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File
Seymour Raskin
RECEIVED
IN SWNCC
WNR

In reply refer to
CE

MEMORANDUM TO THE SECRETARY, SWNCC

Subject: Proposed Policy Statement on Replacement
of Cultural Objects

VIR
740-77119 P.O.

Attached is a proposed policy statement on
this subject representing the views of the State
Department. It is requested that the paper be re-
ferred to the Subcommittee for the Far East for
consideration.

Charles E. Saltzman
State Department Member
State-War-Navy Coordinating Committee

Att.

sup
document

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CE:HLBaker:beco/gp

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PROPOSED SWNCC PAPER
REPLACEMENT OF CULTURAL OBJECTS.

THE PROBLEM

1. To state U. S. policy with respect to replacement of cultural objects ^{which were} wantonly destroyed or removed from Allied countries during the period of Japanese aggression and ^{which have not been found.} [not recovered.]

FACTS BEARING ON THE PROBLEM.

2. See Appendix "A".

DISCUSSION

3. See Appendix "B".

CONCLUSIONS

4. It is concluded that:

A. Policy herein is supplementary to and not in derogation of accepted policy decisions relating to restitution of identifiable looted property.

B. The Japanese Government should be required to replace cultural objects wantonly destroyed or removed from Allied countries during periods of Japanese military aggression against their territories ^{and not since found,} as required below.

C. Cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

D. Allied countries attacked or occupied by the Japanese which claim replacement should provide reasonable evidence that cultural objects were removed or wantonly destroyed as a direct or indirect result of Japanese operations or occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost. In cases of doubt concerning the adequacy of evidence

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in support of a claim, the presumption should be in favor of the claimant country.

E. Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of substantially equivalent character and cultural value held either by Japanese public institutions or Japanese individuals whose property is subject to seizure because of their wartime activities. Property belonging to Japanese public institutions will not be used to fulfill claims for replacement of privately owned cultural objects.

F. Replacement in substantial equivalents as indicated in Paragraph E. above should not include:

(1) Cultural items designated by the Japanese Government as National Treasures prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

(2) Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation, particularly with respect to the program of democratization and reeducation of the Japanese people.

G. The SCAP should be authorized, at his discretion, to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation, in the light of established precedents, of the foregoing policy, particularly as it relates to approval of claims and determination of standards for the substantial equivalents mentioned in Paragraph E. above.

RECOMMENDATIONS

- 2 -

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- 3 -

CONFIDENTIALRECOMMENDATIONS

5. It is recommended that:

- A. The Conclusions in Paragraph 4 be approved by SWNCC;
- B. Upon approval, this paper be transmitted to the War and Navy Departments for their information;
- C. Upon approval, the Conclusions in Paragraph 4 above be transmitted by the State Department to the U. S. Member, FEC, as a statement of the U. S. position on this matter, but with authority to accept minor changes which will not alter its substance or intent.

CE:JEMacDonald/HLBaker:boo/gp

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APPENDIX "A"

FACTS BEARING ON THE PROBLEMA. Statements of Principle with Respect to Replacement of Cultural Property.

1. Letter from the Secretary of State, Cordell Hull, to President Franklin D. Roosevelt, dated June 21 (840.403.14 1/2); paraphrased in letter from Secretary of State Cordell Hull, to Vice-Chairman of the American Commission, David E. Finley, dated July 16, 1943 and in the Department of State Bulletin, August 21, 1943:

"B. At the time of the Armistice:

"i. The American Commission for the Protection and Salvage of Artistic and Historic Monuments should urge that the Armistice terms include the restitution of public property appropriated by the Axis Powers. Where it is not possible to restore such property either because it has been destroyed or cannot be found, restitution in kind should be made by the Axis Powers to the countries from which the property has been taken. In such cases, the Commission should recommend a list of equivalent works of art or historic documents which should be transferred to the invaded countries from Axis museums or from the private collections of Axis leaders.

"ii. The Commission should urge that restitution be made of private property appropriated by the Axis Nations."

