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Letter from the Military Governors to Dr. Konrad Adenauer, President of the Parliamentary Council, approving the Basic Law (May 12, 1949)

After another serious crisis in March 1949 between the Parliamentary Council and the Allies over the distribution of competencies between the federal government and the *Länder* in the future West German state, the three western military governors approved the Basic Law of the Federal Republic of Germany as ratified by the Parliamentary Council. They reached their decision on May 8, 1949, and sent the following letter to Konrad Adenauer letter four days later. The military governors emphasized that the authorities of the federal government and other political bodies as codified in the Basic Law were subject to the Occupation Statute and thus to Allied oversight, and they stressed in particular that police authority could not be exercised without authorization from the occupying agencies. Berlin, still officially under Four-Power control, was given special status. With the exception of the merger of the states of Württemberg-Baden, Württemberg-Hohenzollern, and Südbaden into the state of Baden-Württemberg, no further redrawing of the boundaries of the West German federal states was envisaged.

Dr. Konrad Adenauer
President of the Parliamentary Council
Bonn

Dear Dr. Adenauer!

1. The Basic Law passed on 8 May by the Parliamentary Council has received our careful and interested attention. In our opinion it happily combines German democratic tradition with the concepts of representative government and a rule of law which the world has come to recognize as requisite to the life of a free people.

2. In approving this constitution for submission to the German people for ratification in accordance with the provisions of Article 144 (1) we believe that you will understand that there are several reservations which we must make. In the first place, the powers vested in the Federation by the Basic Law, as well as the powers exercised by *Länder* and local Governments, are subject to the provisions of the Occupation Statute which we have already transmitted to you and which is promulgated as of this date.

3. In the second place, it should be understood that the police powers contained in Article 91 (2) may not be exercised until specifically approved by the Occupation Authorities. Likewise the remaining police functions of the Federation shall be governed by our letter to you of 14 April 1949 on this subject.

4. A third reservation concerns the participation of Greater Berlin in the Federation. We interpret the effect of Articles 23 and 144 (2) of the Basic Law as constituting acceptance of our previous request that while Berlin may not be accorded voting membership in the Bundestag or Bundesrat nor be governed by the Federation she may, nevertheless, designate a small number of representatives to attend the meetings of those legislative bodies.

5. A fourth reservation relates to Articles 29 and 118 and the general question of the reorganization of *Länder* boundaries. Excepting in the case of Wuerttemberg-Baden and Hohenzollern our position on this question has not changed since we discussed the matter with you on 2 March. Unless the High Commissioners should unanimously agree to change this position the powers set forth in these articles shall not be exercised and the boundaries of all of the *Länder* excepting Wuerttemberg-Baden and Hohenzollern shall remain as now fixed until the time of the peace treaty.

6. Fifthly, we consider that Article 84, paragraph 5 and Article 87, paragraph 3, give to the Federation very wide powers in the administrative field. The High Commissioners will have to give careful consideration to the exercise of such powers in order to insure that they do not lead to excessive concentration of authority.

7. At our meeting with you on 25 April, we proposed to you a formula to interpret in English the intention of Article 72(2), 3. This formula which you accepted as conveying your meaning reads as follows: ' [. . .] because the maintenance of legal or economic unity demands it in order to promote the economic interests of the Federation or to insure reasonable equality of economic opportunity to all persons'. We wish you to know that the High Commissioner will interpret this article in accordance with this text.

8. In order to eliminate the possibility of future legal controversy, we would like to make it clear that when we approved constitutions for the *Länder* we provided that nothing contained in those constitutions could be interpreted as restricting the provisions of the Federal constitution. Conflict between *Länder* constitutions and the provisional Federal constitution must, therefore, be resolved in favor of the latter.

9. We should also like it to be clearly understood that upon the convening of the legislative bodies provided for in the Basic Law, and upon the election of the President and the election and appointment of the Chancellor and the Federal Ministers, respectively, in the manner provided for in the Basic Law, the Government of the Federal Republic of Germany will then be established and the Occupation Statute shall thereupon enter into force.

10. On the completion of their final task as laid down in Article 145, 1, the Parliamentary Council will be dissolved. We wish to take this occasion to compliment the members of the Parliamentary Council on their successful completion of a difficult task performed under trying circumstances, on the manifest care and thoroughness with which they have done their work and on their devotion to the democratic ideals toward the achievement of which we are all striving.

Lucius D. Clay
General U.S. Army
Military Governor
American Zone

B. H. Robertson
General
Military Governor
British Zone

Pierre Koenig
Général d' Armée
Military Governor
French Zone

Source: OMGUS, *Federal Constitution*, p. 138; reprinted in Beata Ruhm von Oppen, ed., *Documents on Germany under Occupation, 1945-1954*. London and New York: Oxford University Press, 1955, pp. 390-92.