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ARMISTICE TERMS
JAN. 1944

SECRET

HEADQUARTERS
ALLIED COMAND, COMBINATION
Legal Administration

AMV/JM

6 January 1944.

In reply
refer to: 150 137/1.

SUBJECT: Arbitration Terms.

TO : Mr. Choate.

Dear Harold,

You have asked me to express my view on the Arbitration terms from the legal advisory point of view.

In the results of experience I think two criticisms of the Terms may justly be levelled at them.

First the inclusion of certain vital terms has led to much trouble which we have tried to remedy by making them part of the terms of restoration of territory to the Italian. The terms which deal with the rights of the Allied forces in unoccupied territory and which have been omitted from clause II may be summarized as follows:

- (i) Reservation of extrajudicial rights and immunity from taxation.
- (ii) Reservation of right to hold Allied Military Courts to try offences against the Allies.
- (iii) Reservation of right to maintain and quarter troops.
- (iv) Reservation of right to requisition.
- (v) Provision for posts of troops, etc. quartered in unoccupied territory.

In addition some terms though not so fundamental should have been inserted and are extremely useful.

(i) The right to have military zones. This is highly beneficial when the general policy is to occupy as much a territory as possible.

(ii) The right to export and import and control the distribution of civilian supplies and other supplies without exception of duty in unoccupied territory.

(iii) The right to require the Italian Government to hold in custody

TO : Mr. Caccia.

From Harold,

You have asked me to express my views on the American terms from the legal adviser point of view.

In the result of experience I think two criticisms of the Terms may justly be levelled at them.

First the inclusion of certain vital terms has led to much trouble which we have tried to remedy by making them part of the terms of restoration of territory to the Italian. The terms which deal with the rights of the Allied Forces in unoccupied territory and which have been omitted from clause 21 may be summarized as follows:

- (i) Reservation of extrajudicial rights and immunity from taxation.
- (ii) Reservation of right to hold Allied Military Courts to try offences against the Allies.
- (iii) Reservation of right to maintain and employ troops.
- (iv) Reservation of right to requisition.
- (v) Provision for costs of troops, etc. stationed in unoccupied territory.

In addition some terms though not so fundamental should have been inserted and are extremely useful.

(1) The right to have military zones. This is highly beneficial when the general policy is to occupy as small a territory as possible.

(ii) The right to export and import and control the distribution of civilian supplies and other supplies without payment of duty in unoccupied territory.

(iii) The right to require the Italian Government to hold in custody in unoccupied territory civilian internees including Italian Nationals.

Secondly the complex method of drafting the Terms involving it very difficult for those responsible for seeing that the Italian Govt carry out the terms to understand their real rights and duties. Moreover, it must be remembered that these terms are soldiers or business men and constant reference to the lawyers on points of interpretation does not make for efficiency.

My criticisms may be summarized as follows:

In the first place the provisions are very intermixed instead of being in clear cut sections, one dealing with military terms, another with economic terms, another with war material, another with fascist personnel, another with diplomatic and consular matters, another with rights in unoccupied territory, another with administrative matters and so on.

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In the second place the drafting of individual clauses is unfortunate. I cannot without being lengthy to the point of weariness deal with individual clauses but I would point out a few difficulties.

(1) Clause 21 is ungrammatical in the extreme and the precise rights of the Allied Forces are obscure.

(2) Clause 23 is the only clause dealing with finance, commerce and trade and it is extremely difficult to see exactly what rights were intended to be given to the Allied Forces. This is a much overworked clause and ought to have been split up.

(3) Clause 28 is also a very unsatisfactory clause.

(4) Surely the sanctions clause (44) should be differently drafted.

You will I am sure appreciate that my criticisms are not carrying criticism but are put forward in response to your request as a result of practical experience over two or three months.

Yours Sincerely,

C.R. LEWIS.

(3) Clause 26 is also a very unsatisfactory clause.

(4) Surely the sentence clause (44) should be differently drafted.