B. Japanese National Treasures

In the nineteenth century the Japanese government began to inventory objects of especial cultural importance, and to apply measures for their preservation. The responsibility of the government in ensuring the preservation of cultural possessions of unique worth was first recognized with the promulgation of the "Old Shrines and Temples Preservation Law," in

1872.

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1872. In 1897, the Commission for the Preservation of Old Temples was established, and the practice of listing specific "National Treasures" instituted.

Until 1929, the list was limited to objects in the possession of shrines and temples, but in that year it was extended to privately-owned and non-ecclesiastical objects, primarily in order to halt the sale abroad by private collectors of especially valuable items. This extension did not markedly accelerate the rate of accessions to the list. An idea of the growth of the list can be gained from the following table, showing the number of national treasures at several different dates:

1897	155
1905	1,376
1920	3,103
1929	3,700
1938	4,913

In 1938, the 4,913 national treasures listed were distributed as follows: paintings, 870; sculptures, 1907; minor arts, 381; swords, 362; books and manuscripts, 398.

The later lists may well include objects acquired as a result of Japanese aggression; but they also include objects of genuine Japanese origin, or of long-established Japanese ownership which had not been listed in earlier years because of the restriction of the law to ecclesiastical property. Since the records of important art objects in Japan are very complete, the determination of the origin and the ownership for the past half-century of a particular object classified as a national treasure will usually present no difficulties.

C. Discussion FEC

This paper, except for Paragraph G, has had preliminary discussion in the committee No. 1 of the Far Eastern Commission, where substantial agreement on the principles it embodies has been revealed. In the course

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of the discussion, it was made clear by the officials of the Department of State who participated that the position of this government had not been formulated and that the views they expressed were personal. Representatives of certain other powers also participated on this basis and abstained from taking a formal position pending receipt of instruction from their governments. Nevertheless, considerable progress toward final agreement appears to have been made, and the draft paper has been referred to the Steering Committee. The early formulation of the position of the United States Government thus becomes a matter of some urgency.

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APPENDIX "B"

DISCUSSION

1. This paper is intended to supplement the restitution policies included in FEC 011/12, by establishing certain policies for the replacement of cultural objects wantonly destroyed or removed from Allied countries as a consequence of Japanese aggression.

2. The application of the principles of this paper is limited to the relatively narrow category of cultural objects, defined as items of artistic, historical, religious or educational character, including collections of books, which are irreplaceable through commercial channels. As a result of Japanese action, large numbers of cultural objects were wantonly destroyed or removed from the countries occupied by Japanese forces. The primary importance of these objects did not lie in their economic value but in the public cultural purposes they served. Compensation under ordinary reparation principles is therefore not possible; it can be effected only under a principle of replacement in kind from stocks of similar items in Japan.

3. The policies incorporated in this paper are intended to provide to the countries which have suffered losses of cultural objects as a result of Japanese action, maximum replacement from cultural objects in Japan, consistent with the maintenance in Japan of uniquely valuable cultural treasures of Japanese origin, or of long-established Japanese ownership, and a general stock of cultural objects adequate to meet the requirements of the occupation - particularly with respect to the democratization and reeducation of the Japanese people.

4. The effect of this paper, taken in conjunction with FEC-011/12 which it is designed to supplement, would be to establish two methods of relief for the loss of cultural objects resulting from Japanese occupation of Allied countries. These methods would be:

(a)

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- (a) restitution of specific objects if they can be found;
- (b) replacement by cultural objects of roughly equivalent character and cultural value, if such equivalents can be found and are appropriately available.

5. The degree of liability of the Japanese government under these procedures would vary.

(a) Liability of the Japanese government under (a) is absolute, under the procedures of FEC-011/12.

(b) Exempted from the liability of the Japanese Government under (b) are any cultural items:

- (1) designated by the Japanese Government as national treasures prior to 1931 or designated as Japanese National Treasures after 1931 if they are of Japanese origin or were owned by Japanese public institutions or private owners prior to 1894.
- (2) required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation, particularly with respect to the program of democratization and reeducation of the Japanese people.

