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FINANCE SUBCOMMISSION
OCT. - DEC. 1943

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341/2

22 October 1963

Subject: Legal Opinion Prepared by the Treasury General
Counsel on the Issuance of Allied Military Lire

To : Commander-in-Chief, Allied Forces,
APO 512, c/o Postmaster,
New York, New York.
Attention: Military Government Section.

1. The attached document, prepared by the Office of the
General Counsel of the Treasury Department, is forwarded for
your information.

2. This material has not been cleared with the British.

J. H. HILLBING,
Major General,
Chief, Civil Affairs Division

1 Incl.
Opinion (in dup)

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Dear General Hildring:

Reference is made to your letter of October 18 in reply to our letter of October 14 relating to important legal questions which you have raised with us as a result of recent events in Italy, particularly relating to the issuance and use of Allied Military Currency and the future functions of the Allied Military Financial Agency.

On the basis of the additional information received from the War Department after our letter of October 14, Randolph Paul, General Counsel of the Treasury Department, has rendered a legal opinion concerning these questions. This opinion is enclosed herewith for your information.

It is, of course, understood that as this opinion indicates, it relates only to the legal questions involved and does not purport to express a view on the policy aspects of any particular program.

Very truly yours,

(Signed) Herbert L. Boston

Acting Secretary of the Treasury.

Major General John H. Hildring
Chief of Civil Affairs Division
Office Chief of Staff
War Department
Pentagon Building Room 3C856
Washington, D. C.

Enclosure

JED:mrd - 10/19/43.

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October 19, 1943

MEMORANDUM OPINION

My opinion has been requested concerning certain important questions which have arisen since the recent armistice with Italy, relating to the legal authority, insofar as this Government is concerned, to take certain action in Italy in the monetary and fiscal field.

ISSUES

The questions which have been raised are the following:

- (1) May Allied military lira currency continue to be issued in Italy and, if so, through what medium and to what extent?
- (2) May the Allied Military Financial Agency which has been operating as part of the Allied Military Government continue to function, and if so, may it exercise the powers which it has exercised in the past?
- (3) May any or all of the powers which the Allied Military Financial Agency has exercised in the past be vested in an agency of the Control Commission for Italy set up under Article 37 of the Additional Terms of Surrender?

SITUATION PRIOR TO ARMISTICE

Prior to the invasion of Italy this office examined carefully the question of the legal authority for the issuance of military currency and the establishment of a military financial agency which could act as a bank of issue for such currency. On the assumption that there would be military government of the area to be occupied, it was concluded that the issuance of such currency and the establishment of such an agency were lawful. It was pointed out that the rules governing such action by the Allied Military Command are those of the law of nations as established by international agreement and the usage of the world. Under international law, the Hague Conventions and the decisions of the Supreme Court of the United States, the Military Commander in areas occupied by the forces under his command has all the powers of a de facto government. These powers include the right to provide for the currency needs of the area occupied. In fact it is a fundamental principle of international law that an occupying authority has in addition to its powers, certain obligations to the inhabitants of the territory under its control. It must take whatever steps are necessary to secure public order. Such public order can not be maintained unless the continued operation of local trade and commerce is protected. This protection includes the establishment and maintenance of an adequate and effective circulating medium. Reference was also made to the fact that the occupant of enemy territory need not pay the expenses of occupation.

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CERTAIN BASIC FACTS CONCERNING ARMISTICE AND
SURRENDER TERMS

This memorandum is premised upon the following basic facts concerning the Armistice and subsequent events. These facts were obtained for the most part from certain documents submitted to this Department by the War Department on October 18, 1943, and partly at a conference held on October 15, 1943 between representatives of this Department and representatives of the State and War Departments.

(1) Supremacy of Commander in Chief of the Allied Forces under Armistice Terms.

The Commander in Chief of the Allied Forces has supreme authority in accordance with the Armistice Terms and the additional terms of surrender imposed in accordance with paragraph 12 of the Armistice Terms.

Article 10 of the Armistice Terms provides:

"10. The Commander in Chief of the Allied Forces reserves to himself the right to take any measure which in his opinion may be necessary for the protection of the interests of the Allied Forces for the prosecution of the war, and the Italian Government binds itself to take such administrative or other action as the Commander in Chief may require, and in particular the Commander in Chief will establish Allied Military Government over such parts of Italian territory as he may deem necessary in the military interests of the Allied Nations."