You will I am sure appreciate that my criticisms are not carrying criticism but are put forward in response to your request as a result of practical experience over two or three months.

Yours Sincerely,

G.E. HUGHES.

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Memorandum on Armistice Terms with Italy

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The unalloyed drafting of the Armistice Terms with Italy is giving rise to much trouble in their execution which could have been avoided by the preparation of a clear and more comprehensive document.

The main criticisms may be levelled:

I. Omission of certain vital terms.
 (a) and (b) - Armistice.

As to I:

(a) I need do no more than point to the omission of the following vital terms from Clause 21 which deals with the position of Allied Forces in unoccupied territory:

(1) Reservation of extra-territorial rights and immunity from taxation.

(ii) Reservation of right to hold Allied Military Courts to try offences against the Allies.

(iii) Reservation of right to maintain and quarter troops.

(iv) Reservation of right to requisition.

(v) Provision for costs of troops, etc. quartered in unoccupied territory.

(b) In addition none seems though not so fundamental should have been inserted and are extremely useful.

(1) The right to have military zones. This is highly beneficial when the general policy is to occupy as small a territory as possible.

(c) To export and import and control the distribution of civilian supplies and other supplies without payment of duty in unoccupied territory.

(d) To require the Italian Government to hold in custody in unoccupied territory civilian informants including Italian Nationals.

As to II:

(a) The draftsmanship is unsatisfactory in the extreme and here I add a criticism which might be levelled at the overlying terms of the "Short" and "Long" Armistice Terms which make their joint construction somewhat of a mystery.

In the first place the provisions are very intermixed instead of being in clear cut sections, one dealing with military terms, another with economic terms, another with war materials, another with fascist personnel, another with diplomatic and consular matters, another with rights in unoccupied territory, another with administrative matters and so on.

As to I:

(a) I need do no more than point to the omission of the following vital terms from Clause 21 which deals with the position of Allied Forces in unoccupied territory:

(i) Reservation of extrajudicial rights and immunity from taxation.

(ii) Reservation of right to hold Allied Military Courts to try offenses against the Allies.

(iii) Reservation of right to maintain and quarter troops.

(iv) Reservation of right to requisition.

(v) Provision for costs of troops, etc. quartered in unoccupied territory.

(b) In addition some terms though not so fundamental should have been inserted and are extremely useful.

(1) The right to have military zones. This is highly beneficial when the general policy is to occupy as small a territory as possible.

(c) To export and import and control the distribution of civilian supplies and other supplies without payment of duty in unoccupied territory.

(d) To require the Italian Government to hold in custody in unoccupied territory civilian internees including Italian Nationals.

As to II:

(a) The draftsmanship is unsatisfactory in the extreme and here I omit a criticism which might be leveled at the concluding terms of the "short" and "long" Amistice Terms which make their joint construction somewhat of a mystery.

In the first place the provisions are very intermixed instead of being in clear cut sections, one dealing with military terms, another with economic terms, another with war materials, another with fascist personnel, another with diplomatic and consular matters, another with rights in unoccupied territory, another with administrative matters and so on.

In consequence of this lack of scheme in the Terms it is very difficult at any rate for new legal personnel to find out exactly what is intended and what are the rights of the Allied Forces. These terms have after all to be executed in the main by military and business personnel and not lawyers.

(b) The drafting of individual clauses is obscure in some cases in the extreme. I cannot without being lengthy to the point of weariness deal with individual clauses but I would point out a few difficulties.

(1) Clause 21 is ungrammatical in the extreme and the precise rights of the Allied Forces are obscure.

(2) Clause 22 23 in the only clause dealing with finance, commerce and trade and it is extremely difficult to see exactly what rights were in-

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tended to be given to the Allied Forces. This is a much overworked clause and ought to have been split up.

(3) Clause 28 is also a very unsatisfactory clause.

Generally almost every clause when closely examined is remarkable for its lack of clarity.

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Lack of clarity.

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