6. Several of the member nations of the Far Eastern Commission have suggested, with considerable insistence, that cultural objects lost as a result of Japanese aggression be replaced from a general stock of cultural objects collected in Japan regardless of origin or present ownership. The indiscriminate collection of cultural items, regardless of ownership, for the purpose of replacement is not consistent with United States policy. For this reason only two categories of property should be made available for replacement of lost cultural items. They are:

- (1) Cultural

- (1) Cultural items which are the property of public institutions with exceptions listed in Paragraph 5.
- (2) Cultural items among the property of individuals whose property is subject to seizure because of their wartime activities. Persons convicted of war crimes by the War Crimes Tribunal may, as a part of their sentence, have their property confiscated. Under the provisions of paragraph E of the conclusions, such property would be available to replace lost items.

7. Collections of cultural objects owned by public institutions in Japan should not be used to satisfy claims of private individuals for replacement of lost objects. It would be inconsistent with the conservation of cultural property and not consonant with public interest if public collections were dispersed or pass from public to private possession. It would deprive not only the people of enemy nations but also the public of all nations of access to these materials. It is obvious that collections of public institutions as the Uffizi Palace Museum in Florence and the Kaiser Friedrich Museum in Berlin are an international heritage preserved under public trust for all people. This is equally true of the Imperial Household Museums of Tokyo and Nara, although these collections may not be as generally known. Following World War I the only replacement of cultural property made was that of the collections of the University of Louvain Library (Article 247 of the Treaty of Versailles).

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

*Mr Hamilton
will you please
consider this*

TO : Mr. Butterworth

DATE: February 24, 1948.

FROM : Mr. Penfield

SUBJECT: Replacement of Cultural Objects (Japan) (SANACC 385 and SFE 202 Series)

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As far as I can determine the arguments in favor of this paper are:

(1) There is precedent for it in the Italian treaty.

(2) The Secretary of State in 1943 urged upon the President and upon the American Commission for the Protection and Salvage of Artistic and Historic Monuments adoption of a policy substantially the same as that proposed in the attached file.

(3) Implementation of the policy would provide a means for rehabilitating Chinese university and other public libraries a matter of some importance to the US from a long-term point of view, without substantial harm to Japanese culture.

(4) There is great pressure, especially by the Chinese and the Dutch, for adoption of the policy.

The chief arguments against the adoption of the paper as set forth by the Army Department are:

(1) SCAP is opposed to it.

Comment: SCAP's opposition is not supported by any reason and it is not unreasonable to suppose that it is based solely on its desire to avoid the administrative difficulties involved in implementing the policy.

(2) The policy could set a precedent for restitution in kind of all types of materials and commodities.

Comment: This disadvantage has not apparently risen in connection with the similar provisions in the Italian treaty and in view of the special nature of the cultural objects affected this would seem to be rather a farfetched fear.

(3) Implementation of the policy would alienate Japanese goodwill toward the US.

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Comment: Although the policy would be an Allied (FEC) one, and none of the removals effected under it would be for American benefit, any unfavorable Japanese reaction would undoubtedly be directed to some extent against the US because of our position there. In addition to the rather surprising attitude evidenced by expression of great concern over endangering Japanese goodwill to the US in connection with a relatively minor matter, it is hard to believe that the removal of Japanese cultural objects not of sufficient importance to warrant classification as national treasures could have any very substantial effect upon Japanese national feelings.

(4) There is no information available as to the number or value of claims that might be forthcoming.

Comment: Although this objection seems valid it appears to have been met by provision in the proposed paper giving SCAP very extensive administrative control over the implementation of the policy.

If the above are the only substantial considerations involved in this paper it would seem to me that the Army's objections are not well founded. I have mentioned this subject to Marshall Green and it may be that he will be able to obtain some more definite reactions on it in Tokyo. In any event, we shall keep it in the Far East Subcommittee until after Kennan's return.

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FE:JKPenfield:hst

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SFE 202/2

19 February 1948

Pages 1 and 2.

STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EAST

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

- References: a. SANACC 385
 b. SANACC 385/1
 c. SFE 202
 d. SFE 202/1

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 Attached.