Article 12 of the Armistice Terms provides:

"12. Other conditions of a political, economic and financial nature with which Italy will be bound to comply will be transmitted at a later date."

Articles 18 and 20 of the Additional Terms of Surrender provide:

"18. The forces of the United Nations will require to occupy certain parts of Italian territory. The territories or areas concerned will from time to time be notified by the United Nations and all Italian land, sea and air forces will thereupon withdraw from such territories or areas in accordance with the instructions issued by the Allied Commander-in-Chief. The provisions of this article are without prejudice to those of article 6 above. The Italian Supreme Command will guarantee immediate use and access to the Allies of all airfields and naval ports in Italy under their control."

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"20. Without prejudice to the provisions of the present instrument the United Nations will exercise all the rights of an occupying power throughout the territories or areas referred to in Article 15, the administration of which will be provided for by the issue of proclamations, orders or regulations. Personnel of the Italian administrative, judicial and public services will carry out their functions under the control of the Allied Commander-in-Chief unless otherwise directed."

Articles 22 and 36 of the Additional Terms of Surrender provides

"22. The Italian Government and people will abstain from all action detrimental to the interests of the United Nations and will carry out promptly and efficiently all orders given by the United Nations."

"36. The Italian Government will take and enforce such legislative and other measures as may be necessary for the execution of the present instrument. Italian military and civil authorities will comply with any instructions issued by the Allied Commander-in-Chief for the same purpose."

(2) The Control Commission for Italy

The Control Commission for Italy is being set up under Article 37 of the Additional Terms of Surrender, which provides:

"37. There will be appointed a control commission representative of the United Nations charged with regulating and controlling this instrument under the orders and general directions of the Allied Commander-in-Chief."

Article 42 of the Additional Terms of Surrender provides:

"42. The Italian Government will send a delegation to the Headquarters of the control commission to represent Italian interests and to transmit the orders of the control commission to the competent Italian authorities."

The Functions of the Control Commission^{1/} are:

(1) To enforce and execute the instrument of surrender under the orders and general directives of the Allied Commander-in-Chief.

^{1/} Outgoing message for Eisenhower from Combined Chiefs of Staff, 16th, October 11, 1943.

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(2) To insure that the conduct of the Italian Government conforms to the requirements of an Allied Base of Operations, especially transportation and communications.

(3) To be the organ through which the policy of the United Nations towards the Italian Government is conducted and the relations of the United Nations with the Italian Government are handled.

An examination is being made of methods and machinery whereby Italian territory, at present under the Allied Military Government, can pass gradually to Italian administration supervised by the Control Commission.^{2/} It is contemplated that the responsibility of the Allied Military Government for the control of civil affairs will eventually be merged into the Control Commission.^{3/}

(3) Status of the Allied Military Government established prior to armistice.

The Allied Military Government established prior to the armistice will continue to exercise jurisdiction over certain areas of Italian territory. Although "it is anticipated that these areas will be reduced to a minimum and that the responsibility for the control of civil affairs will be merged into the Control Commission as soon as practicable"^{4/}, it should be noted that under the Armistice Terms^{5/} the Allied Commander-in-Chief may at any time extend the jurisdiction of the Allied Military Government over such parts of Italian territory as he may deem necessary in the military interests of the Allied Nations.

(4) Administration by the Italian Authorities.

Although it appears that the trend will be to place Italian territory insofar as possible under Italian administration, it should be noted that this is not required by the Armistice Terms, and that any such Italian administration will be under the supervision of the Control Commission, which in turn functions under the orders and general direction of the Allied Commander-in-Chief.

^{2/} Incoming message from Eisenhower for Combined Chiefs of Staff, REF 53, October 15, 1943.

^{3/} Outgoing message for Eisenhower from Combined Chiefs of Staff, REF 248, October 14, 1943.

^{4/} Outgoing message for Eisenhower from Combined Chiefs of Staff, REF 248, October 14, 1943.

^{5/} See Article 10.

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(5) Relevant Financial Provisions of Additional Terms of Surrender.

