts:	
General Military Courts	11
Superior Military Courts	12
Summary Military Courts	12
Disqualifications for sitting	12
Art. 3. Allied Military Courts in Unoccupied Territory	13
Art. 4. Jurisdiction:	
« Allied Forces »	17
Prisoners of War	17
Art. 5. Trial of War Criminals	19
Art. 6. Merchant Seamen: Cases affecting	21
Art. 7. Proceedings in Open Court or Camera	23
Art. 8. Juvenile Offenders	25
Art. 9. Commencement of Proceedings	27
Art. 10. Rights of Accused	29
Art. 11. Impounded Property Pending Trial	31
Art. 12. Framing of Charges	33
Art. 13. Trial Together of several Accused	35
Art. 14. Charges under Italian Law	37
Art. 15. Amendment of Proceedings	39
Art. 16. Prosecuting Officers	41
Art. 17. Defence Advocates	43
Art. 18. General Powers of Court	45
Art. 19. Interpreters	47
Art. 20. Procedure:	
Preliminaries	49
Arraignment	49
On Plea of Guilty	49

	PAGE
On Plea of Not Guilty	50
Verdict	53
Evidence of Character: Mitigation	53
Sentence	54
Art. 21. Committal to Higher Court:	
Duty of Inferior Court to Remit	55
Disposal of Record	55
Art. 22. Evidence:	
Admissibility	57
Proof of exhibits	57
Confessions	58
Art. 23. Perjury and False Statements	59
Art. 24. « Agent provocateur » cases	61
Art. 25. Power of Punishment	63
Art. 26. Guide to Imposition of Sentence:	
Sentences generally	65
Fines	66
Suspended sentences	67
Art. 27. Restitution, Compensation or Forfeiture:	
Discretionary nature of power	69
Art. 28. Restitution, Confiscation or Forfeiture:	
Orders for	71
Art. 29. Receipts for Fines and Other Monies	73
Art. 30. Records of Proceedings	75
Art. 31. Disposal of Records	77
Art. 32. Review:	
Petitions generally	79
Review from Army Area	79
Review from Region	80
Art. 33. Applications for Pardon, Grace, Clemency, etc. and Second Petitions	83
Art. 34. Release of Prisoners without Trial	85
Art. 35. Release of Prisoners Pending Review	87
Art. 36. Release of Prisoners on grounds of ill health	89
Art. 37. Records of sentences for Italian Authorities	91
Art. 38. Forms, and their Use	93

SPECIMEN FORMS

- Form 1. Convening Order for a General or Superior Court.
- Form 1 A. Appointment of Officers to a General Court.
- Form 2. Citazione.

- Form 3. Mandato di Cattura.
- Form 4. Charge Sheet (Foglio d'Accusa).
- Form 5. Summons for Witness (Citazione per Testimonianza).
- Form 6. Commitment (Mandato di Cattura).
- Form 7. Cauzione di Garanzia per il Pagamento di Multa.
- Form 8. Charge Sheet (Foglio d'Accusa).
- Form 9. Cash Bail Bond (Cauzione).
- Form 9A. Bail Bond (Atto di Obbligo con Malleveria).
- Form 10. Warrant of Committal for trial to a Superior or General Military Court.
- Form 11. Petition for review.
- Form 12. Statement of Release from Prison.
- Form 13. Return of Sentences of over one year.

A P P E N D I X

Rules of Procedure for Allied Military Courts.

	PAGE
Rule 1. Construction	I
Rule 2. Commencement of Proceedings	I
Rule 3. Constitution of Court: Prosecutor or Defender	I
Rule 4. Conduct of Proceedings: Presence of Members	III
Rule 5. Interpreters	III
Rule 6. Arraignment and Charge	V
Rule 7. Pleading before Summary Military Court	V
Rule 8. Procedure on Plea of Guilty	VII
Rule 9. Procedure on Plea of Not Guilty	IX
Rule 10. Committal to Higher Court	XIII
Rule 11. Procedure in General and Superior Military Courts	XV
Rule 12. Power to adjourn, and other powers	XV
Rule 13. Court Officials	XV
Rule 14. Joint Charges	XVII
Rule 15. Witnesses	XVII
Rule 16. Evidence	XVII
Rule 17. Evidence as to character	XIX
Rule 18. Judgment and Sentence	XIX
Rule 19. Fines	XXI
Rule 20. Insanity	XXI
Rule 21. Saving for errors and omissions	XXI
Rule 22. General powers of Court	XXIII
Rule 23. Petitions for Review	XXIII

1786

Declassified E.O. 12356 Section 3.3/NND No. 785021



ALLIED CONTROL COMMISSION

FOREWORD

1. This handbook contains the Consolidated Instructions for Allied Military Courts, and an appendix containing the Rules of Procedure.
2. These Instructions and Rules will come into force on 15th May 1944.
3. The Consolidated Instructions are classified RESTRICTED and will not be disclosed to unauthorized persons; in particular *the contents will not be disclosed to Italian Lawyers.*
4. The object of the Instructions is to collect and put together in handy form all directions required by Legal or other officers presiding over Allied Military Courts. Any directive issued prior to the 1st May 1944 is repealed, so far as it is inconsistent with the Consolidated Instructions. Additions or amendments will be issued as required.
5. The Rules of Procedure are NOT RESTRICTED. On the contrary all lawyers practicing before Allied Military Courts must be familiar with them. To this end, a distribution is being made of an Italian translation of the Rules.
6. Officers will note particularly: Rule 18 (b) — Separate sentences on each charge and Rule 23 — Petitions for Review. The latter rule is designed to cut down the number of such petitions which are presented without any substantial grounds; all legal officers will endeavour to insure that this rule is complied with scrupulously.

M. S. LUSH
Brigadier
Executive Commissioner

NOTE

1. The Rules of Procedure and the instructions on procedure contained in this handbook have been framed with a view to laying down a proper basis for the conduct of Allied Military Courts. In General and Superior Military Courts these rules and instructions will be followed explicitly. In Summary Military Courts in very minor cases and particularly in the forward areas some deviation is permissible provided that no injustice is thereby done to the accused. Even when there is some such deviation, the officer presiding over the Court will always be guided by the principles laid down in the Rules of Procedure and the material instructions in this handbook.

2. It will be observed that throughout these Consolidated Instructions there is no reference to any proclamation by number. The reason is that, when further territory is occupied, it is proposed to issue for use in that territory a different series of proclamations. In the new series there will be many fewer proclamations as each one will embody the provisions (with certain amendments) of several of the existing proclamations. The two series of proclamations may be running simultaneously for a period and therefore any reference to numbers would be misleading.

ARTICLE 1 — Definitions.

The expressions «Regional Commissioner» and «Regional Legal Officer» will where applicable include respectively the Senior Civil Affairs Officer and Senior Legal Officer of any area controlled by an Army.

The expression «Provincial Legal Officer» shall include the legal officer in legal charge of any district within such area.

A «judicial officer» is any officer of ACC who is a qualified lawyer.

ARTICLE 2 — Constitution of Courts.

General Military Courts.

1. *a.* Shall consist of not less than 3 officers of the Allied Forces at least one of whom shall be a judicial officer.

b. Shall be convened only as follows:

(1) In areas where Allied Military Government is functioning under the orders of a Task Force Commander, (a) by such a Task Force Commander or (b) by a Divisional or higher Commander duly authorised by the Task Force Commander or (c) by the Army SCAO.

(2) In a region in occupied territory (a) by the Regional Commissioner from a panel appointed for that purpose by the Chief Commissioner or (b) in default of any such panel by the Chief Commissioner or as he may direct.

2. An application for such a Court will be made in writing by the Provincial Legal Officer to the Regional Legal Officer who will (if he considers a General Military Court necessary) arrange for the Regional Commissioner to nominate a Court from the panel appointed for the purpose or (in default of such a panel) apply in writing to the CLO, HQ ACC for the appointment of a Court.

3. Any such application whether made to the Regional Legal Officer or to the Chief Legal Officer will give the following information:

- a.* Name of accused.
- b.* Charges against accused.
- c.* Date by which case will be ready for trial.
- d.* Estimated duration of case.
- e.* Names of officers available to sit on the Court.
- f.* Name of suggested prosecutor.
- g.* Whether adequate interpreter available.
- h.* Address of proposed Courtroom.

Superior Courts.

4. *a.* Shall consist of two or more officers of the Allied Forces (at least one of whom shall be a judicial officer) or one judicial officer if he has been specially authorized by the CLO, HQ ACC to sit alone as a Superior Court.

b. Shall be convened by the Provincial Commissioner of the Province or the Senior Civil Affairs Officer of the Army in which the Court is to sit.

5. Application for authority for a judicial officer so to sit alone will be made to the CLO, HQ ACC accompanied by a statement of the officer's qualifications and experience.

Summary Courts.

6. Shall consist of (a) a judicial officer if available or (b) any officer of the Allied Control Commission or (c) any other officer of the Allied Forces if appointed in writing by name to sit by the Provincial Commissioner.

7. Provincial Commissioners will bear in mind at all times the undesirability of appointing untrained officers to sit as a Summary Court if this can be avoided.

8. *Disqualifications for sitting on any Allied Military Court.*
The following are disqualified from sitting on any Allied Military Court:

- Public Safety Officers while acting as such;
- Any officer who has taken part in the investigation of any case to be heard before that Court;
- Any officer who may be prejudiced by personal knowledge of the facts of the case or otherwise.

NOTE

The Senior Judicial Officer present is always President — See R. P. 4.

ARTICLE 3 — Allied Military Courts in Unoccupied Territory.

1. The Allied Forces have reserved to themselves the right to hold military courts in unoccupied territory including the four provinces of Apulia and Sardinia, for the trial of acts hostile to the Allied Forces. An extract from the decree conferring this power upon Allied Courts is set out in the note at the foot of this Article.

Such Courts will only be held (1) because of unusual circumstances in any individual case (2) because the Italian Courts are not functioning satisfactorily in any particular locality, or (3) because quick and vigorous action by an Allied Military Court is requisite to put an end to a series of hostile acts.

2. Where cases of this nature are alleged to have occurred it will be the duty of the Regional Commissioner to have the facts investigated and if he considers that trial by an Allied Military Court, as opposed to an Italian civil court, is necessary, he will so report to CLO, HQ ACC with a request that a military court be appointed.

3. *a.* All such courts will be convened only by order of HQ, ACC and as appears from the decree will punish offenders in accordance with the Italian Codes, but will follow their own procedure.

b. In view of these facts all charges will be framed under the Italian Codes by HQ, ACC and, therefore, it is essential that in requesting a military court pursuant to paragraph 2 above, full and complete facts be supplied in order that the charges may be properly framed.

c. Normally a member of the Office of Special Prosecutions will undertake the prosecution.

d. Where it transpires in the course of hearing that there is established against the accused (1) any other fact constituting an offence not expressed in the charge, or (2) evidence of aggravating circumstances (Article 61, Penal Code) not mentioned in the citation or charge, then on such question being raised by the President or submitted by the prosecutor, the accused may apply for

an adjournment of not more than 5 days to prepare his defence (ref. 444, 445 and 446 Code of Penal Procedure).

If the accused does not ask for time, the offence in question or the aggravating circumstances are forthwith to be included in the charge and the trial proceeded with.

A note of compliance with these Rules of Procedure must appear on the record.

e. The procedure to be followed will be the same as the procedure in a General Military Court in occupied territory, except, of course, that all sentences will be imposed in accordance with the applicable Penal Code.

f. Reviews and appeals are dealt with in paragraphs 6 and 7 below.

4. Where a Regional Commissioner requests that a military court shall be appointed, his request will also specify the names of officers available to sit on the court (a court will normally consist of not fewer than 3 officers), the interpreter, the officer to act as prosecuting officer in case none is available from the Department of Special Prosecutions, and the officer to act for the defence in the event of the accused not being represented by an advocate.

5. Every accused will be defended by a legal representative. Where the financial position of the accused does not permit him to engage the services of a legal representative on his own account, arrangements should be made by the Regional Commissioner for the provision of a legal representative in accordance with the provisions of the Italian Code of Penal Procedure (Article 128) and of the Rules of Penal Procedure contained in the Decree No. 602 of 28 May 1931 (Article 3 et seq.). This procedure provides that in such cases nomination of defending counsel shall be made forthwith and in conformity with the competent Italian jurisdiction for each case by one of the following judicial officials:

- a.* an examining magistrate (giudice istruttore);
- b.* the Public Ministry (Procuratore del Re or Procuratore Generale);

- c. president of a tribunal (presidente di tribunale);
- d. the Praetor (Pretore).

The several jurisdictions of Italian courts being determined by somewhat complicated rules, applications should be addressed in the first instance to the Praetor of the local court or to a procurator of a tribunal, whichever is the more expeditious or convenient, so that this official may determine the proper functionary having the power to take immediate action in each instance. The advocates or the defence procurators, as the case may be, who are nominated under these rules, are obliged to appear for the accused, and are selected for this purpose from an official roll established locally at the seat of each tribunal. If no such arrangements can be made, the accused must be defended by an Allied officer, and in cases where the death penalty may be imposed such officer shall be a qualified lawyer.