Note by the Secretary

The enclosure, a memorandum by the CAD Member, is circulated for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
Secretary

FW 894.403 / 2-2448 CONFIDENTIAL FILE

SFE 202/2

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E N C L O S U R E

MEMORANDUM BY THE CAD MEMBER

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

1. The CAD member neither favors the original proposal contained in SANACC 385 nor the modified version contained in SFE 202/1 for the following reasons:

a. The U. S. has agreed that the Japanese will make reparations in kind and that the Japanese will restore identifiable looted property. Going beyond these two agreements and making restitution in kind of cultural objects could serve to alienate Japanese good will from the U. S. and set a precedent for restitution in kind of all types of material and commodities.

b. The limited quid pro quo accruing to the U. S. from the FEC nations concerned would appear to be more than offset by the alienation of Japanese good will towards the U.S.

c. The carrying out of restitution in kind would be difficult to administer fairly, and SCAP has already indicated that he would recommend the resolution of such matters in the Japanese peace settlement by a cultural objects tribunal of specialists.

d. Paras. 4. c.(1) and (2) of SFE 202/1, in the light of reparations and restitution of identifiable property, give undue favor to the claimant.

e. The Army has no information as to the number or value of claims that might be forthcoming if such a policy were approved. If such claims were extensive, presumably, the Japanese government would have to provide some yen payment or credit to Japanese owners of cultural objects whose property was to be used for restitution in kind -- thus lessening the already deflated value of the yen.

2. The CAD member has been advised by Mr. Burr Smith

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(speaking for the Department of State) that his department cannot concur in the proposal to withdraw SANACC 385 as modified by SFE 202/1, which recommendation was contained in SFE 202. Therefore it is recommended that divergent views of the two departments be promptly presented to SANACC for resolution.

3. The P&O member concurs in the recommendation contained in para. 2. above.

CONFIDENTIALCOPY NO. 34SANACC 38521 October 1947Pages 1 - 9, incl.STATE-ARMY-NAVY-AIR FORCE COORDINATING COMMITTEEREPLACEMENT OF CULTURAL OBJECTS (JAPAN)Note by the Secretaries

The enclosure, a study by the State Department presented by the State Member, has been referred to the State-Army-Navy-Air Force Coordinating Subcommittee for the Far East for recommendation.

H. W. MOSELEY
W. A. SCHULGEN
V. L. LOWRANCE
Secretariat

FW 894.403/2.2448

CONFIDENTIAL P. 11

SANACC 385CONFIDENTIAL

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E N C L O S U R E

REPLACEMENT OF CULTURAL OBJECTS

Study by the Department of State

THE PROBLEM

1. To state U. S. policy with respect to replacement of cultural objects which were wantonly destroyed or removed from Allied countries during the period of Japanese aggression and which have not been found.

FACTS BEARING ON THE PROBLEM

2. See Appendix "A".

DISCUSSION

3. See Appendix "B".

CONCLUSIONS

4. It is concluded that:

a. Policy herein is supplementary to and not in derogation of accepted policy decisions relating to restitution of identifiable looted property.

b. The Japanese Government should be required to replace cultural objects wantonly destroyed or removed from Allied countries during periods of Japanese military aggression against their territories and not since found, as required below.

c. Cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

d. Allied countries attacked or occupied by the Japanese which claim replacement should provide reasonable evidence that cultural objects were removed or wantonly destroyed as a direct or indirect result of

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Japanese operations or occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost. In cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country.

e. Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of substantially equivalent character and cultural value held either by Japanese public institutions or Japanese individuals whose property is subject to seizure because of their wartime activities. Property belonging to Japanese public institutions will not be used to fulfill claims for replacement of privately owned cultural objects.

f. Replacement in substantial equivalents as indicated in Paragraph e. above should not include:

(1) Cultural items designated by the Japanese Government as National Treasures prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

(2) Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation, particularly with respect to the program of democratization and reeducation of the Japanese people.

g. The SCAP should be authorized, at his discretion, to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation, in the light of established precedents, of the foregoing policy, particularly as it relates to approval of claims and determination of standards

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for the substantial equivalents mentioned in Paragraph e.
above.