Article 23 provides:

"23. The Italian Government will make available such Italian currency as the United Nations may require. The Italian Government will withdraw and redeem in Italian currency within such time-limits and on such terms as the United Nations may specify all holdings in Italian territory of currencies issued by the United Nations during military operations or occupation and will hand over the currencies withdrawn free of cost to the United Nations. The Italian Government will take such measures as may be required by the United Nations for the control of banks and businesses in Italian territory, for the control of foreign exchange and foreign commercial and financial transactions and for the regulation of trade and production and will comply with any instructions issued by the United Nations regarding these and similar matters."

Article 33(A) provides:

"33.(A) The Italian Government will comply with such directions as the United Nations may prescribe regarding restitution, deliveries, services or payments by way of reparation and payment of the costs of occupation during the period of the present instrument."

(6) Declaration of War by Italy and Acceptance as a Cobelligerent.

On October 13, 1943, Italy declared war on Germany, and the United States, Great Britain and the Soviet Union issued the following joint statement:

"The Governments of Great Britain, the United States, and the Soviet Union acknowledge the position of the Royal Italian Government as stated by Marshal Badoglio and accept the active co-operation of the Italian nation and armed forces as a co-belligerent in the war against Germany.

"The military events since Sept. 8 and the brutal mistreatment by the Germans of the Italian population, culminating in the Italian declaration of war against Germany, have in fact made Italy a cobelligerent, and the American, British, and Soviet Governments will continue to work with the Italian Government on that basis. 11

"The three governments acknowledge the Italian Government's pledge to submit to the will of the Italian people after the Germans have been driven from Italy, and it is understood that

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nothing can detract from the absolute and untrammelled right of the people of Italy by constitutional means to decide on the democratic form of Government they will eventually have.

"The relationship of cobelligerency between the Government of Italy and the United Nations Governments cannot of itself affect the terms recently signed, which retain their full force and can only be adjusted by agreement between the Allied Governments in the light of the assistance which the Italian Government may be able to afford to the United Nations' cause."

The State Department has informally confirmed that the Armistice Terms fixing the relationship between the Allied authorities and the Italian authorities are not affected by Italy's declaration of war on Germany and its acceptance as a cobelligerent.

DISCUSSION

(1) Situation after Armistice and prior to Italy's Declaration of War on Germany.

(a) As previously pointed out, the issuance of military currency and the establishment of a military financial agency as a bank of issue for such currency is well within the powers of the military commander in areas occupied by his forces. Aside from the question of the Armistice, the occupying force has the right to do whatever acts are necessary in the prosecution of the war, the range of military necessity in particular cases being determined by the circumstances relative to each case.

Except to the extent that the Armistice Terms with Italy can be said to have taken away any of the powers from the Allied Commander-in-Chief he has ample authority to continue the issuance of such military currency as he deems necessary; to issue such currency through whatever medium is deemed most desirable from the standpoint of military necessity, which would include the issuance of such currency through an existing agency or the establishment of a new agency to issue such currency; and to vest in an appropriate agency, existing or created, such financial functions as may be necessary for the prosecution of the war.

(b) It seems clear that the Armistice Terms with Italy and the Additional Terms of Surrender have not limited in any way the powers which resided in the Allied Commander-in-Chief prior to the Armistice to issue military currency and to establish an agency having the functions

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of the Allied Military Financial Agency. Without going into the question of the extent to which an armistice can enlarge upon the powers of the military commander in an area occupied by his forces, it is at least clear that powers which he possessed prior to the armistice continue unchanged in the absence of a special provision of the armistice terms to the contrary.^{6/}

There is nothing in the Armistice Terms and the Additional Terms of Surrender which can be construed in any way to limit the powers which the Allied Commander-in-Chief previously had under established rules of international law. In fact, such Armistice terms serve to confirm by contract powers which the Allied Commander-in-Chief previously possessed without contract. Thus, the Allied Commander-in-Chief reserves to himself the right to take any measures which in his opinion may be necessary for the protection of the interests of the Allied forces in the prosecution of the war; reserves the right to establish an Allied military government over such parts of Italian territory as he may deem necessary in the military interests of the United Nations; and reserves the power to impose conditions of a political, economic, and financial nature with which Italy will be bound to comply. The Italian Government binds itself to take such administrative or other action as the Commander-in-Chief may require and to carry out promptly and efficiently all orders given by the United Nations.