6. Any person convicted by a military court may, within 30 days of the imposition of sentence, file with the Regional Commissioner a petition addressed to the Chief Commissioner, HQ ACC submitting reasons why the conviction should be set aside or the sentence modified.

7. Where a petition is so filed, the petition together with the record of the case shall be forwarded by the Regional Commissioner to HQ ACC for review. Where no such petition is filed the record of the case shall be similarly forwarded at the expiration of 30 days from the imposition of sentence.

8. The above directive does not apply in any area which has been declared a military zone. If any area is hereafter declared to be a military zone further instructions will be issued for that area concerning the holding of Allied Military Courts.

NOTE: Extract from Article 3 of RDL of 11 Feb. 44, No. 31 (as amended by RDL of 13 Apr. 44).

© Whoever within the territory restored to the Italian administration com-

mits a hostile act or commits an offence against property to the prejudice of the Allied Military Forces or any member thereof or of any functionary representative or agent of the United Nations or causes seditious manifestations against the Allied Forces or commits acts which in any way hamper the war effort or help the enemy shall be tried by the Italian Courts according to Italian Penal Law.

However, the jurisdiction of Allied Military Tribunals shall be recognised in cases in which they think fit to take jurisdiction. In such cases the Allied Military Tribunals shall follow their own procedure but shall apply the Italian penal law.

ARTICLE 4 — Jurisdiction.

1. Allied Military Courts have no jurisdiction over «members of the Allied Forces». The following construction of the expression «members of the Allied Forces» will be adopted:

a. It *includes* organised contingents of Armed Forces of the United Nations (such as French, Poles or Yugoslavs) who are under the command of the Commander in Chief, Italy; and therefore members of such contingents may *not* be tried by Allied Military Courts.

b. It *excludes* any member of such nations who is not a member of an organised contingent; and such a member may, therefore, be so tried.

c. It *excludes* Italian troops who are co-belligerents and not Allies. Italian troops are, therefore, technically subject to the jurisdiction of Allied Military Courts; but *in the absence of some very special reason to the contrary this jurisdiction will NOT be exercised and they will be handed over to their own military courts for trial.*

In cases of doubt (e. g., where an Italian soldier commits an offence against the personnel or property of the Allied Forces), the case should be referred to the CLO, HQ, ACC for his instructions.

2. The jurisdiction of Allied Military Courts also does *not* extend to prisoners of war, which includes prisoners of war on parole. If a paroled prisoner of war commits an offence he must be handed over to the military authorities for imprisonment and trial by Court Martial.

3. As to trial of war criminals see Article 5 and trial of merchant seamen see Article 6 below.

ARTICLE 5 — Trial of War Criminals.

1. The expression «War Crimes» for the purpose of these instructions means violation of the laws and customs of war, e. g., maltreatment in any way of prisoners of war or internees and similar offences of this general nature. It does NOT include current crimes against the Allied Forces such as wire cutting, sniping, etc. Italians who commit crimes against Italian nationals will not be considered as war criminals: they will be handed over to Italian Government representatives for trial. Should any doubt exist as to whether reported acts constitute war crimes, the case will be reported to CLO, HQ ACC for his consideration.

2. Allied Military Courts will NOT try any person charged with any war crime.

3. All persons suspected of having committed war crimes will be held in custody pending orders from HQ ACC.

4. Any reports of the commission of war crimes by Italians or others will be investigated immediately and a full report including nature and place of alleged crime, names and addresses of alleged offenders and of the victims and witnesses will be forwarded to CLO, HQ ACC.

5. Such investigation will NOT include the holding of any formal hearing: it will be limited to the gathering of the facts necessary to enable HQ ACC to prepare a proper report to higher authority.

6. The utmost secrecy will be observed in making these investigations.

1798

ARTICLE 6 — Disposal of cases affecting Merchant Seamen.

- a.* Any case concerning a British or Dominion or Colonial Merchant Seaman will be referred to the Naval Officer in charge of the port concerned for investigation and action where possible under the Merchant Shipping Act or Defence Regulations.
 - b.* If in any case, owing to lack of jurisdiction or for any other reason, the Naval Officer in charge is unable to dispose of the case, the full facts will be reported to the CLO, HQ ACC and his directions obtained.
 - c.* On no account will any such seaman be tried in any Allied Military Court unless so directed by the CLO, HQ ACC.
2. Any case concerning a Merchant Seaman in a U. S. merchant vessel will be referred to the U. S. Naval Authorities at the port concerned.
3. Any case concerning a neutral seaman or a seaman of one of the United Nations (except British and American seamen) will be handed over to the local Italian courts.

ARTICLE 7 — Proceedings in Open Court or Camera.

1. Trials by every Allied Military Court shall be public except when otherwise directed by the court.

2. The power to direct any trial or any part thereof to be held in camera shall only be exercised if it is necessary to prevent any prejudice to the security of the Allied Forces or for some other exceptional reason.

3. Where any such direction is given, this shall be clearly recorded on the record of the case and a report attached stating what parts of the trial were held in camera and the reasons therefor.

4. If any intelligence branch requests for security reasons that a particular trial or part of it be held in camera, but the court is not satisfied as to the reasonableness of the request, the court will postpone or adjourn the trial and submit the question to the CLO, HQ ACC for his decision.

ARTICLE 8 — Juvenile Offenders.

1. A « juvenile offender » is an offender under 18 years of age.
2. One or more juvenile offenders, if charged alone, will be tried by an appropriate court (General, Superior or Summary) sitting as a Juvenile Court. The proceedings will be informal: the public, except for the family of the accused, will be excluded; otherwise the normal procedure will be followed. Whenever possible, a welfare officer should attend.
3. If one or more juvenile offenders are charged together with an adult, all will be tried together in open court.
4. Juvenile offenders may be punished as adults if in the opinion of the Court they are mentally and physically mature: where they appear to be hardened criminals it may be necessary to impose substantial terms of imprisonment.
5. Juvenile offenders, unless considered hardened criminals, should normally be sent to reformative institutions where such exist. Otherwise, a sentence of imprisonment will have to be passed. In assessing the sentence, the youth of the accused must be taken into account, and full use should be made of the power to suspend the whole or part of the sentence especially in petty cases.
6. In applying the above principles, officers will bear in mind any particular circumstances as to prevalence of theft, etc., obtaining locally and also that juvenile thieves are frequently merely the tools of others; and enquiry should be made to discover the identity of the latter.

ARTICLE 9 — Commencement of Proceedings.

All proceedings in an Allied Military Court will be commenced as provided by R. P. 2 namely by arrest without warrant or by warrant of arrest or by summons to appear followed where necessary by service of charges on a Charge Sheet.

Any officer of the ACC and any officer of the Civil Police (including an officer of the RRCC) may issue a warrant or summons.

A warrant or summons may be issued on the complaint of any person that an offence triable by an Allied Military Court has been committed.

ARTICLE 10 — **Rights of Accused.**

1. Every defendant before an Allied Military Court is entitled:

a. To have in advance of trial a copy of the charges upon which he is to be tried.

b. To consult a lawyer before trial and subject to military exigencies to have a lawyer of his own choosing defend him at the trial except that the Chief Legal Officer or a Regional Legal Officer or any Court may at any time prohibit any lawyer or other person from appearing in any Court. In any case, the Court may, at the request of the defendant or otherwise, assign to him an officer to assist in the defence of the case;

c. To apply to the Court for further time to prepare the defence which application the Court may grant or deny in its discretion (an adjournment should always be granted if the accused would otherwise be prejudiced unless the accused has been guilty of undue delay).

d. To bring with him such material witnesses as he may desire or to have them summoned by the Court at his request (the power to summon witnesses is conferred by R. P. 12).

e. To give evidence on his own behalf at the trial, but he may not be compelled to do so; (R. P. 9 (c) (1)).

f. To have proceedings translated for his benefit when he is unable to understand them otherwise.

2. Every person accused must be fully informed of the above rights.

Unless, therefore, the proceedings have been commenced by a summons bearing a statement of such rights, a Charge Sheet will be served on the accused setting out the same.

ARTICLE 11 - Treatment of impounded property pending trial.

1. Property seized in connection with an arrest (unless the property is perishable, as to which see below) will be retained pending trial by the person seizing it and **MUST** be produced in Court at the trial.

2. At the termination of the trial, the Court will order the restoration of the property to the accused or make such other proper order as may be required, and incorporate such order in the record of the case (see Article 28).

3. It will be remembered that the mere seizure of an article does **NOT** give the person who seized it any claim to the article.

4. If the property is perishable it may be sold before trial under the order of the Provincial Commissioner or the Court or some other officer of the ACC and the proceeds of sale must then be brought into Court at the trial and will be subject to the order of the Court.

ARTICLE 12 — Framing of Charges.

1. Unless the accused has been served with a summons clearly and properly stating the charges on which he is to be tried (in accordance with the following provisions) a list of the charges on which it is proposed to proceed will be served on the accused — See Form 4.

2. Even if the summons contained a statement of the charges, further facts may come to light during investigation and the original charges may require to be revised. In this case a list of amended charges as above will be served.

3. The charges and particulars must be clear and specific.

4. If it is necessary to charge offences under more than one paragraph of the proclamation or order or with different offences under one paragraph, a separate charge will be framed for each alleged offence.

5. In framing charges, remember the following:

a. The section of the Proclamation or order alleged to have been violated **MUST** be quoted.

b. The phrasology of the section must be followed exactly.

c. All relevant particulars (c. g., date and place of alleged offence: nature and quantity of property involved, etc). must be given.

6. Multiplicity of charges will be avoided.

EXAMPLE

The facts on which the charge is to be based are as follows: The accused was found at X in possession of a quantity of Army boots recently stolen from an Army store at Y. No person witnessed

the theft or could identify the accused as having been at the scene of the theft. A charge of theft should not be preferred in this case.

The charge should be as follows:

1st Charge: The accused wrongfully had in his possession property of the Allied Forces contrary to Procl. , art. , sec. .

Particulars: Between 1st Jan 1944 and 15th Jan 1944 the accused had in his possession at X, 44 pairs of boots the property of the Allied Forces.

ARTICLE 13 — Trial Together of several Accused.

1. *a.* Any number of accused persons though charged separately may be tried together where the offences are alleged to have arisen out of the same set of circumstances.

b. The Court may, either before or during trial, direct that one or more of the accused be tried separately if it is satisfied that otherwise such accused would be seriously prejudiced in his defence.

2. *a.* When an officer of the Allied Forces is instructed to defend two or more accused who are to be tried together, he will consider whether he will be prejudiced in the conduct of the defence of any one of them by reason of the fact that there is a serious conflict of interest between such accused and the other accused.

b. If he will be so prejudiced, he will apply to the Court for the appointment of a separate representative for the other accused.

c. The Court should grant any adjournment that may reasonably be required in the above circumstances.

3. Where two or more persons are charged jointly with the commission of a joint offence (e. g. conspiracy) they will, of course, be tried jointly.

ARTICLE 14 — Charges under Italian Law.

1. Charges under Italian Law will be preferred only with the authority of the Regional Commissioner (who may delegate this power either generally or in particular cases according to circumstances).

2. *Only in exceptional circumstances* will charges be brought under Italian Law. To this end such authority will NOT be given:

a. If justice can be done by proceedings under a proclamation or order.

b. If Allied Military interests will not be prejudiced by leaving the case to be dealt with by an appropriate Italian tribunal when available.

3. If such a charge is preferred the offence is punishable only as provided by Italian Law.

ARTICLE 15 — Amendment of Proceedings.

1. The Court may at any stage of the proceedings amend the charges against the accused. Normally, there should be no amendment after the close of the prosecution case.

2. If the amendment is more than a technical amendment, the accused will be allowed such time as may be reasonably necessary to enable him to prepare his defence to such charges as amended.

ARTICLE 16 — Prosecuting Officers.

1. Whenever possible and invariably in cases of complexity or magnitude, cases will be prepared and presented by a qualified prosecuting officer.

2. In any case of special difficulty application will be made to the CLO, HQ ACC for the advice or assistance of the staff of the Office of Special Prosecutions.

3. The duty of the prosecuting officer is to present to the court in as clear a way as possible all material facts including those favourable to the accused.

To carry out this duty he must constantly keep in mind (a) the charge or charges against the accused, (b) the facts required to be proved to constitute the offence charged and (c) the evidence by which those facts can be established.

ARTICLE 17 — Defence Advocates.

1. *a.* In all trials in which the accused may be sentenced to death, the accused will be defended by a qualified Italian avvocato or where (on security grounds or for other good reason) that is not practical, by an officer of the Allied Forces who is a qualified lawyer.

b. In other trials of exceptional complexity, magnitude or gravity in which the accused is not represented by a lawyer the Court should appoint an officer of the Allied Forces to represent the accused.

2. *a.* If the accused is not in a financial position to engage such an avvocato, application will be made to the appropriate Italian authority who will officially nominate an avvocato to appear and represent the accused free of charge.

b. Such application will be made, as explained in Article 3 Sec 5 above, to a Praetor or Procurator, whichever is the more convenient.

ARTICLE 18 — General Powers of the Court.

The Proclamation confers general powers on the Courts to do all acts requisite for the due administration of justice.