RECOMMENDATIONS

5. It is recommended that:

- a. The Conclusions in Paragraph 4 be approved by SANACC;
- b. Upon approval, this paper be transmitted to the Army, Navy, and Air Force Departments for their information;
- c. Upon approval, the Conclusions in Paragraph 4 above be transmitted by the State Department to the U.S. Member, FEC, as a statement of the U.S. position on this matter, but with authority to accept minor changes which will not alter its substance or intent.

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APPENDIX "A"

FACTS BEARING ON THE PROBLEM

A. Statements of Principle With Respect to Replacement of Cultural Property.

1. Letter from the Secretary of State, Cordell Hull, to President Franklin D. Roosevelt, dated June 21 (840.403.14 1/2); paraphrased in letter from Secretary of State Cordell Hull, to Vice-Chairman of the American Commission, David E. Finley, dated July 16, 1943 and in the Department of State Bulletin, August 21, 1943:

"B. At the time of the Armistice:

"i. The American Commission for the Protection and Salvage of Artistic and Historic Monuments should urge that the Armistice terms include the restitution of public property appropriated by the Axis Powers. Where it is not possible to restore such property either because it has been destroyed or cannot be found, restitution in kind should be made by the Axis Powers to the countries from which the property has been taken. In such cases, the Commission should recommend a list of equivalent works of art or historic documents which should be transferred to the invaded countries from Axis museums or from the private collections of Axis leaders.

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In the nineteenth century the Japanese government began to inventory objects of especial cultural importance, and to apply measures for their preservation. The responsibility

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of the government in ensuring the preservation of cultural possessions of unique worth was first recognized with the promulgation of the "Old Shrines and Temples Preservation Law," in 1872. In 1897, the Commission for the Preservation of Old Temples was established, and the practice of listing specific "National Treasures" instituted.

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In 1938, the 4,913 national treasures listed were distributed as follows: paintings, 870; sculptures, 1907; minor arts, 381; swords, 362; books and manuscripts, 398.

The later lists may well include objects acquired as a result of Japanese aggression; but they also include objects of genuine Japanese origin, or of long-established Japanese ownership which had not been listed in earlier years because of the restriction of the law to ecclesiastical property. Since the records of important art objects in Japan are very complete, the determination of the origin and the ownership for the past half-century of a particular object classified as a national treasure will usually present no difficulties.

C. Discussion FEC

This paper, except for Paragraph g, has had preliminary discussion in committee No. 1 of the Far Eastern Commission,

Who introduced into FEC?

SANACC 385

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where substantial agreement on the principles it embodies has been revealed. In the course of the discussion, it was made clear by the officials of the Department of State who participated that the position of this government had not been formulated and that the views they expressed were personal. Representatives of certain other powers also participated on this basis and abstained from taking a formal position pending receipt of instruction from their governments. Nevertheless, considerable progress toward final agreement appears to have been made, and the draft paper has been referred to the Steering Committee. The early formulation of the position of the United States Government thus becomes a matter of some urgency.

CONFIDENTIALAPPENDIX "B"DISCUSSION

1. This paper is intended to supplement the restitution policies included in FEC 011/12, by establishing certain policies for the replacement of cultural objects wantonly destroyed or removed from Allied countries as a consequence of Japanese aggression.

2. The application of the principles of this paper is limited to the relatively narrow category of cultural objects, defined as items of artistic, historical, religious or educational character, including collections of books, which are irreplaceable through commercial channels. As a result of Japanese action, large numbers of cultural objects were wantonly destroyed or removed from the countries occupied by Japanese forces. The primary importance of these objects did not lie in their economic value but in the public cultural purposes they served. Compensation under ordinary reparation principles is therefore not possible; it can be effected only under a principle of replacement in kind from stocks of similar items in Japan.

3. The policies incorporated in this paper are intended to provide to the countries which have suffered losses of cultural objects as a result of Japanese action, maximum replacement from cultural objects in Japan, consistent with the maintenance in Japan of uniquely valuable cultural treasures of Japanese origin, or of long-established Japanese ownership, and a general stock of cultural objects adequate to meet the requirements of the occupation - particularly with respect to the democratization and reeducation of the Japanese people.