^{6/} Dooley v. United States (1931), 132 U.S. 222. Duties collected upon imports into Puerto Rico by the United States military authorities after the signing of an armistice with Spain but before the ratification of the peace treaty and the cession of Puerto Rico to the United States were legally exacted under the war powers of United States Commander-in-Chief.

Ex Parte Ortiz (C.C. Minn. 1900), 100 Fed. 955.

See Cross v. Harrison (1853), 16 How. 164; Ochoa v. Hernandez (1913), 230 U.S. 139.

See Speight, War Rights on Land (1911), p. 245-246:

"In the absence of a special provision [in an armistice], the invading belligerent's war rights as against the population continue unchanged. He can raise requisitions, billet his soldiers, demand services in kind and even levy contributions, and his general martial law regulations remain in full force. And war conditions still hold good as regards the mutual relations of the inhabitants of the districts held by the two belligerents."

Accord: Colby, Occupation Under Laws of War. (1925), 25 Columbia Law Review 905, 911.

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(c) In accordance with the Armistice Terms and the Additional Terms of Surrender, the Allied Commander-in-Chief has supreme authority to take such action and to direct the Control Commission and the Italian authorities, as well as the Allied Military Government, to take such action, as may be necessary for the prosecution of the war.

The Allied Military Commander, having the right to impose outright military government on the whole of the area, may instead delegate these governmental activities to (a) a control commission or (b) the Italian authorities without altering the fundamental character of his powers and obligations. Having the clear right to act in the field of currency directly, it follows that so long as he is the supreme authority he may act with equal right indirectly.

Accordingly, the Allied Military Commander may continue to issue Allied military currency if deemed necessary in the military interests; may issue such currency through any agency or agencies that he deems it necessary to use for that purpose; may vest in an agency of the Military Government, or in an agency of the Control Commission, or in an agency of the Italian government, such functions as may be necessary for the protection of the interests of the Allied forces in the prosecution of the war.

(d) With respect to the question of the nature of the obligation of this Government in connection with the continued issuance of Allied military currency, and the question of the effect of the issuance of such currency on the over-all question of occupation costs, it would seem that the interests of this Government have been protected by Article 23 and Article 33(A) of the Additional Terms of Surrender. Under Article 23 the Italian Government will withdraw and redeem in Italian currency holdings in Italian territory of Allied military currency issued during military operations or occupation and will hand over the currencies withdrawn free of cost to the United Nations; and under Article 33(A) the Italian government will comply with such directions as the United Nations may prescribe regarding the payment of the costs of occupation during the period of the Terms of Surrender.

(2) Situation after Italy's Declaration of War on Germany.

There remains the question of determining the effect, if any, of Italy declaring war on Germany and assuming the status of a "cobelligerent".

(a) It would seem clear that the act of Italy in declaring war on Germany could not restrict the powers of the Allied Commander-in-Chief, as established by international law and confirmed by contract of the Armistice terms, unless the Allied Nations agreed to such a restriction upon the powers of their Commander-in-Chief. Certainly after the Allied Nations have beaten Italy into unconditional surrender, Italy cannot by going through the motions of declaring war on Germany avoid the full legal consequences of such surrender and the armistice. This would be

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boot-strap lifting in its most patent form.

Although no exact precedent has been found for this rather self evident proposition, it is confirmed by general principles of international law. Thus, the powers of a military commander, in an area occupied by his forces, to exercise the functions of military government over such area only cease under such conditions as the conquering nation or nations elect to impose.¹⁷ Furthermore, the Armistice Terms with Italy not only do not restrict these powers but expressly confirm them, and it is well established that the unilateral act of one party to an internationally binding agreement can not affect the rights of the other party to such agreement.

(b) It is equally clear that the Allied Nations have not agreed to any restriction upon the powers of their Commander-in-Chief by accepting Italy as a "cobelligerent".

The concept of "cobelligerency" is relatively new in the nomenclature of international law but according to Lauterpacht, Oppenheim's International Law (6th ed. 1949), p. 200 of Vol. II, in 1915 during the World War, Great Britain, France, Italy and the United States recognized the Czechs-Slovaks as cobelligerents. He also reports that similar recognition was granted in 1917 to the Polish national army composed to a substantial degree of subjects of the enemy powers.