This includes the following powers:

- a.* To grant bail. This power should not be exercised in serious cases (such as thefts of mail bags or other cases where Allied property or interests are involved) except in the most unusual circumstances. Bail, if granted, must always be substantial in amount, and sufficient to ensure the attendance of the accused at his trial;
- b.* To adjourn proceedings generally or to a fixed time and place;
- c.* To punish for contempt;
- d.* To make an order as to costs;
- e.* To administer oaths;
- f.* To order the attendance of witnesses with or without documents;
- g.* To direct that any person shall be detained in custody as a material witness provided that no such person shall be detained for longer than 21 days without a further order being made.
- h.* To appoint one or more assessors to sit with the Court whose duty will be to give such advice or assistance on any question as the Court shall require.

ARTICLE 19 — **Interpreters.**

1. An Interpreter shall be used whenever interpretation is required to enable the Court, the prosecutor, the accused or the accused's legal representative to understand the proceedings.

2. The Interpreter shall be sworn as provided by the Rules of Procedure (R. P. 5).

3. The Interpreter will confine his activities to interpreting: he will *not* be permitted to frame questions or merely to give the purport of any observations, questions or answers, or to enter into argument with advocates or witnesses.

4. Officers will remember that efforts will almost certainly be made to influence them through the medium of the Interpreter.

It is therefore most important that a careful watch be kept on the Interpreter out of court; and on no account will the Interpreter be permitted to sign any letter or other document.

5. *a.* Any opening speech made by the Prosecutor *will* be interpreted into Italian.

b. The speech by the defence avvocato need not necessarily be translated into English, but it must be so translated if there is a possibility of the Court not understanding it *or* of the defence being under the impression that the Court has not fully understood it.

c. The closing speech (if any) by the prosecutor need not necessarily be translated into Italian, provided that at least the gist of it is understood by or translated for the defence.

ARTICLE 20 — Procedure.

The procedure to be followed in Allied Military Courts is set out in the Rules of Procedure. The following observations are not exhaustive: they are in amplification and explanation of those rules, and it is imperative that all officers presiding on Allied Military Courts make themselves familiar with such rules.

Every question (including questions of finding and sentence) which may arise during trial will be determined by a majority of the officers of the Court, the members expressing their views in inverse order of their seniority.

The first action to be taken by an Allied Military Court is to satisfy itself that it is properly convened and that it has jurisdiction to try the accused for the offences charged. The Court will then swear the Interpreter (R. P. 5), unless the proceedings are conducted in Italian or the Interpreter is the regular Court Interpreter.

The Court should then ascertain the names of the accused's legal representatives (if any).

Arraignment.

The charges must be read and explained to the accused and in respect of each charge each accused should be asked whether he pleads «guilty» or «not guilty».

In any case where the accused pleads «guilty» the Court should satisfy itself that the accused appreciates the elements required to constitute the charge and admits facts sufficient to support it.

In all cases in which the Court has jurisdiction to impose a sentence of death, the Court will enter a plea of «not guilty», and will require the facts to be proved by the prosecution.

On Plea of Guilty.

If the accused pleads «guilty» and the Court accepts the plea, no evidence is required to prove the offence. The Court must,

however, acquaint itself with the relevant facts in order to pass sentence, and this can be done as follows:

a. When there is a prosecuting officer, by the prosecuting officer stating the facts shortly to the Court;

b. Where there is no prosecuting officer, by a perusal of the documents or by statements of witnesses. If statements are taken from witnesses they must be on oath and opportunity must be given for cross-examination and re-examination.

The accused must have full opportunity of knowing what facts are being placed before the Court. If a prosecuting officer makes a statement, it must be interpreted. If documents are perused, their contents must be made known to the accused.

Any witness as to good or bad character to be called either by the prosecution or the defence should then be heard. Such witnesses will be subject to cross-examination by the other side and to re-examination.

The accused or the legal representatives on his behalf should then be invited to make any statement he wishes in mitigation of the offence. Such statement by the accused need not be on oath. If during such statement, or at any other time, it appears that, though the accused has pleaded «guilty» his plea should have been one of «not guilty», a plea of «not guilty» must be substituted for the plea of «guilty» and the trial must proceed.

On Plea of Not Guilty.

When the accused pleads «not guilty» the procedure is as follows:

a. In cases of any complexity the prosecutor states shortly to the Court the facts on which he relies and indicates the evidence by which he intends to prove these facts.

b. During the opening statement all witnesses (including Allied officers) both for prosecution and defence should be out of court. Witnesses should remain out of court until they have given evidence and should remain in court thereafter during the hearing unless released. During adjournments a warning should be given

that witnesses who have already given evidence should not converse with the other witnesses who have still to give evidence.

c. The prosecutor, after his opening statement, calls his witnesses in order. The order should be dictated by the desire to present the facts to the Court in as clear and logical a sequence as possible.

d. Witnesses will give their testimony on oath and shall be sworn in the following form:

« Being conscious of the responsibility which this oath imposes upon you, before God and man, do you swear to speak the whole truth and nothing but the truth ».

« Consapevole della responsabilità che col giuramento assumete davanti a Dio e agli uomini, giurate di dire tutta la verità e null'altro che la verità ».

Where the witness desires to affirm, the form used will be:

« Being conscious of the responsibility which this affirmation imposes on you do you affirm to speak the whole truth and nothing but the truth ».

« Consapevole della responsabilità che coll'affermazione assumete, affermate di dire la verità e null'altro che la verità ».

Before administering the oath to a child the Court must satisfy itself that the child realizes the nature of the oath. A child who does not realize the nature of an oath will not be sworn, but may nevertheless give evidence if the Court is satisfied that such a child understands the duty of telling the truth.

e. Evidence is given in answer to questions in the following stages:

- (1) Examination in Chief or direct examination in answer to questions by the prosecution.
- (2) Cross-examination by the defence on any matter relevant to the case including the credibility of the witness.
- (3) Re-examination by the prosecution which is *confined to matters raised in cross-examination.*

So far as is possible the Court should reserve its questions until after the re-examination of the witness.

f. It is the duty of the prosecution not only to call evidence to establish a prima facie case but also, if possible, to deal with any matters of defence. Facts favourable to the accused, if known to the prosecutor, must be presented by him to the Court.

g. After the evidence has been called on behalf of the prosecution, the prosecutor announces that the case for the prosecution is closed.

h. If at this stage, no prima facie case has been made out against the accused, he should be acquitted. Should the legal representative for the defence desire to argue that no prima facie case has been made out, he shall be permitted to do so.

i. The defence then calls its witnesses in order. If the accused is to give evidence he should be called first. Before he gives evidence it must be explained to him that:

- (1) he need not give evidence unless he wishes;
- (2) if he wishes to give evidence it must be given on oath;
- (3) if he gives evidence he will be subject to cross-examination on all relevant facts concerning the case. His evidence cannot be confined to particular aspects of the case.

j. Witnesses for the defence then give their evidence in answer to questions in the following stages:

- (1) examination in chief in answer to questions by the defence;
- (2) cross-examination by the prosecution;
- (3) re-examination by the defence which is confined to matters raised in cross-examination.

k. At the conclusion of the evidence for the defence, the defence closes its case.

l. Evidence by way of rebuttal can be called on behalf of the prosecution only when the defence has raised new matters in evidence which were not suggested to the witnesses for the prosecution, and which the prosecution have had no opportunity of answering and which is relevant to the main issue.

m. All the evidence having been heard the accused or his legal representative is then entitled to address the Court and must be heard for so long as he confines himself to evidence adduced in the case or legal argument based on the facts of the case. He is not entitled to introduce at this stage any fact which has not been sworn to in evidence. Only one speech shall be made on behalf of each accused.

n. The prosecution is then entitled to reply to the speech or speeches for the defence. This right need not be exercised and should not be exercised in simple cases.

Verdict.

A separate verdict of «guilty» or «not guilty» will be recorded in respect of each charge on the Charge Sheet. The Court will not record a verdict of «guilty» on any charge unless it is genuinely satisfied by the evidence that the specific charge has been made out. Every accused person is presumed to be innocent until he is proved guilty and he must be given the benefit of any *reasonable doubt*. In cases of any complexity the Court should give reasons for its decisions.

The duty of the prosecution is to try and prove its case beyond «*reasonable doubt*» and if it does so, it is the duty of the Court to convict; if it does not do so, it is the duty of the Court to acquit.

«Reasonable doubt does NOT mean a mere possible doubt, as everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt..... It is not sufficient for the prosecution to establish a probability, but it must establish the truth of the fact to a reasonable and moral certainty».

Mitigation and Evidence of Character.

After a verdict of «guilty» a Court shall inquire into the previous character and convictions (if any) of the accused and hear any remarks which he or his legal representative have to make on the question of mitigation of sentence. The accused may if he

chooses give evidence or call evidence on his behalf which shall be subject to cross-examination and re-examination.

Sentence.

The Court will impose and record a separate and appropriate sentence in respect of each offence of which the accused has been found guilty. This sentence may be mitigated or increased by the previous character and conduct of the accused, but otherwise the sentence must be based solely on those facts which have been proved to the satisfaction of the Court and in respect of which the accused has been found guilty. Sentences of imprisonment imposed on a number of charges may be either consecutive or concurrent or partly consecutive and partly concurrent. It must always be made plain in passing sentences whether sentences are consecutive or concurrent or partly consecutive and partly concurrent. The following are examples of the different types of sentence:

a. *Example of Consecutive Sentences.*
 «On 1st Charge, 6 months; on 2nd Charge, 3 months such sentences to run consecutively».

b. *Example of Concurrent Sentences.*
 «On 1st Charge, 4 months; on 2nd Charge, 1 month such sentences to run concurrently».

c. *Example of sentence partly concurrent and partly consecutive.*
 «On 1st charge, 12 months; on 2nd charge 9 months, such sentences to run as to 3 months concurrently and as to the balance consecutively».

In this case the accused will serve 18 months; but if the conviction on the 1st charge is quashed on review, the full 9 months awarded on the second charge will be served.

chooses give evidence or call evidence on his behalf which shall be subject to cross-examination and re-examination.

Sentence.

The Court will impose and record a *separate and appropriate sentence in respect of each offence of which the accused has been found guilty*. This sentence may be mitigated or increased by the previous character and conduct of the accused, but otherwise the sentence must be based solely on those facts which have been proved to the satisfaction of the Court and in respect of which the accused has been found guilty. Sentences of imprisonment imposed on a number of charges may be either consecutive or concurrent or partly consecutive and partly concurrent. It must always be made plain in passing sentences whether sentences are consecutive or concurrent or partly consecutive and partly concurrent. The following are examples of the different types of sentence:

a. Example of Consecutive Sentences.

«On 1st Charge, 6 months; on 2nd Charge, 3 months such sentences to run consecutively».

In this case the accused will serve a total of 9 months.

b. Example of Concurrent Sentences.

«On 1st Charge, 4 months; on 2nd Charge, 1 month such sentences to run concurrently».

In this case the accused will only serve 4 months; but if, for example, the conviction on the 1st Charge is quashed on review, the conviction and the sentence of the Court on the 2nd Charge will remain.

c. Example of sentence partly concurrent and partly consecutive.

«On 1st charge, 12 months; on 2nd charge 9 months, such sentences to run as to 3 months concurrently and as to the balance consecutively».

In this case the accused will serve 18 months; but if the conviction on the 1st charge is quashed on review, the full 9 months awarded on the second charge will be served.

ARTICLE 21 — **Committal to Higher Court.**

1. *a.* If at any stage of any trial a Summary or Superior Court is of the opinion that its powers to deal with the case are inadequate or that for any other reason the case ought to be tried by a higher court the Court shall not proceed to pass a verdict, but shall commit the case to a higher court (not specifying the nature of the court) and shall hand the record of the case to the Provincial Legal Officer. Officers sitting as Summary Courts must be particular to bear this duty in mind: they should not continue to hear a serious case merely to save the trouble of adjourning it to a higher court. If there is any reasonable risk of witnesses ceasing to become available for the subsequent trial, the inferior court shall record all the available evidence before committing the case.

b. Where there are more than one accused, the power to commit to a higher court may be used in respect of some of the accused, the lower court retaining and disposing of the case against the remainder. This course should be adopted where possible: e. g., in «riot» cases, in which frequently there are a large number of accused and the gravity of the offence alleged against them varies very greatly.

2. *a.* The Provincial Legal Officer on receipt of the record will either refer the case to a Superior Military Court for trial or submit the record to the Regional Legal Officer with a recommendation for trial by a General Military Court.

b. The methods of convening a General Military Court are set out in Article 2 above.

c. Upon a General Court being convened the Regional Legal Officer will be responsible for issuing all necessary orders as to arrangements for the Court including in particular the presence of the prosecutor and prosecution witnesses, the accused and his advocate and the Court Interpreter.

ARTICLE 22 — Evidence.

a. The following notes on evidence in Allied Military Courts will be observed:

1. Admissibility.

- (a) An Allied Military Court shall admit such evidence including hearsay as in its opinion is relevant and material to the charges before it and shall, in deliberating on the judgment in each charge, take into consideration the nature of the evidence produced and the degree of reliance which can reasonably be placed upon it.
- (b) Where a written statement made by a person who is not called as a witness is admitted as evidence under the rule, it must be borne in mind that no opportunity for cross-examination as to the facts set out in the statement was given and that even if the statement is not inaccurate it may create a wrong impression by being incomplete.
- (c) Original documents should always be produced unless lost or destroyed.