4. The effect of this paper, taken in conjunction with FEC-011/12 which it is designed to supplement, would be to establish two methods of relief for the loss of cultural objects resulting from Japanese occupation of Allied countries. These

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methods would be:

(a) restitution of specific objects if they can be found;

(b) replacement by cultural objects of roughly equivalent character and cultural value, if such equivalents can be found and are appropriately available.

5. The degree of liability of the Japanese government under these procedures would vary.

(a) Liability of the Japanese government under (a) is absolute, under the procedures of FEC-011/12.

(b) Exempted from the liability of the Japanese Government under (b) are any cultural items:

(1) designated by the Japanese Government as national treasures prior to 1931 or designated as Japanese National Treasures after 1931 if they are of Japanese origin or were owned by Japanese public institutions or private owners prior to 1894.

(2) required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation, particularly with respect to the program of democratization and reeducation of the Japanese people.

6. Several of the member nations of the Far Eastern Commission have suggested, with considerable insistence, that cultural objects lost as a result of Japanese aggression be replaced from a general stock of cultural objects collected in Japan regardless of origin or present ownership. The indiscriminate collection of cultural items, regardless of ownership, for the purpose of replacement is not consistent with United States policy. For this reason only two categories of property should be made available for replacement of lost cultural items. They are:

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(1) Cultural items which are the property of public institutions with exceptions listed in Paragraph 5.

(2) Cultural items among the property of individuals whose property is subject to seizure because of their wartime activities. Persons convicted of war crimes by the War Crimes Tribunal may, as a part of their sentence, have their property confiscated. Under the provisions of paragraph e. of the conclusions, such property would be available to replace lost items.

7. Collections of cultural objects owned by public institutions in Japan should not be used to satisfy claims of private individuals for replacement of lost objects. It would be inconsistent with the conservation of cultural property and not consonant with public interest if public collections were dispersed or pass from public to private possession. It would deprive not only the people of enemy nations but also the public of all nations of access to these materials. It is obvious that collections of public institutions as the Uffizi Palace Museum in Florence and the Kaiser Friedrich Museum in Berlin are an international heritage preserved under public trust for all people. This is equally true of the Imperial Household Museums of Tokyo and Nara, although these collections may not be as generally known. Following World War I the only replacement of cultural property made was that of the collections of the University of Louvain Library (Article 247 of the Treaty of Versailles).

CONFIDENTIALCOPY NO. 34SANACC 385/115 December 1947Page 10STATE-ARMY-NAVY-AIR FORCE COORDINATING COMMITTEEREPLACEMENT OF CULTURAL OBJECTS (JAPAN)

Reference: SANACC 385

Note by the Secretaries

The enclosure is circulated to the Committee for information and has been referred to the Subcommittee for the Far East for consideration in connection with their study of SANACC 385.

W. A. SCHULGEN

V. L. LOWRANCE

J. P. GARDINER

Secretariat

FW 894, 403/2-2448
CONFIDENTIAL P. 10

SANACC 385/1CONFIDENTIAL

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ENCLOSURE

From: SCAP Tokyo Japan

To: CSCAD

Nr: CS 7103

4 December 1947

Reurlet file AGAO-S007 (27 October 47) CSCAD, 29 October 1947, subject, "Request for comment on SANACC 385," recommend this matter be deferred until peace treaty is signed and administered by an international cultural objects tribunal consisting of specialists, established for the purpose of adjudicating such claims.

End.