Lauterpacht points out that during World War I both groups rebelled against the Central powers and while their recognition by the Allies might be disregarded by the enemy who might treat them as insurgents in accordance with local criminal law, yet

".....The better opinion is probably that when such recognition [i.e. as co-belligerent] is granted by the adversary to large bodies of men effectively organized on foreign soil in anticipation of independent statehood, a point is reached at which the

¹⁷ As expressed by William W. Birchner, LLB, Major General of the United States Army, in his book on Military Government and Martial Law (1914), after reviewing the experience of the United States Government with respect to conquered territory:

"The experience of the United States Government, therefore, but adds to the evidence derivable almost universally from the history of other nations, that military government ceases at the pleasure of him who instituted it upon such conditions as he elects to impose, and that its termination is not in point of time coincident, either necessarily or generally, with the cessation of hostilities between the contending belligerents."

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belligerent confronted with the disaffection and desertion of a considerable number of his subjects engaged in hostilities against him can no longer, without exposing himself to justifiable retaliation, assert the provisions of his own criminal law as the only legally relevant element in the situation."

If there were nothing more to rely on in the instant case than the mere adoption of this little used concept of "co-belligerency" one would conclude that its adoption was primarily for the purpose of describing a rather novel factual situation and not for the purpose of agreeing to a change in the fundamental relationship between the allies and Italy under the Armistice.

That there can be no doubt that this was the sense in which the term was used is perfectly obvious from the joint statement of the United States, Great Britain and the Soviet Union that

"The relationship of co-belligerency between the Government of Italy and the United Nations Governments cannot of itself affect the terms recently signed, which retain their full force and can only be adjusted by agreement between the Allied Governments in the light of the assistance which the Italian Government may be able to afford to the United Nations' cause."

CONCLUSION

Without expressing any viewpoint as to policy considerations which may be involved, and on the premise of the above-mentioned basic facts as they exist today, it is concluded that:

(1) If deemed desirable from a military standpoint, the issuance of Allied Military Currency in Italy, may be continued pursuant to the orders of the Allied Commander-in-Chief and may be supplied through the medium of:

- (a) The Allied Military Financial Agency or some comparable agency under the Allied Military Government.
- (b) An agency of the Control Commission.
- (c) An agency of the Italian authorities.

Just as prior to the Armistice, this government will be under no obligation to redeem such currency; and the effect of the issuance of such currency on the over-all question of occupation costs is substantially the same as it was prior to the Armistice.

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(2) The Allied Military Financial Agency may continue to function retaining all the powers which it lawfully possessed prior to the Armistice.

(3) Any or all of the above-mentioned powers of the Allied Military Financial Agency may be vested in an agency of the Control Commission (whether or not such powers are also retained by the Allied Military Financial Agency).

It should be clearly understood that if the basic facts on which this opinion is premised should change in the future, the conclusions herein set forth will have to be reexamined in the light of the new facts.

(Signed) Randolph Paul

General Counsel.

HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee

EDW/gmf

341/2
23 December 1943.

In reply
refer to: ACC/L/304.

SUBJECT: Workmen's Compensation for Agricultural Workers.

TO : Regional Chief Legal Officer, Region 2.

1. Ref. your letter 2201/13/10 dated 16 December 43.
2. As the question is one principally of Finance, I have transmitted your letter and enclosure to the Finance Subcommittee for consideration.

RICHARD H. WIMER, Lt. Col. CAC
Deputy Chief Legal Officer,
ACC.