2. Proof of Exhibits.

- (a) The offering in evidence of documents and other exhibits by motion is not a practice followed in Allied Military Courts. When a document or other article is identified by a witness in circumstances relevant to the charge it thereby becomes evidence in the case and should be marked as an exhibit.

Examples:

- (i) In a charge of assaulting a member of the Allied Forces with intent to kill, after evidence that an Allied soldier had been stabbed, Sergeant X stated « I found this dagger under a pile of rubbish at the defendant's house ». The dagger should be received in evidence by

the Court and marked as an exhibit. It would remain for the Court in considering its verdict to decide on this and other evidence whether or not this was the dagger which was used.

- (ii) In a charge of wrongful possession of Allied property the Marshal of Carabinieri stated «on the 24 December 43 the defendant made a verbal statement to me at the Carabinieri barracks at X. I wrote down the statement, read it over to him and he signed it. I produce the statement». The Court should receive the statement in evidence, but the weight to be attached to it depends on the circumstances.

3. Confessions.

- (a) In British and American procedure no confession to the police is admissible unless made freely and voluntarily and generally only after caution. It is not possible to apply these rules strictly to all proceedings in Allied Military Courts. The Court is entitled to look at a purported confession and should inquire into the circumstances in which it was made. The issue for the Court then is whether or not the confession is true, the onus being upon the prosecution to prove that it is.
- (b) There is no rule of law in Allied Military Courts that a man may not be convicted on an uncorroborated confession; but if there is evidence that a confession was obtained by force, corroboration is obviously necessary.
- (c) Similarly, there is no rule of law that a confession by an accomplice which implicates the accused may not be accepted by the Court as evidence against the accused. Every Court, however, must remember the natural tendency to exculpate oneself by implicating another and the Court, therefore, must be wary of attaching great weight to such evidence: *on no account* should an accused be convicted on such evidence unless there is *ample corroboration*.

ARTICLE 23 — Perjury and False Statements.

1. *Perjury.*

The Court must not permit an existing trial for a substantive offence to be converted into a trial of the accused or any other witness for perjury.

In a proper case, a charge of perjury may be preferred against a witness who has deliberately made a false statement on oath. This course should only be adopted in exceptional cases, in which it is clear that the witness has deliberately given false evidence on a substantial question of fact (as opposed to opinion) to mislead the Court.

2. *False statements.*

Under the Proclamation it is an offence to « make a false statement in connection with any official matter ». This is a very useful provision in many ways, but it must NOT be used:

- (a) as a substitute for a charge of perjury;
- (b) as an easy means of procuring conviction in a case where the evidence against the suspect is flimsy, but the suspect, in the course of the investigations, has made a false statement to the investigating officer;
- (c) If the accused makes the false statement in answer to questions designed to establish his guilt on some other charge.

ARTICLE 24 — « Agent Provocateur » Cases.

a. Cases in which an « Agent provocateur » has been employed are dangerous and to be discouraged; the Court will always scrutinise the evidence in such case with special care and will be very reluctant to convict in such cases even if the facts appear to be proved.

b. The above remarks do NOT apply to the class of cases where a soldier is approached by a civilian and asked to aid or abet an offence and the soldier (having reported the event and acting under orders) does the act asked of him to enable the civilian to be caught.

ARTICLE 25 — Power of Punishment.

1. The powers of punishment conferred by Proclamation in the various types of Allied Military Courts are as follows:

- a. General Military Courts may impose any lawful punishment including death.
- b. Superior Military Courts may impose any lawful punishment other than death or imprisonment for more than 10 years.
- c. Summary Military Courts may impose any lawful punishment other than death or imprisonment for more than one year or a fine 50,000 lire or both such imprisonment and fine.

2. In connection with the above, the Court will always remember that the only authorised punishments in each case are «lawful punishments», i. e., Death, Imprisonment, Fine or Imprisonment and Fine, accompanied in permitted cases (i. e., after conviction for wrongful use, sale purchase or possession of property) by an order for confiscation, forfeiture, restitution or compensation or by an order closing premises or by an order as to residence. For the full permitted scope of such orders, reference must be made to the relevant proclamation.

These are the only lawful punishments: courts may not impose any other punishment.

3. In *no* case can a person convicted by a Summary Military Court be kept in prison in respect of that conviction for more than one year. If, therefore, a Summary Court imposes a year of imprisonment and a fine, the accused *must* be released at the end of one year, whether the fine is paid or not.

Similarly, no person can be kept in prison in respect of a conviction by a Superior Military Court for more than 10 years.

ARTICLE 26 — **Guide to Imposition of Sentences.**

The imposition of an appropriate sentence on each person convicted is the duty (and a most difficult duty) of any Court. The following general instructions will be taken as a guide in determining sentences.

1. Sentences generally.

- a. Do not compromise: if there is a «reasonable doubt» (as described in Article 20 above) acquit the accused; if no such doubt exists, impose a full sentence.
- b. Remember that Italians are used to and expect much heavier sentences than those normally imposed in the United Kingdom or the United States of America. The Italians themselves have criticised the lightness of the sentences given by Allied Military Courts.
- c. Remember that the sentences imposed by an Allied Military Court will be subject to the Italian rule whereby persons sentenced to a term of 5 years or more may in certain circumstances be released on conditional liberty after serving in some cases one-half and in other cases two-thirds of the sentence.
- d. Remember that the Allied Military Courts are being criticised because their sentences are too light for the purposes of Military Government.
- e. Remember that the principle has been laid down that «the purpose of Military Courts is to impose sentences..... which will be a *deterrent* to others». Imprisonment must not merely be regarded as a means of punishment and reformation of the offender.
- f. Remember that the accused is the one offender who has been caught and that there are hundreds more outside the court ready and willing to offend if the risk of severe punishment is slight.
- g. Remember that during the trial not only must justice be done, but also it must be apparent that justice is being done; but

imposing a reasonably heavy sentence is in no way inconsistent with justice.

b. Remember that extreme caution will be used in moderating the severity of a sentence on account of mitigating circumstances. The possession of a family large or small, is NOT a mitigating circumstance.

i. Remember that cases such as mail theft, cutting of wire (communication lines) and theft and possession of such wire are of great concern to the Allied Forces and must be dealt with severely.

j. Remember that although a Court should impose substantial penalties in accordance with the above general instructions, it should not impose unreasonably heavy sentences in *petty* cases.

2. Fines.

a. From experience it has been found that fines are not an effective deterrent and should not normally be imposed (unless coupled with a sentence of imprisonment) except in petty cases or when the gaols are full. In particular, they are NOT appropriate in that type of case where the accused is operating in the «black market» or otherwise engaged in illegal trading. Such operators do not fear fines (their profits are so great), but they do fear imprisonment.

b. Any military court has power to impose a fine as its sentence or part of its sentence, but a Summary Military Court may not impose a fine (with or without imprisonment) over 50,000 lire.

c. Where a fine is imposed the order of the Court *must* state the date by which the fine is to be paid and impose a sentence (in addition to any other sentence) to be served in default of payment by the prescribed date. The form of the sentence will be as follows:

«Two months imprisonment and a fine of 10,000 lire to be paid within X days; in default of payment of the fine within that period, accused to serve a further period of Y weeks imprisonment».

Note in this connection:

(i) This differs from the Italian practice, under which the

fine may be paid at any time during the original term of imprisonment.

- (2) The convicted person must either pay *all* the fine within the stated period (i. e., within X days in the above example) or go to gaol for the *full* period in default: therefore a reasonable time (according to the amount of the fine) must be given for payment.
- (3) The term of imprisonment imposed in default of payment of the fine must be reasonable in relation to the size of the fine. It is NOT intended to fetter the discretion of the Court in any way, but for guidance in calculating the term to be served in default, it is suggested that 1 day per 100 lire may be taken as a rough guide, e. g., on a fine of 10,000 lire a term of 3 months in default would be reasonable; but in the case of very small fines a proportionately larger term might well be imposed.

3. Suspended Sentences.

a. The Court has the power to suspend all or part of a sentence of imprisonment (but NOT of a fine). This may be done only at the time of passing sentence.

b. Suspension may be granted on such terms as to good behaviour and on such other conditions (e. g., as to place of residence) as the Court may decide.

c. The effect of suspending a sentence is to leave the sentence intact, but to provide that it shall not be served unless or until the person convicted fails to comply with any of the terms imposed by the Court or is subsequently convicted an Allied Military Court (as to which see *g* below).

The sentence remains in suspense (unless it is served for one of the reasons above mentioned) during the continuance of Allied Military Government.

d. This power will *not* be used as a regular practice, but only in exceptional cases, e. g., on account of the age or ill-health of the accused, or some special extenuating circumstances.

- 1829
- e. The reason for the suspension will be noted on the record.
- f. In the event of an alleged breach of any such terms or conditions, the accused will be brought before the first available Summary Court (not necessarily the court which imposed the sentence); if such breach is proved *by evidence* the Court will order the accused to serve the original sentence or such part of it as was suspended.
- g. A subsequent conviction by an Allied Military Court for any offence shall have the effect of putting into effect the whole of any suspended sentence unless the Court otherwise directs: the Court so convicting will order the accused to serve the suspended term in addition (i. e., consecutively) to any other sentence it may impose.
- h. The contents of sub-paragraph g will be brought to the notice of the accused at the time of suspending a sentence.
- i. Persons subjected to a suspended sentence *may not* be subjected to any unlawful punishment, e. g., being made available to work for RRCC.

ARTICLE 27 - Discretionary Nature of Power of Restitution, Compensation or Forfeiture.

1. The power to order restitution or compensation or forfeiture conferred by the proclamation is only exercisable when a prisoner is convicted of wrongful use, sale, purchase or possession of an article.

2. This power must be exercised judicially.

3. Normally, the power to order forfeiture should be used where the wrongful use, etc., is the substance of, and not incidental to, the charge.

Examples:

a. A man is convicted of possession of firearms without a permit or of wrongful possession of property of the Allied Forces or of accepting a bribe; the power should normally be exercised.

b. A person is convicted of being out of doors after curfew without a permit and was riding a bicycle at the time of arrest; the power should NOT be exercised.

4. The power of forfeiture is additional to other powers of punishment. Officers sitting in Summary Courts will *not* make use of the power merely to impose a penalty which will, in fact, exceed 50,000 lire.

ARTICLE 28 — Orders for Restitution, Confiscation or Forfeiture.

1. As stated above (Article 11) when property is seized before trial it *must* be produced in Court at the trial. If it is not forthcoming, the Court must scrutinise closely the reasons for its non-production. The order of the Court *must* deal with the disposition of the property.

2. Any such order will:

- a. Be in writing;
- b. Be embodied in the record;
- c. Specify the manner in which the goods or proceeds of sale thereof will be disposed of.

3. In default of any express orders to the contrary, goods subject to such order will be disposed of in accordance with the following general directions:

a. Property of the Allied Forces will be returned to the nearest military depot dealing with that type of goods;

b. Stolen property will be returned to the true owner if he can be found: if not, it will be handed to the nearest military depot dealing with that type of goods;

c. Confiscated unperishable goods will be confiscated to the Allied Military Government and will be at the disposition of the Provincial Commissioner;

d. Confiscated perishable goods will be sold (if not already sold-see Article 11) and the proceeds disposed of as confiscated money in accordance with sub-paragraph e;

e. Confiscated money will be paid to the nearest Provincial Finance Officer;

f. Money ordered to be paid as compensation will be paid as directed by the Court.

ARTICLE 29 — Receipts for Fines and Other Monies.

1. A receipt will be given on Form F. 1 for every fine or other money paid into Court.

2. When a fine or other money is paid the record will be endorsed with a note showing (1) the number of the receipt, (2) the date, (3) the amount and (4) in respect of what paid: e. g.,
No. 136; 25 March 1944; 2000 lire; fine.

3. For the protection of officers receiving the same, all fines or other monies received will be paid into the nearest Provincial Finance Officer as soon and as regularly as possible. Such payments will be supported by copies of the receipts and a schedule in duplicate giving the following information:

Name of payee;

Reference number of case;

Amount paid;

Reason for payment (fine, forfeiture, etc).

The Provincial Finance Officer will be required to return the duplicate schedule duly receipted.

ARTICLE 30 — **Records of Proceedings.**

1. Officers presiding over Allied Military Courts must keep adequate and tidy records in accordance with the following instructions.

2. In General and Superior Courts, the record will be on Form 8 (which may be in any one of three forms, viz. double sheeted, single sheet with counterfoil or with Mandato di Cattura attached) and except in very short cases the note of the evidence will be on separate sheets of paper which should be attached to the Form 8.

3. In Summary Courts, the record will be kept either:

a. On Form 8 with the evidence on the form itself or on separate sheets of paper which should be attached to the Form 8; or

b. In very short simple cases (such as curfew and straightforward cases of wrongful possession) in the space provided on the back of the Summons (Form 2) or Charge Sheet (Form 4). **RECORDS WILL BE KEPT ONLY AS ABOVE DIRECTED. THE USE OF THE SUMMARY COURT RECORD BOOK WILL BE DISCONTINUED.**

4. The Court's notes of the evidence will be made (either on the appropriate Form or on separate sheets) *during the trial*: they must *not* be left to be written up afterwards. These notes form part of the record of the case. Sufficient notes should be made by the Court (on the counterfoil or elsewhere) to serve as an office record of the case once the full record of the case has been forwarded.