CM-IN-790 (5 Dec 47)

SANACC 385/1

- 10 -

Enclosure

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CONFIDENTIALCOPY NO. 1SFE 2022 January 1948Page 1

SFE

STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EASTREPLACEMENT OF CULTURAL OBJECTS (JAPAN)References: a. SANACC 385
b. SANACC 385/1Note by the Secretary

The enclosure, a memorandum by the CAD Member, is circulated for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
Secretary

FW 894.403/2-2448

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E N C L O S U R E

MEMORANDUM BY THE CAD MEMBER

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

1. The CAD Member cannot approve SANACC 385.
2. It is our view that the preference shown to claimant countries by the presumption established in paragraph 4 d of the conclusions would serve to alienate Japanese good will from the United States. This preference is considerably broader than that established in paragraph 13, SWNCC 227/22.
3. The principle of restitution "in substantial equivalents" for certain cultural objects serves to weaken the position taken with respect to "Final Restitution Policy" in SWNCC 227/22, and if approved may suggest a precedent for either restitution in kind or current production reparations in Japan.
4. Action on this matter should be suspended until a general, revised policy on restitution is forthcoming. The matter is now pending as FEC 011/42. The Replacement of Cultural Objects is not a matter of urgency, is not important to the economy of Japan or the other countries involved, and would severely tax the administrative and technical facilities of SCAP at this time.
5. I propose that SFE recommend to SANACC that SANACC 385 be withdrawn from consideration by the Committee.
6. The P&O and AAF members concur.

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SFE 202/19 February 1948Pages 1 - 3, incl.STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EASTREPLACEMENT OF CULTURAL OBJECTS (JAPAN)References: a. SANACC 385
b. SANACC 385/1
c. SFE 202Note by the Secretary

The enclosure, a memorandum by the State Member, SANACC, and a revision of the Conclusions of SANACC 385 representing the position of the State Department on this policy, is circulated herewith for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
SecretarySFE 202/1CONFIDENTIAL

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E N C L O S U R E

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

Memorandum by the State Member, SANACC

1. State Department representatives have participated in further discussion on this subject on an informal basis at the sub-committee level in the FEC. As a result of these discussions certain changes in the original draft of SANACC 385 appear desirable and they are included in the following revised conclusion. The most important revision is that which limits the replacement of cultural objects to those which has previously served a public cultural purpose. This provision will limit the claims for replacement which may be presented by the claimant countries to items of sufficient importance and value to have been included in their public libraries, museums and educational institutions. Only those items which cannot be replaced through normal channels of production and commerce would be replaced under this policy. Additional protection for the cultural heritage of the Japanese people is provided by broadening the categories of art objects which will not be used for making replacements.

2. It is believed that the change in the recommended policy will increase its feasibility from an administrative point of view.

3. It is recommended that SANACC 385 be amended by the substitution of the following for paragraph 4:

CONCLUSIONS

"4. It is concluded that:

"a. This policy is supplementary to and not in derogation of policy decisions relating to restitution of looted property.

"b. For the purposes of this policy, cultural objects are defined to include all movable objects of artistic,

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historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

"c. The Japanese Government should be required to replace cultural objects which had previously served public cultural purposes; and, which have been removed from allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories, in accordance with the following provisions:

"(1) Allied countries attacked or occupied by the Japanese which claim replacement should show, in reasonable detail, amounts, kinds and quality of cultural objects lost.

"(2) In cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country.

"(3) Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of approximately equivalent character and cultural value obtainable in Japan.

"(4) Replacement in approximate equivalents as indicated in para. (3) above should not be made from:

"(a) Cultural items designated by the Japanese Government as National Treasures (Kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (Kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

"(b) Early collections significant for their unity and completeness, such as the Nara Complex of

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the Horiuji, Yakushiji, Toshidaiji, Todaiji, Kosokuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes, in so far as replacement can be made from other sources.

"(c) Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation particularly with respect to the program of democratization and education of the Japanese people."

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT
CONFIDENTIAL

TO : FE - Mr. Butterworth

DATE: March 10, 1948

FROM : FE - Mr. Hamilton

SUBJECT: Replacement of Cultural Objects (Japan) (SANACC 385 and SFE 202 Series)

Mr. Barnett told me this morning that he felt the Chinese would come to you directly to express their interest in this subject.