FROM : AFHQ (MGS)
TO : AGWAR FOR CCS

34 T/21 Ryan

WITH REFERENCE TO EXPORTS FROM ITALY THE FOLLOWING IS PROPOSED FOR YOUR CONSIDERATION. PRICES IN LIRE TO BE PAID TO THE SUPPLIER WILL BE AGREED TO OR FIXED BY AMG OR ARMISTICE COMMISSION. AMG OR ARMISTICE COMMISSION WILL THEN OBTAIN FROM AMFA THE LIRE FUNDS TO MAKE PAYMENT TO SUPPLIER AND TO MEET OTHER EXPENSES SUCH AS FREIGHT, WAREHOUSING, LIGHTERAGE, ETC., IN SO FAR AS THESE EXPENSES ARE NOT INCURRED IN OTHER CURRENCIES. WE ASSUME YOU WILL DETERMINE PROCEDURE AS TO PRICE TO BE PAID BY PURCHASERS ABROAD AND THAT BROADLY SPEAKING YOU INTEND THAT THE CURRENCIES OTHER THAN LIRE PAID BY SUCH PURCHASERS WILL GO INTO EARMARKED OR BLOCKED ACCOUNTS. WE WILL NEED TO BE ADVISED ALSO AS TO METHOD OF CARRYING OUT THIS PROCEDURE INCLUDING SELECTION OF BANKS TO HANDLE SUCH ACCOUNTS. AS TO PROCEDURE TO BE FOLLOWED IN CASE OF FRENCH PURCHASES OF ITALIAN EXPORTS, THE FRENCH OPENING PROPOSAL IS TO PAY ALGERIAN FRANCS INTO A BLOCKED ACCOUNT AT THE BANK OF ALGERIA, TO REMAIN BLOCKED UNTIL RELEASED UNDER MUTUAL AGREEMENT BETWEEN THE FRENCH, UNITED STATES AND BRITISH AUTHORITIES. WE SHOULD APPRECIATE YOUR VIEWS ON THE ABOVE, BEARING IN MIND YOUR RECENT INSTRUCTIONS THAT DISPOSITION OF FOREIGN CURRENCIES ARISING OUT OF ITALIAN OPERATION WILL BE SUBJECT OF SUBSEQUENT SETTLEMENT. PROMPT RECEIPT OF YOUR VIEWS ON FOREGOING WILL BE OF ASSISTANCE TO US SHOULD THE U.S. TREASURY OFFICIALS WISH TO DISCUSS MATTER WHEN THEY RETURN TO THIS AREA.

20/10/43
/tlt

SECRET

MEMORANDUM

FROM : Legal and Financial Sub-Commissions.
TO : Brigadier General Julius Holmes, Military Government Section, A.F.H.Q.
SUBJECT : Proposed contract with A.N.I.C. oil refinery at Bari.
DATE : 20th October, 1943.

1. The Chief Financial Officer of the Allied Commission was informed on 19th October, at a meeting in Major General Gale's office and at a subsequent meeting with Brigadier Dunlop, that it is proposed by officers of the British Army presently at Bari to enter into a contract with an oil refinery (A.N.I.C.) for storage facilities, and that an advance equivalent to 1,600,000 lire is urgently needed.
2. The Chief Financial Officer stated that he preferred to defer discussion of entering into a contract with a firm in unoccupied territory and he also stated that he was not entirely familiar with the policy with reference to requisitioning which was to be followed in either occupied or unoccupied Italian territory now that Italy has been accorded the status of co-belligerent. He agreed, in the meantime, to propose to the responsible officials of AFM the making of an emergency advance of 1,600,000. An appropriate cable was drafted and handed to MGS for approval.
3. The contract with A.N.I.C. which is under consideration may be taken as typical of a large number which may be drafted if the Allied Commission or the Allies use this method of obtaining from Italian enterprises and individuals in unoccupied Italy the performance of services and delivery of goods required for the Allied war effort or by the Allied Commission. The considerations of costs, rates of compensation, and other terms which the drafting of such contracts will involve will require the Allied Commission greatly to increase its legal and accounting staffs, to employ the services of Italian lawyers, and so on. This method of operation may also give rise to a great amount of litigation with the extremely undesirable consequence that someone on behalf of the Allied Commission might find himself as a plaintiff or even a defendant in the Italian Courts.

4. It is suggested that the whole policy of Allied Commission as conceived in the Armistice Terms is not to enter into a series of individual contracts but to obtain its war material and such other supplies and services as may be required by the method of ordering the Italian Government to produce them. Thus it is suggested that resort be had to appropriate provisions of the Armistice Terms, by which the Italian Government may be required to provide the Allied Forces with supplies and facilities. In particular, Article 21 (B) provides that the Italian authorities "will make available in now-occupied Italian territory all transport facilities required by the United Nations, ... and will comply with instructions issued by the Allied Commander-in-Chief regarding the use and control of airfields, ports, shipping, inland transport systems, vehicles, intercommunication systems, power stations and public utility services, oil refineries, stocks and such other fuel and power supplies and means of producing same, as United Nations may specify, together with connected repair and construction facilities."
- Thus in the present case there seems no difficulty in ordering the Italian Government to enter into contracts with A.N.I.C. for the storage of the required

meeting with Brigadier Dunlop, that it is proposed by officers of the British Army presently at Bari to enter into a contract with an oil refinery (A.M.I.C.) for storage facilities, and that an advance equivalent to 1,900,000 lire is urgently needed.