5. Presiding officers must remember that their records are of real importance. Any person convicted has a right to present a petition for Review and unless there is an adequate record, the right is reduced to a valueless farce. Records in simple cases need not be long: *they must include* all material facts particularly relevant quantities and amounts. Comments by the Court which may help the Reviewing authority to form a mental picture of the case or to know why a particularly severe or lenient sentence was imposed are valuable and should always be included in the space provided for the purpose.

ARTICLE 31 — Disposal of Records.

1. Records of all cases will be forwarded to the Regional Legal Officer, who will be responsible for the storage and safe custody of them.
2. Courts need not keep a duplicate record, but they must keep a sufficient short note of the case to serve as an office record (see Article 30).
3. In any case in which review by the Chief Commissioner is required (see Article 32 below) the full record will be forwarded to Hq, ACC, who will return the same to Regional Hq on completion of the review, with the decision on review entered in the appropriate space on the record.
4. Regional Hq will be responsible for notifying Provincial Legal Officers of all decisions on review whether such review be by the Chief Commissioner or the Regional Commissioner.
5. The SCAO of an Army may, after a case has been reviewed and all consequential action taken, send the record for safe custody to the Regional Commissioner of the Region that will be responsible ultimately for the area in which the case was heard.

ARTICLE 32 — Review.

1. Every person convicted by an Allied Military Court has a right to present a petition for Review setting out the grounds (whether of law or fact) on which it is suggested conviction should be set aside or the sentence varied. The rules governing such petitions are set out in the Rules of Procedure: Rule 23 Para. 3 of that rule provides:

«A petition must comply with the following conditions:

- (a) It must be on the prescribed form.
- (b) It must be presented within 30 days of sentence.
- (c) It must be presented to the trial court or the Provincial Legal Officer.
- (d) It must be signed by the *accused personally* or by the *lawyer who appeared for him at the trial.*
- (e) It must state the grounds of appeal.
- (f) It must state the full *name and address* of the accused or the lawyer by whom it is presented».

Provincial and other legal officers must see that the lawyers understand and comply with the provisions of Rule 23.

2. The presiding officer forwarding a petition will always make his comments in the space provided for the purpose. It is the duty of the Provincial Legal Officer to see that this has been done before the papers are forwarded to the Regional Legal Officer.

3. The record of the following cases will be reviewed by the Chief Commissioner or by a judicial officer *not* below the rank of Lieutenant Colonel appointed by him for that purpose:

- a. *Where the trial was held within an Army area.*
 - (1) Where one or more of the charges is framed under Italian law.
 - (2) Where the sentence on the accused or on any one of two or more persons tried jointly exceeds two years imprisonment or 50,000 lire fine.

- (3) Where the accused, or where two or more accused are tried jointly, where any one of the accused, submits a Petition for Review.
- (4) Where on account of the importance of the case or for any other reason the Senior Civil Affairs Officer of the Army submits the record for review by the Chief Commissioner.

b. Where the trial was held within a Region.

- (1) Where one or more of the charges is framed under Italian law.
- (2) Where the sentence on the accused or on any one of two or more persons tried jointly, exceeds two years imprisonment or 50,000 lire fine.
- (3) Where on account of the importance of the case or for any other reason the Regional Commissioner submits the record for review by the Chief Commissioner.

4. The records of all other cases (whether or not a Petition for Review is presented) will be reviewed by the Regional Commissioner or by a judicial officer not below the rank of major appointed by him for that purpose.

5. There is NO right to submit a petition to the Chief Commissioner by way of appeal from the decision of the Regional Commissioner in any case reviewed by him in accordance with the powers above conferred on him.

6. *a.* Records of cases for review by the Chief Commissioner will be forwarded by Regional Legal Officers to the Chief Legal Officer immediately upon

- (1) Receipt of a Petition for Review, complying with the provisions of R. P. 23 (3), or,
- (2) Expiration of the period necessary for a Petition for Review presented on the last permissible day to reach the Regional Legal Officer:

whichever shall first happen.

b. Records of such cases until forwarded and records of other cases pending review will be disposed of as directed by the Regional Commissioner.

7. Petitions presented out of time strictly speaking may be disregarded: Rules of Procedure, Article 23, para. 5. As a matter of practice, unless they are very substantially out of time, they will be treated the same as if presented within the permitted time. *ADVOCATES WILL NOT BE INFORMED OF THIS.*

8. The decision of the Reviewing Authority will be entered in the space provided therefor on the record (i. e., on the back of Form 2 or Form 4 or Form 8).

**ARTICLE 33 - Application for Pardon, Grace, Clemency, etc.;
Second Petitions.**

1. There is NO provision for pardoning offenders convicted by an Allied Military Court, nor (except on review) for reducing, remitting or varying any sentence imposed by any such Court.

2. If an application for pardon, grace, clemency, etc., is received in a case where the death sentence has been imposed and confirmed, the following action will be taken, viz., (a) if time permits that the application can be forwarded to CLO, HQ ACC and an answer be received before the date fixed for execution, the application will be so forwarded by the quickest means possible; and (b) if time does NOT so permit, the Regional Commissioner will consider the application and decide whether there is any new substance in the application, in which case the execution will be postponed; or whether it is merely a device for gaining time in which case the execution will proceed as arranged.

3. If a similar application is received in any other case, it will be considered and disposed of by the Regional Commissioner unless it falls within the classes of cases the review of which is reserved to the Chief Commissioner *and* the Regional Commissioner is of opinion that the application raises some point of law or fact which should be considered by the Chief Commissioner.

4. Second petitions will be treated in the same way as such applications.

5. Where any such application or petition is forwarded by the Regional Commissioner it will be accompanied by the complete record.

ARTICLE 34 — Release of Prisoners Without Trial.

1. No person held on a charge before an Allied Military Court shall be released before trial (except on provisional liberty) for lack of evidence or for any other reason except on an order of an Allied Military Court or (if no such court is available) of the Provincial Commissioner or the Provincial Police Officer.

2. The order for any such release will be on Form 12.

ARTICLE 35 — Release pending Review.

1. If, upon receipt of the record in any case, the Regional Commissioner or the Regional Legal Officer is of opinion that an injustice has been done to an accused, he may order that, pending decision on review by the appropriate authority, the accused be set at liberty or the payment of a fine be postponed and in making any such order he may impose such terms or conditions (including the lodging of bail or the deposit of security) as he shall think fit.

2. This power will be exercised sparingly and may *not* be delegated.

ARTICLE 36 — Release of Prisoners on grounds of ill health.

1. The following instructions are issued with the agreement of Public Safety Sub-Commission, Hq ACC.

2. It is the responsibility of Italian Prison Officials to arrange for the removal from prison, for such period as may be necessary, of any convicted person who otherwise may be in danger of death or serious injury to his health and to arrange for his accomodation in an appropriate hospital or other institution.

3. The state of health of the accused, as disclosed on the record or by a petition for review, will be taken into consideration by the Reviewing Authority in considering whether to affirm or vary any sentence.

The Reviewing Authority may return any record to the Provincial Legal Officer with instructions to the latter to request the Provincial Public Safety Officer to have the case investigated in accordance with para. 2 above.

4. Any application for removal from prison on grounds of ill health which may be made to a legal officer after review will be passed to the Provincial Public Safety Officer for action in accordance with para. 2 above.

5. It is emphasised that any such removal should only be for such period as may be necessary, e. g., for an operation or treatment. The sentence remains unaffected and at the end of such period the convicted person will be returned to prison unless the sentence has expired.

ARTICLE 37 — Records of Sentences for Use of Italian Authorities.

1. In order that the Italians may keep adequate records, it is necessary that they be supplied with certain information regarding all sentences of over 1 year of imprisonment imposed by Allied Military Courts.

2. It will be noticed that these records are *not* required in cases where only a fine is imposed or where the sentence of imprisonment is of one year or less, i. e., they are *not* required in any Summary Court case.

3. Form No. 13 will be submitted by Provincial Legal Officers to the Regional Legal Officer on the 1st day of every month; the Regional Legal Officer will collect and forward all such forms for his Region to CLO, HQ ACC for transmission to the Ministry of Justice.

4. The last column on the form, headed « Disposizione », will be completed whenever it is known in what prison the convicted person is lodged.

ARTICLE 38 — Forms.

1. At the conclusion of these Articles, there will be found a set of Model Forms, which are in substance the same as those now in use.

The inclusion of these Model Forms will *not* be construed as an order to take such forms into use to the exclusion of the supply of existing forms.

2. Regions will be responsible for the preparation, printing and distribution of their own forms. Such forms will follow the general lines of these Model Forms with any minor modifications which Regions may choose to make.

3. The object of including the Model Forms in this handbook is to provide precedents for any officer who may at any time find himself without a supply of forms.

4. The following notes on the forms may be of value:

Form 1. (Order convening a General or Superior Military Court).

For those entitled to convene these courts see Article 2.

Form 1A. (Nomination of General Court from Panel).

See Article 2. This procedure can only be adopted when a panel of officers has been previously appointed.

Form 2. (Summons to Appear with short Record on reverse).

A Summons to appear is appropriate when the charge is not grave and it is not wished to hold the accused in prison pending trial.

The Record on the reverse is intended for use in short simple cases: in other cases a Form 8 should be used. The Form should be made out in duplicate: one copy will be served on the accused and the other (signed, if possible, by the accused and with certificate of service completed) will be given to the prosecution.

Form 3. (Warrant of Arrest).

It is most important that the lower half of the form be completed: otherwise it will be impossible to know in what gaol the accused is lodged.

Form 4. (Charge Sheet with short Record on Reverse).

For use of Charge Sheet see Article 12. In general (and except in the most simple cases) a Charge Sheet duly completed (for instructions on framing charges, see Article 12) should be served on every accused person in ample time before trial unless he has already received a written statement of the charges on which it is proposed to proceed.

The Record on the reverse is intended for use in short simple cases: in other cases a Form 8 should be used.

Form 5. (Summons for witness).

The use of this form is self-evident. The return must be completed: it is possible that the witness may fail to attend; the return will enable the Court to trace the person who served the summons and (in the absence of the person who served it) is itself evidence of service.

Form 6. (Committal).

It is imperative that the Form be completed: —
a. In every case in which a sentence of imprisonment is imposed.

b. In every case in which a fine is imposed, unless the fine is paid immediately. In every case in which a fine is imposed a sentence of imprisonment must be imposed in default of payment (see Article 26.2); and in default of payment by the prescribed date this sentence is served automatically without the convicted person being again brought before the Court (see Article 26.2 (c)). This form is the authority to the prison to hold the convicted person in custody.

In some cases, this form may be found ready attached to the Form 8. On existing prints of this form there is a note to the effect that if the fine is not paid, the accused will receive a credit of — lire per day served in confinement. This statement is now inaccurate (see Art. 26 (c)) and *will be deleted.*

Form 7. (Guarantee for payment of fine).

This form is little used, but it might be of avail in a case where a heavy fine is imposed and the accused requires considerable time to raise the money.

Form 8. (Record of trial).

This form is the standard form of Record and *will be used in every case except where the Record on the Reverse of Form 2 or Form 4 is used.*

There are 3 permissible variations of this form: —

- a. On a double sheet;
- b. In book form, with counterfoils (for use as office records);
- c. With Mandato di Cattura (Form 6) attached.

Whichever variation is found to be most convenient in any particular case may be used.

For adequate review, it is essential that the form be properly completed as indicated on the form.

Form 9. (Bail).

For use when accused is set at liberty on his own recognizances.

Form 9A. (Bail Bond by Sureties).

This form is self-explanatory. It is very seldom used.

Form 10. (Committal to Prison pending trial by higher Court).

The form is self-explanatory.
For procedure on committal to a higher Court, see Article 21.

Form 11. (Petition for Review).

The attention of all officers concerned is particularly drawn to R. P. 23 and to the note on page 2 of the form.

Form 12. (Statement of Release from Prison).

For use when an accused, who has been held in custody pending trial, is released by the Court for any reason. It is important for prison records.

Form 13. (Return of sentences over 1 year).

For use of this form, see Article 37.

NOTE: The forms formerly in use and known as J 2, J3 and J4 are abolished. The decision on Review in the future will always be on the Record (see Article 32 (8)).

When a Record is returned by Hq ACC to Hq of a Region a simple receipt form will be enclosed for signature and return.

Regional Hq will design and use such form as they may think fit for communicating the decision on Review to the Provincial Legal Officers.

1847

FORM No 1

CONVENING ORDER
FOR A GENERAL OR SUPERIOR MILITARY COURT
ALLIED MILITARY GOVERNMENT

I, (name and rank)
(appointment)
hereby APPOINT to be President
and and
to be members of a General / Superior Military Court for the trial
of all persons who may be brought before it.