2. The Chief Financial Officer stated that he preferred to defer discussion of entering into a contract with a firm in unoccupied territory and he also stated that he was not entirely familiar with the policy with reference to requisitioning which was to be followed in either occupied or unoccupied Italian territory now that Italy has been accorded the status of co-belligerent. He agreed, in the meantime, to propose to the responsible officials of AEM the making of an emergency advance of 1,900,000. An appropriate cable was drafted and handed to MGS for approval.

3. The contract with A.M.I.C. which is under consideration may be taken as typical of a large number which may be drafted if the Allied Commission or the Armies use this method of obtaining from Italian enterprises and individuals in unoccupied Italy the performance of services and delivery of goods required for the Allied war effort or by the Allied Commission. The considerations of costs, rates of compensation, and other terms which the drafting of such contracts will involve will require the Allied Commission greatly to increase its legal and accounting staffs, to employ the services of Italian lawyers, and so on. This method of operation may also give rise to a great amount of litigation with the extremely undesirable consequence that someone on behalf of the Allied Commission might find himself as a plaintiff or even a defendant in the Italian Courts.

4. It is suggested that the whole policy of Allied Commission as conceived in the Armistice Terms is not to enter into a series of individual contracts but to obtain its war material and such other supplies and services as may be required by the method of ordering the Italian Government to produce them. Thus it is suggested that resort be had to appropriate provisions of the Armistice Terms, by which the Italian Government may be required to provide the Allied Forces with supplies and facilities. In particular, Article 21 (B) provides that the Italian authorities "will make available in non-occupied Italian territory all transport facilities required by the United Nations, ... and will comply with instructions issued by the Allied Commander-in-Chief regarding the use and control of airfields, ports, shipping, inland transport systems, vehicles, intercommunication systems, power stations and public utility services, oil refineries, stocks and such other fuel and power supplies and means of producing same, as United Nations may specify, together with connected repair and construction facilities."

Thus in the present case there seems no difficulty in ordering the Italian Government to make arrangements with A.M.I.C. for the storage of the required amount of oil and for the refining of the oil to be brought ~~to be brought~~ to it and this is primarily a matter for attention by the Industry & Commerce Sub-Commission. The manner in which the Italian Government carries out these orders, whether by requisition or contract, is not the concern of Allied Commission. This procedure will relieve the Military Authorities and the Allied Commission of all such contractual arrangements.

5. Under this procedure the Italian Government would discuss with the contracting firms all questions of financing. The Allied Commission would be concerned in these matters primarily only: (a) in the course of its scrutiny of the Italian budget and current expenditures and (b) to the extent that air fire advances are needed by the Italian Government.

FROM : A.F.H.Q. (FROM M.G.S. FOR HAMLYN).

Date-Time of Origin
Oct 191650

TO : FILPAT for AMGOT for COLONEL GRAFFTEY-SMITH.

VUE URGENT NEED RE-ESTABLISHMENT OF OIL STORAGE FACILITIES BARI, PROPOSE
APPROVING ADVANCE 1,500,000 LIRE BY AMFA TO AZIENDA NAZIONALE IDROGENAZIONE
COMBUSTIBILI (A.N.I.C.) AT BARI FOR PURPOSE MEETING WAGE BILL ON FIRST
NOVEMBER(.) SUGGEST OBTAINING PROPER RECEIPT EVIDENCING OBLIGATION A.N.I.C.
TO REPAY, TERMS TO BE SETTLED LATER (.) COULD YOU CONTACT LT.COL. EYLES,
R.A.S.C., WHO HAS REPORTED ON A.N.I.C. AND UNLESS YOU DISAGREE MAKE
ARRANGEMENTS FOR EMERGENCY ADVANCE (.) PLEASE CABLE ME WHAT IS DONE AND
YOUR SUGGESTION FOR TERMS OF LOAN.

From :- Finance Sub-Commission.

Copies to: Col. Evans, Industry & Commerce.
Col. Upjohn, Legal
JACS
AMG (P)
E & F.

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