In the Field

Dated 194

(Signature of Convening Officer)

1848

FORM No. 1a

APPOINTMENT OF OFFICERS TO A GENERAL MILITARY COURT

(OFFICERS ALREADY ON PANEL)

ALLIED MILITARY GOVERNMENT

In pursuance of the power conferred upon me by the appointment dated the

_____ 194_____

I hereby DIRECT that the General Military Court shall meet at _____

at _____ hours on _____, the _____ day of _____ 194_____

and such other days as may be necessary for the trial of the offences brought before it AND that the composition of the Court (in compliance with such order) shall be as follows:

_____ President

_____ Member

_____ Member

Dated _____ 194_____

(Signature of Regional Commissioner)

MOD. N° 2.
(riveduto)

FORM N° 2.
(revised)

GOVERNO MILITARE ALLEATO
SUMMONS
CITAZIONE

TO (Name) _____
A (Nome) _____
(Address) _____
(Indirizzo) _____

Siete con la presente citato e richiesto di presentarvi personalmente davanti il Tribunale Militare Alleato
Sommario Superiore a _____ addì _____
(Indirizzo della Corte) (Address of Court) (Data) (Date)

alle ore _____ sotto le seguenti accuse: _____
(Orario) (Hour)

Accusa: _____

Dettagli: _____

Accusa: _____

Dettagli: _____

(Se non tradotto dall'ufficiale, voi dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura):

Ogni accusato di fronte ad un Tribunale Militare Alleato ha diritto:

- (a) Di avere in anticipo una copia delle accuse sotto le quali egli sarà processato, sempre che egli lo desideri.
- (b) Di consultare un avvocato prima del processo e se le esigenze militari permettono, di avere un avvocato in sua difesa durante il corso del processo stesso.
- (c) Di fare richiesta al Tribunale per ottenere un periodo di tempo sufficiente per preparare la sua difesa, richiesta che il Tribunale può concedere o rigettare a propria discrezione;
- (d) Di farsi accompagnare dinanzi al Tribunale da testimoni a sua difesa, se così desidera, o far richiesta di fargli comparire per ordine del Tribunale;
- (e) Di fornire prove a suo vantaggio durante il processo, ma non potrà essere costretto a fornirle.
- (f) Di farsi tradurre i procedimenti per il suo beneficio quando egli non è capace di comprenderli diversamente.

PER ORDINE

Data: _____
(Firma dell'individuo autorizzato)

RAPPORTO DI CITAZIONE

Io riconosco di aver ricevuto la citazione di cui questa è una copia conforme.

Data: _____
(Firma dell'accusato)

PROOF OF SERVICE

I hereby certify that I have this day of 194 . . at (hours) served the summons of which this is a copy personally / by leaving copy at above address / by mailing it to above address.

(Signature of Officer Serving Summons)

1850

MOD. N° 3
(riveduto)

FORM N° 3
(revised)

GOVERNO MILITARE ALLEATO MANDATO DI CATTURA

A tutti gli Agenti di Polizia

Siete con la presente autorizzati e vi si ordina di arrestare

.....
(Name) (Nome)

.....
(Address) (Indirizzo)

e di condurlo senza indugio davanti il Tribunale Militare a

.....
(Address of Court) (Indirizzo della Corte)

per rispondere ad accuse imputategli.

Per ordine

.....
(Firma dell'individuo autorizzato)

RAPPORTO DI MANDATO DI CATTURA

lo con la presente attesto che addì 194 (non mi è stato
..... (ho debitamente

possibile di notificare il mandato di cattura in quanto l'accusato non è stato
notificato questo mandato di cattura (del quale questa è una copia

trovato (morto) (irreperibile).

conforme) all'accusato, ed egli è ora detenuto a
..... (carcere)

.....
(Firma dell'Ufficiale presentante il Mandato di Cattura)

MOD. N° 4
(riveduto)

FORM N° 4
(revised)

GOVERNO MILITARE ALLEATO
CHARGE SHEET
FOGLIO D'ACCUSA

Place (Luogo) _____ Date (Data) _____

(Name of defendant) (Nome dell'accusato) _____ (Indirizzo) (Address) _____

IS HEREBY CHARGED WITH THE FOLLOWING OFFENSES:
è accusato delle seguenti offese:

First Charge: _____
Particulars: _____

Second Charge: _____
Particulars: _____

Third Charge: _____
Particulars: _____

TRADUZIONE

Prima Accusa: _____
Dettagli: _____

Seconda Accusa: _____
Dettagli: _____

Terza Accusa: _____
Dettagli: _____

(Se non tradotto dall'ufficiale, dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura).

LE SUDETTE ACCUSE SONO RIFERITE A PROCESSO DAVANTI IL TRIBUNALE MILITARE ALLEATO

_____ A _____ ADDI _____ IL _____
(Generale/Superiore/Sommario) (Indirizzo della Corte) (Data)

DI 194 .., ALLE ORE _____
(Mese) (Orario)

(Firma dell'individuo autorizzato)

- Ogni accusato di fronte ad un Tribunale Militare Alleato ha diritto:
- (a) Di avere in anticipo una copia delle accuse sotto le quali egli sarà processato, sempre che egli lo desideri.
 - (b) Di consultare un avvocato prima del processo e, se le esigenze militari permettono, di avere un avvocato in sua difesa durante il corso del processo stesso.
 - (c) Di fare richiesta al Tribunale per ottenere un periodo di tempo sufficiente per preparare la sua difesa, richiesta che il Tribunale può concedere o rigettare a propria discrezione.
 - (d) Di farsi accompagnare dinanzi al Tribunale da testimoni a sua difesa, se così desidera, o far richiesta di farli comparire per ordine del Tribunale.
 - (e) Di fornire prove a suo vantaggio durante il processo, ma non potrà essere costretto a fornirle.
 - (f) Di farsi tradurre i procedimenti per il suo beneficio quando egli non è capace di comprenderli diversamente.

PROCEEDINGS

Ref No

..... Military Court sitting at on 194 ..

Advocate for Accused

Plea (s) of Accused:

1st Charge:

2nd Charge:

3rd Charge:

Summary of Prosecution Evidence:

Summary of Defence Evidence (including any statement in mitigation):

Verdict:

1st Charge:

3rd Charge:

2nd Charge:

Sentence, (separate on each charge):

1st Charge: Imprisonment: lire fine to be paid by
term in default of payment

2nd Charge: Imprisonment: lire fine to be paid by
term in default of payment

3rd Charge: Imprisonment: lire fine to be paid by
term in default of payment

Terms of imprisonment to be consecutive / concurrent / partly concurrent (if so, give details)

Others orders (confiscation, restitution, etc.)

.....
(Signature of Presiding Officer)

DECISION ON REVIEW

Date: 194

.....
(Signature of Reviewing Authority)

FORM N° 5
(revised)

ALLIED MILITARY GOVERNMENT
SUMMONS FOR WITNESS

TO

Name _____

Address _____

You are hereby summoned and instructed to appear in person before the

(Name of Court)

(Address of Court)

on the day of _____ 194 . . . at hours _____
(Date) (Hour)

to give evidence in the case pending against:

(Name of Accused)

and you are required to bring with you the following documents or articles: _____

Failure to comply with this summons (unless for good reason) will subject you to severe punishment.

By order

Date: _____ 194 _____

(Signature of person authorized)

RETURN OF SUMMONS

I served the above named witness on the day of 194 . . .

at hours } personally
 } leaving copy at his address

(Signature of officer making service)

MOD. N° 5.
(riveduto)

GOVERNO MILITARE ALLEATO
CITAZIONE PER TESTIMONIANZA

A
Nome _____

Indirizzo _____

Siete con la presente citato e vi si ordina di presentarvi personalmente davanti il _____

(Nome della Corte)

(Indirizzo della Corte)

addì 194... alle ore _____
(Data) (Orario)

per testimoniare nella causa in corso contro:

(Nome dell'Accusato)

e vi si richiede di portare con voi i seguenti documenti o oggetti:

Il mancato aderimento a questa citazione (senza giustificata ragione) vi assoggetterà a pena severa.

Per ordine

Data: 194...

(Firma dell'individuo autorizzato)

RAPPORTO DI CITAZIONE

Io ho notificato questa citazione al testimone soprannominato

addì 194... alle ore

- } personalmente
- } lasciandone copia al suo indirizzo

(Firma dell'ufficiale rimettente)

MOD. N° 6.
(riveduto)FORM N° 6.
(revised)

ALLIED MILITARY GOVERNMENT — COMMITMENT
GOVERNO MILITARE ALLEATO — MANDATO DI CATTURA

TO: The Officer in Charge of any prison, gaol or camp to which the person named below may be delivered or of any
All'Ufficiale in Capo di qualsiasi prigione, carcere o campo al quale la persona sotto nominata possa essere con-
other prison, gaol or camp to which the prisoner may be hereafter lawfully transferred.
segnata o di qualsiasi altra prigione, carcere o campo al quale il detenuto possa essere d'ora in avanti legalmente
trasferito.

Whereas one

Poiché un

(Name — Nome)

of

di

(Address — Indirizzo)

has been convicted of an offence against
è stato condannato per contravvenzione:

and has been sentenced by an Allied Military Court
ed è stata pronunciata sentenza da un Tribunale Militare Alleato

to serve a sentence of _____ imprisonment
a scontare la pena di _____ di prigione

such sentence to commence on the _____ day of _____ 194____
tale sentenza a partire dal _____

and to pay a fine of _____ lire.
e di pagare una multa di _____

Such fine to be paid by the _____ day of _____ 194____
Tale multa dev'essere pagata entro il _____

and in default of payment of such fine by the last mentioned date to serve a further sentence of _____
e nel caso di mancato pagamento di tale multa entro tale data menzionata deve scontare una ulteriore pena de
imprisonment.
tentiva di _____ di prigione.

Now, therefore, you are hereby authorized to receive the said person into your custody and detain him in accordance
Pertanto, siete autorizzato a ricevere detta persona in vostra custodia e trattenerla conformemente alla sentenza
with the sentence so imposed or until further order of this Court or of a competent Military Authority and for so
così pronunciata o fino ad ulteriore disposizione di questa Corte o di una competente autorità militare e per pro-
doing this shall be sufficient warrant.
cedere in tal senso questa vale quale autorizzazione.

Signed this _____ day of _____ 194____
Firmato il _____

(Presiding Officer — L'Ufficiale Presidente)

(Court — La Corte)

1856

FORM No. 7
(revised)

ALLIED MILITARY GOVERNMENT

BOND OF SURETIES FOR PAYMENT OF FINE

Whereas one _____
(Name)
of _____
(Address)
was convicted in _____
(Name of Court)
on the _____ day of _____ 194_____ for the offence of _____

and was sentenced to pay a fine of _____ lire to be paid by _____ 194_____
Date

Now, therefore, we _____ and _____
(Name of Surety) (Name of Surety)
jointly and severally do hereby bind ourselves
(Name of Surety)
to the Allied Military Government to secure the payment of this fine imposed upon the said

not later than the said _____ 194_____
Date

In the case of the failure of _____
(Defendant)
to pay the said sum, we jointly and severally acknowledge that we shall pay the said fine together
with all costs, charges and interest, and that any levy of execution or seizure of our moneys,
property, chattels or goods may summarily be made the Allied Military Government to satisfy the
judgment rendered and fine imposed.

Witnessed by

(Defendant)

(Surety)

(Surety)

1857

MOD. No 7.
(riveduto)

GOVERNO MILITARE ALLEATO

CAUZIONE CON GARANZIA PER IL PAGAMENTO DI MULTA

Essendo che _____
(Nome)

_____ (Indirizzo)

fu giudicato reo dal Tribunale _____
(Nome della Corte)

_____ (Indirizzo della Corte)

addì _____ per l'offesa di _____

e fu condannato a pagare una multa di _____ lire dal _____ 194
Data

Ora, quindi, noi _____ e
(Nome del garante) (Nome del garante)

_____ (Nome del garante) solidalmente ed individualmente con la presente

ci obblighiamo di pagare al Governo Militare Alleato questa multa imposta al predetto _____

non più tardi dalla detta data _____ 194
Data

Nel caso di mancato pagamento da parte di _____
(L'accusato)

per l'ammontare suddetto, noi solidalmente ed individualmente ci impegniamo di pagare la suddetta multa compreso tutte le spese, ed interesse a _____ per cento e qualsiasi altro peso gravi sul giudizio, e che qualsiasi ordine d'esecuzione o sequestro dei nostri contanti, beni mobili e immobili, o mercanzia potrà essere compiuto dal Governo Militare Alleato per imporre la sentenza pronunciata e la multa inflitta.

(Testi)

_____ (L'accusato)

_____ (Garante)

_____ (Garante)

1858

FORM No. 7
(revised)

ALLIED MILITARY GOVERNMENT

BOND OF SURETIES FOR PAYMENT OF FINE

Whereas one _____
(Name)
of _____
(Address)
was convicted in _____
(Name of Court)
on the _____ day of _____ 194_____ for the offence of _____

and was sentenced to pay a fine of _____ lire to be paid by _____ 194_____
Date

Now, therefore, we _____ and _____
(Name of Surety) (Name of Surety)
jointly and severally do hereby bind ourselves

to the Allied Military Government to secure the payment of this fine imposed upon the said

not later than the said _____ 194_____
Date

In the case of the failure of _____
(Defendant)
to pay the said sum, we jointly and severally acknowledge that we shall pay the said fine together
with all costs, charges and interest, and that any levy of execution or seizure of our moneys,
property, chattels or goods may summarily be made the Allied Military Government to satisfy the
judgment rendered and fine imposed.

Witnessed by _____

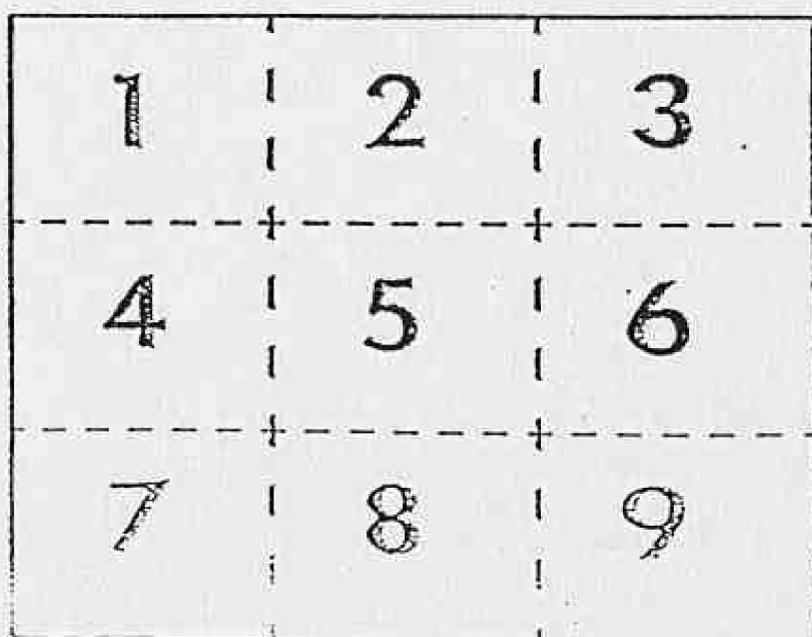
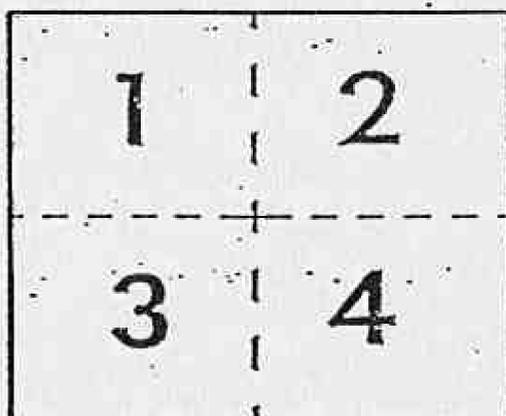
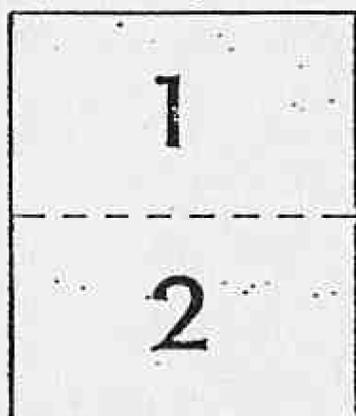
(Defendant)

(Surety)

(Surety)

MAPS AND CHARTS TOO LARGE TO FILM
ON ONE EXPOSURE ARE FILMED CLOCKWISE
BEGINNING IN THE UPPER LEFT CORNER,
LEFT TO RIGHT, AND TOP TO BOTTOM.

SEE DIAGRAMS BELOW.



EVIDENCE FOR DEFENCE

REMARKS OF COURT

(Comments on evidence, reasons for severity or leniency, etc.)

FINDINGS AND SENTENCE OF COURT

Name of Accused	Charge	G or NG	Imprisonment	Fine	Fine to be paid by	Term in default

Where two or more terms of imprisonment (other than a term of imprisonment in default of payment of fine) are imposed on any accused, here state whether terms are *consecutive, concurrent or partly consecutive and partly concurrent* (in last event give particulars)

FINDINGS AND SENTENCE OF COURT

Name of Accused	Charge	G or NG	Imprisonment	Fine	Fine to be paid by	Term in default

Where two or more terms of imprisonment (other than a term of imprisonment in default of payment of fine) are imposed on any accused, here state whether terms are *consecutive, concurrent or partly consecutive and partly concurrent* (in last event give particulars)

Other orders (confiscation, restitution, etc.)

(Signature)

DECISION ON REVIEW

Date: _____ 194 _____

(Signature of Reviewing Authority)

1866

MOD. N° 9
(riveduto)

FORM N° 9
(revised)

**ALLIED MILITARY GOVERNMENT
GOVERNO MILITARE ALLEATO**

**CASH BAIL BOND
CAUZIONE**

Received of

Si riceve da

(hereinafter called the accused) the sum of

(da questo momento chiamato accusato) la somma di

Said sum shall be returned to the accused if he appears before an
Detta somma sarà restituita all'accusato se egli comparirà dinanzi a un

Allied Military Court at such time and place as he may be directed
Tribunale Militare Alleato nel giorno e luogo fissato

and if said accused perform any further order or judgment of such Court.
e se detto accusato eseguirà qualunque altro ordine o giudizio di tale Tribunale.

Otherwise, such bail shall be forfeited.
In caso contrario perderà la cauzione.

Dated:

Data:

(Signature of officer in Receipt of Bail)
(Firma dell'ufficiale ricevente la cauzione)

(Signature of Witness)
(Firma del Teste)

1867

MOD. N° 9 a.
(riveduto)

FORM N° 9 a.
(revised)

GOVERNO MILITARE ALLEATO
ATTO DI OBBLIGO CON MALLEVERIA
(BAIL BOND)

Premesso che _____ è incolpato di violazione al
(Nome dell'Imputato — Name of Accused)

proclama / ordine _____

per cui è stato deferito dal Tribunale Militare a _____
(Luogo — Place)

il _____ (place & date of court granting bail); che tale Tribunale ha ordinato che al detto
(Data — Date)

_____ (Imputato — Accused)

sia concessa la libertà provvisoria previa malleveria della somma di L. _____ garantita da due solvibili mallevadori
(Amount of Bail)

solidali, con obbligo all'imputato stesso di ricomparire dinanzi al Tribunale Militare _____
(Generale/Superiore/Sommario)

a _____ il _____ alle ore _____
(Luogo — Place) (Data — Date)

(Type of Court, place, date and hour to which referred), o in altro luogo, giorno ed ora che saranno ordinati dall'Autorità Militare competente.

Ciò premesso, io _____ mi obbligo di comparire davanti detta autorità
(Imputato — Accused)

nella data, luogo ed ora di cui sopra e noi _____

_____ (Mallevadore — Name of Surety) _____ (Indirizzo — Address) e

_____ (Mallevadore — Name of Surety) _____ (Indirizzo — Address)

rinunziando al beneficio della escussione preventiva contro il debitore principale imputato suddetto, ci obblighiamo solidalmente ed indivisibilmente tra di noi, di pagare al Governo Militare Alleato la somma suddetta, qualora il ripetuto imputato non dovesse adempiere all'obbligo della presentazione come sopra.

Consentiamo, all'uopo, fin da ora, che per il soddisfacimento della somma suddetta di Lire _____
(Amount of Bail)

il Governo Militare Alleato, proceda, senz'altro, all'espropriazione forzata di ogni nostro valore e bene mobile od immobile.

_____ (Data e Luogo — Date & Place) _____ (Firma dell'Imputato — Signature of Accused)

_____ (Firma del Mallevadore — Signature of Surety)

Teste: _____ (Witnessed by:) _____ (Firma del Mallevadore — Signature of Surety)

MOD. N° 10.
(riveduto)

FORM N° 10.
(revised)

ALLIED MILITARY GOVERNMENT
GOVERNO MILITARE ALLEATO

WARRANT OF COMMITTAL for trial to a Superior or General Military Court
AUTORIZZAZIONE DI DETENZIONE in attesa di giudizio davanti un Tribunale Militare Superiore o Generale

TO: The Officer in Charge of _____ Prison (Camp)
All'Ufficiale in Capo delle Carceri (campo) di _____

or any other prison or camp to which the prisoner(s) may hereafter lawfully be transferred.
o qualsiasi altra prigione o campo al quale il (i) prigioniero(i) possa (possano) essere d'ora in avanti legalmente trasferito (i).

WHEREAS:
POICHE':

_____ has / have been charged with the offence(s) of _____
è stato / sono stati accusato(i) dell'offesa (delle offese) di _____

_____ and has / have been remanded by me for trial by a higher Court
ed è stato / sono stati rimandato(i) da me per il giudizio davanti un Tribunale di più alta competenza

NOW THEREFORE, you are hereby authorized to receive the above named prisoner(s) into your custody and detain
PERTANTO, siete autorizzato a ricevere il(i) suddetto(i) prigioniero(i) in vostra custodia e detenerlo(li) secondo la legge

him / them according to law and for so doing this shall be your warrant.
e per procedere in tal senso questa vale quale vostra autorizzazione.

Signed this _____ day of _____ 194...
Firmato il _____

(Signature of President of Court)
(Firma del Presidente della Corte)

GROUPS FOR APPLICATION

NOTE: This application must be signed either by the Petitioner personally or by the lawyer who appeared for him at the trial.

NOTE: This application must be signed either by the *Petitioner* personally or by the lawyer who appeared for him at the trial

.....
(Signature of Petitioner or Lawyer)

.....
(Name and Address in Capitals of Person Signing)

1873

MOD. No. 11

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza alla Corte di giudizio o all'Ufficiale Legale Provinciale.

PROVINCIA DI _____

Tribunale _____ di _____

Nome dell'accusato _____

Indirizzo dell'accusato _____

Data di arresto _____

Accusa _____

Data del giudizio _____

Condanna _____

Nome dei Membri del Tribunale _____

Data della sentenza _____

LE RAGIONI PER LA PRESENTAZIONE DELL'ISTANZA SARANNO DESCRITTE ALLA PAGINA 4

OSSERVAZIONI DEL PRESIDENTE DEL TRIBUNALE

(Se non disponibile, dall'Ufficiale Legale Provinciale)

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza alla Corte di giudizio o all'Ufficiale Legale Provinciale.

PROVINCIA DI _____

Tribunale _____ di _____

Nome dell'accusato _____

Indirizzo dell'accusato _____

Data di arresto _____

Accusa _____

Data del giudizio _____

Data della sentenza _____

Condanna _____

Nome dei Membri del Tribunale _____

LE RAGIONI PER LA PRESENTAZIONE DELL'ISTANZA SARANNO DESCRITTE ALLA PAGINA 4

OSSERVAZIONI DEL PRESIDENTE DEL TRIBUNALE
(Se non disponibile, dall'Ufficiale Legale Provinciale)

(Firma)

194

(Descrizione, cioè: Grado Rivestito)

LE RAGIONI PER LA PRESENTAZIONE DELL'ISTANZA

NOTA: Quest'istanza deve essere firmata o dall'interessato personalmente o dall'avvocato il quale lo ha difeso nel giudizio.

(Firma dell'Interessato o dell'Avvocato)

(Nome e Indirizzo in lettere maiuscole della persona che firma)

MOD. No. 12
(riveduto)

FORM No. 12
(revised)

COMUNICAZIONE DI SCARCERAZIONE AVVENUTA

Al Capo delle Carceri di _____

Oggi, il _____

è stato messo in libertà dal Tribunale Militare Alleato perchè

- | gli è stato concesso la cauzione
- | è stato prosciolto
- | ha pagato la multa inflittagli
- | è stato giudicato ad una pena condizionale

Data: _____ 194 _____

(Presidente del Tribunale Militare Alleato)

TRANSLATION

STATEMENT OF RELEASE FROM PRISON

TO: The Head of the Prison of _____

Today _____

has been set free by the Allied Military Court because he has

- | been granted bail
- | been acquitted
- | paid the fine imposed on him
- | been sentenced to a suspended sentence

Dated: _____ 194 _____

(President of Allied Military Court)

APPENDIX

RULES OF PROCEDURE FOR ALLIED MILITARY COURTS

1. — Construction.

a. These rules shall be read with and subject to the Proclamations and Orders of the Allied Military Government.

b. The following expressions shall where applicable have the following meanings:

« Regional Commissioner » shall include the SCAO in any area controlled by an Army. « Regional Legal Officer » shall include the Senior Legal Officer in any such area. « Provincial Legal Officer » shall include the legal officer in legal charge of any district within such area. « Judicial Officer » shall mean any officer of the ACC who is a qualified lawyer.

2. — Commencement of Proceedings.

All proceedings in an Allied Military Court will be commenced by arrest without warrant or by a warrant of arrest or by summons to appear followed, where necessary, by service of charges on a charge sheet.

3. — Constitution of Court and Right to act for Prosecution and Defence.

a. The constitution of an Allied Military Court whether General, Superior or Summary shall be as laid down from time to time by the Allied Control Commission.

b. Any officer or other member of the Allied Forces may act as Prosecutor in any Allied Military Court and a member of the RRCC may act as Prosecutor in any Summary Military Court.

c. Any lawyer may appear in any case on behalf of one or more accused except that the Chief Legal Officer or a Regional Legal Officer or any Court may at any time prohibit any lawyer from appearing in any Court.

4. — Conduct of Proceedings and Presence of Members.

a. Where a Court is composed of more than one officer, the President of the Court will be the Senior Judicial Officer present, or if there is no Judicial Officer present, then the senior officer on the Court.

b. The absence or death of any member of a Court shall not invalidate any proceedings, providing that the number of members present throughout the trial is not reduced below the minimum number required to constitute such Court.

5. — Interpreters.

a. An Allied Military Court may appoint an interpreter or interpreters either generally or for the trial of any case before it.

b. The following oath shall be administered to every interpreter before acting as an interpreter in the Court:

«Do you solemnly swear by Almighty God that you will to the best of your ability truly interpret and translate as you shall be required to do?»

c. An interpreter appointed generally by a Court as a Court Interpreter need only take an oath at the commencement of his service.

6. — **Arraignment and Charge.**

a. All persons arrested for an offence, with or without warrant, will be brought as soon as practicable before a Military Court which shall be a Summary Military Court, unless the Chief Legal Officer or the Regional Legal Officer orders that any particular case or classes of cases shall be brought directly before a Superior or General Military Court for trial.

b. The Summary Military Court will, on any accused appearing before it, hear the charges against the accused and then deal with the same or defer the hearing of the case.

c. When the Court defers the hearing of a case, it will order the accused to be detained in custody or released on bail on such terms as the Court thinks fit.

d. An accused who appears before a Court following arrest with or without a warrant will be given a statement of the charges made against him before he is tried on the same and, subject to the military exigencies, such statement will be delivered to the accused by the Prosecutor in sufficient time before the trial to enable the accused to prepare his defence. Full opportunity and assistance will be given to an accused to obtain the attendance of material witnesses whom he desires to call on his behalf at the trial.

7. — **Pleading before a Summary Military Court.**

a. At the hearing of any case by a Summary Military Court, the court will read to the accused the charges brought against him, explaining the charges and will ask the accused after the reading of each charge whether he pleads « guilty » or « not guilty » to it. If necessary the court will explain these terms to the accused. The Court will enter in the record of the case whether the accused pleads « guilty » or « not guilty » to each charge. The Court may

accept a plea of « guilty » to an offence other than that charged and a plea of « not guilty » to the offence charged.

b. If the answer of the accused to any charge is such that it appears he may not be guilty of the offence, whether he pleads « guilty » or « not guilty », a plea of « not guilty » will be entered in the record and the case shall proceed accordingly. A plea of « not guilty » will be entered in the record of every case in which the accused, if found guilty by a competent Court, might be sentenced to death.

c. It shall be competent at any stage of the trial for the accused with the leave of the Court, to alter a plea of « not guilty » to « guilty », or for the Court to enter a plea of « not guilty » in place of a plea of « guilty » made by the accused.

d. It shall be competent for the Court to amend a charge at any time provided that an adjournment is granted, if necessary, and that no injustice is thereby done to the accused.

8. — Procedure on Plea of Guilty in Summary Military Court.

a. Upon a plea of « guilty » the Court shall satisfy itself that the accused appreciates the elements required to constitute the charge and admits facts sufficient to support it; and the Court shall thereupon proceed to hear such statement for the prosecution and such evidence as it requires to enable it to determine the sentence to be imposed. Evidence of good or bad character, called either by the prosecution or the defence will then be heard and the accused or the legal representative on his behalf should then be invited to make any statement he wishes in mitigation of the offence. If it has power to impose adequate punishment, the Court will then proceed to sentence. If it has not such power, it will commit the case to a higher Court.

9.—Procedure on Plea of Not Guilty in a Summary Military Court.

Upon a plea of «not guilty» to one or more offences charged, a Summary Military Court shall adopt the following procedure:

a. If the Court retains the charges and proceeds to trial, it will call upon the prosecution to open its case;

(i) The prosecution may then make a statement outlining the facts proposed to be proved in evidence by the witnesses for the prosecution and after making any such statement the prosecution will call its witnesses in such order as it thinks fit, having in mind the presentation of the facts to the Court in as clear and logical a sequence as possible.

(ii) Each witness called will take an oath, or make an affirmation, before giving evidence and the Court will record that the witness was duly sworn or affirmed. Oaths and affirmations will be in the forms set out in rule 15 below, but may be made in English, Italian or any other language. Before administering the oath to a child, the Court must satisfy itself that the child realizes the nature of an oath. A child may give evidence without being sworn, provided the Court is satisfied that such witness understands the duty of telling the truth.

(iii) After each witness has given his evidence, the accused or his representative may cross-examine the witness upon any matters relevant to the case including the credibility of the witness. The prosecution may thereafter re-examine any witness upon any matter appearing in the cross-examination. After the witness has completed his evidence, the Court may ask the

witness any questions relating to the matters before the Court and may, if it thinks fit, permit the prosecution and accused, or his representative, to cross-examine and re-examine the witness upon the answers thereto.

(iv) When all the witnesses for the prosecution have been called, the prosecution will announce that the case for the prosecution is closed.

b. After the close of the case for the prosecution the defence may submit and present arguments to establish that in respect of all or any of the charges there is not sufficient evidence to support the same and that the accused should not be required to answer them.

If, as a result of such submission or otherwise, the Court is satisfied that there is not sufficient evidence as aforesaid, the Court shall acquit the accused on such charges. Any such acquittal shall be entered in the record of the case. The court may also direct that any further charge or charges be preferred against the accused and in such case may grant any necessary adjournment for that purpose.

c. The Court will call upon the accused to open the case for the defence in respect of all charges which the accused is required to answer. Thereupon,

(i) The accused or his representative may make an opening statement and call witnesses for the defence in manner provided with regard to the case for the prosecution. The accused may not be compelled to give evidence, but any evidence he gives must be on oath. He and other witnesses may be cross-examined upon all relevant facts concerning the case (including credibility) and may be re-examined.

(ii) When all the witnesses for the defence have been called, the defence will announce that the case for the defence is closed.

d. After the case for the defence is closed:

(i) The prosecution may call or recall any witness for the purpose of rebuttal, that is to say, of giving evidence on any new matter raised by the defence not suggested to the witnesses for the prosecution, which the prosecution have had no opportunity of answering and which is relevant to the main issue; and

(ii) The accused or his representative may then address the Court on the evidence adduced and on any matters of law based on the facts of the case. Only one speech may be made on behalf of each accused.

The prosecution may thereafter reply. The Court will then consider its judgment.

e. The Court may call or recall any witness at any time before judgment if it considers that it is necessary in the interest of justice.

10. — Committal to a higher Court.

If the Court decides at any time during the trial of a case that it should be tried by a higher Court, the Court will:

a. Commit the accused for trial by a higher court (not specifying the nature of the court) and send the record to the Provincial Legal Officer who will either refer the case to a Superior Military Court for trial or will submit the record to the Regional Legal Officer with recommendation for trial by a General Military Court.

b. Enter the order made on the record of the case.

c. Make an order directing that the accused be held in custody or released on bail pending trial. Before making such order the Court shall call upon the prosecution for its recommendations

and shall have regard thereto, and the order shall be entered in the record of the case.

11.— Procedure on Trial in Superior and General Military Courts.

The procedure in Superior and General Military Courts will be the same (so far as applicable) as that provided with regard to Summary Military Courts.

12. — Power to adjourn and other Powers.

In addition to any particular power of adjournment contained in these Rules, an Allied Military Court has power at any time to adjourn the proceedings either generally or to a fixed time and place, and to grant an adjournment at the request of the prosecution or defence as the justice of the case may require. Every Allied Military Court likewise has power to grant bail or provisional liberty, to punish for contempt, to make any proper order as to costs, summon the attendance of witnesses and to order the detention of material witnesses provided that no such person is detained for more than 21 days at a time without a further order being made.

13. — Court Officials.

An Allied Military Court may appoint persons to be stenographers and other officials for its court when such persons are available. Such officials need not be members of the Allied Forces but the Court will be responsible that they are fit and proper persons.

The following oath will be administered in open court at the commencement of proceedings to all stenographers employed in Allied Military Courts:

«Do you swear by Almighty God that you will truly take down to the best of your ability the evidence

to be given before this Court and such other matters as may be required and will, when required, deliver to the Court a true transcript of the same?»

14. — Joint Charges.

Two or more persons may be tried either jointly or separately for the same offence where the charge arises out of the same set of circumstances.

15. — Witnesses.

a. Witnesses will give testimony on oath or affirmation.

b. The form of oath is as follows:

«Being conscious of the responsibility which this oath imposes on you before God and man, do you swear to speak the whole truth and nothing but the truth».

«Consapevole della responsabilità che col giuramento assumete davanti a Dio e agli uomini, giurate di dire tutta la verità e null'altro che la verità».

c. The form of affirmation is as follows:

«Being conscious of the responsibility which this affirmation imposes on you do you affirm to speak the whole truth and nothing but the truth».

«Consapevole della responsabilità che coll'affermazione assumete, affermate di dire tutta la verità e null'altro che la verità».

16. — Evidence.

An Allied Military Court may admit such evidence, including hearsay, as in its opinion is relevant and material to the charge before it, but shall, in deliberating on the judgment in each

charge, take into consideration the nature of the evidence produced and the degree of reliance which can reasonably be placed upon it.

17. — Evidence as to Character.

a. Evidence of good or bad character of the accused, including evidence of any prior criminal record, will be admissible after finding and before sentence and the Court may take into account such evidence in considering sentence.

b. Evidence of bad character against an accused will be admissible before judgment only where the accused has produced evidence as to his own good character as a defence to the charges made or has produced evidence purporting to show that any material witness for the prosecution is of bad character.

18. — Judgment and Sentence.

a. The sentences authorised by Allied Military Courts are as set out in the Proclamation relating thereto.

b. An Allied Military Court will announce its judgment on each charge on which an accused is tried before it, imposing and recording a separate and appropriate sentence in respect of each offence of which the accused has been found guilty. Sentences of imprisonment imposed on a number of charges may be either consecutive or concurrent or partly consecutive and partly concurrent. In passing sentence, the Court must clearly state whether sentences are consecutive or concurrent.

c. A sentence of imprisonment may be suspended in whole or in part by reason of age or ill-health of the accused or for other exceptional reason.

19. — Fines.

a. An Allied Military Court shall, when imposing any fine, direct the period within which the whole of the fine is to be paid. Such Court, in imposing a fine, will impose a sentence of imprisonment to be served in default of payment of such fine but in no case can a person convicted by a Summary Military Court be kept in prison in respect of that conviction for more than one year. Similarly no person convicted by a Superior Military Court can be detained in respect of that conviction for more than ten years.

b. When default is made in payment of a fine within the period directed by the Court, it shall not be necessary to bring the accused again before a Court to have the alternative sentence confirmed and such accused may be imprisoned as of course.

20. — Insanity.

a. If it is ascertained by the Court upon competent medical or other evidence that at the time of committing the offence the accused was so insane as not to appreciate the nature and quality of his act, the Court shall enter a special finding of « guilty but insane » and shall order the accused to be detained in custody for so long as the Chief Commissioner of the Allied Control Commission shall direct. The accused shall, if possible, be removed to a criminal lunatic asylum.

b. If the Court ascertains that the accused is insane at the time of trial, the Court shall adjourn the trial generally and order the accused to be similarly detained.

21. — Saving for errors and omissions.

Where at any time during any proceeding before an Allied Military Court, any error or omission, technical or otherwise, is made, the proceedings shall not thereby be invalidated, and no

action will be taken on any Review of such proceedings on account of any such error or omission unless it appears that injustice has been done to the accused.

22. — General Powers of Court.

An Allied Military Court may, where no procedure has been directed in any matter which arises, adopt such procedure as it thinks fit, provided no injustice is thereby done to the accused.

23. — Petitions for Review.

1. The only mode of appeal from a verdict or sentence of an Allied Military Court is by Petition for Review as provided by the said Proclamation.

2. No such petition should be submitted unless it discloses substantial grounds (whether of law or fact) on which it is suggested that the conviction should be set aside or the sentence varied.

3. A petition must comply with the following conditions:

a. It must be on the prescribed form.

b. It must be presented within 30 days.

c. It must be presented to the trial court or the Provincial Legal Officer.

d. It must be signed either by the accused personally or by the lawyer who appeared for him *at the trial*.

e. It must state the grounds of appeal (see para. 2 above).

f. It must state the full name and address of the accused or the lawyer by whom it is presented.

4. Once one petition has been submitted and adjudicated no further petition will be presented.

5. The Reviewing Authority may disregard any petition which does not comply with the instructions contained in paras. 2 and 3 above or where a previous petition has been submitted and adjudicated.

6. Any lawyer who repeatedly submits or advises his clients to submit petitions which are either frivolous or which do not disclose any substantial grounds of appeal may be forbidden by the Chief Legal Officer or Regional Legal Officer to appear in any Allied Military Court.

7. Upon any such Petition for Review the Reviewing Authority may commute any sentence of imprisonment or part of any such sentence into a fine and may make all necessary orders as to the time within which such fine must be paid and otherwise as may be requisite.

1893