The precedents for action along the lines proposed in the attached paper are Article 247 of the Treaty of Versailles (which provides for replacement of cultural property to the University of Louvain Library) and Article 12 of the Italian Peace Treaty (which provides for replacement to Yugoslavia) and Article 37 of the Italian Peace Treaty (which provides for replacement to Ethiopia). These precedents are more precise and definite than would be the case in the proposal under consideration for Japan. I suggest that you raise with the Chinese the question whether they could be precise in what they have in mind: Do they have in mind the libraries of certain specific Chinese universities, etc.? How extensive is the replacement program for each of these libraries? Obviously, when a problem is stated precisely the difficulties of administration are less than when the problem is stated in very general language. *We should, I believe, indicate sympathetic attitude in principle.*

Please return these papers to me for further consideration after the Chinese have called on you.

M.H.

any United Nation

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. J. Allison - NA
 Mr. R.H. Whitman - CE
 FROM : R.W. Barnett - CE
 SUBJECT: Replacement of Lost Cultural Objects

DATE: 31 March 1948

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file

1. You are aware that the Reparations Committee has suspended discussion of 61-272/1 pending diplomatic talks between the Chinese Embassy and the State Department on the subject of Replacement from Japan of Lost Cultural Objects.

2. On Wednesday, March 31, Minister Yang and Mr. Anthony Koo called by my office to inform me that the Embassy intends in the near future to make an approach to the Department.

3. It is probable that when the meeting takes place, a Chinese representative will make the following points:

a. The replacement of lost cultural objects proposal now being negotiated in the Far Eastern Commission would benefit China in a very substantial way; other countries occupied by the Japanese would be unlikely to obtain more than incidental benefits;

b. China's interest in the proposal lies in its desire to accomplish rehabilitation of the cultural institutions and resources which were damaged or destroyed by the Japanese;

c. There exists in China both within the Government and amongst the intelligentsia generally a strong and well-articulated interest in obtaining from Japan replacements for lost cultural objects or collections, particularly libraries for the principal government and private educational institutions;

d. The cultural relationship of China to Japan is a unique one, similar in many ways to the relationship of the U.K. to the U.S., making a program of replacement in equivalents administratively feasible;

e. The failure of the U.S. to cooperate in putting in motion the projected program would be misunderstood and profoundly resented by Chinese public opinion.

3. The Chinese representative may desire to discuss with the Department several details which appear in Inclosure A and Inclosure B of 61-272/1. Inclosure A is a proposed policy approved by the majority of the Far Eastern Commission countries. Inclosure B is a proposal approved by the U.K. and supported on a tentative and informal basis by the U.S. delegation (the U.S. delegation has been authorized to make Inclosure B a basis for discussion by Mr. Saltzman's office).

The Chinese representative will refer to paragraph 3 of Inclosure A and paragraph 3.a. of Inclosure B. He will maintain that the later provision

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introduces a restriction upon claims which may be submitted in connection with the replacement program, which in effect will do a serious injustice to China where many of the most precious libraries and art collections were privately owned and served the purposes of private Chinese scholars and connoisseurs.

The Chinese representative will then refer to paragraph 6 of Inclosure A and paragraph 6 of Inclosure B. He will point out that the former version of paragraph 6 which is acceptable to the Chinese Government establishes a restriction upon the cultural property in Japan available for disposition under the terms of a replacement program. He will assert that this restriction is adequate counter balance for the widening of recognized claims which the Chinese asked for in paragraph 3 of Inclosure A.

4. There is at present no SANACC policy regarding Replacement of Lost Cultural Objects. The problem is under consideration in SANACC. The Department of the Army objects to the policy proposal which has been submitted by the State Department and believes that the problem of replacement of lost cultural objects should be dealt with at the peace conference. If the Chinese Embassy is able to persuade the Department that the Far Eastern Commission should take action on this matter, steps should be taken to obtain at an early time SANACC approval of a policy which can be made the basis for responsible discussion of the matter in the Far Eastern Commission or, if preferable, further diplomatic talks with the Chinese. It is my understanding that OE has communicated with NA with the view of shifting to it responsibility for handling this matter. The economic implications of the program are, of course, negligible.

FBIS
Far Eastern Section
China--Central Government
Mar. 18, 1948

Excerpt

CHINESE ANTIQUITIES - - The Chinese Mission in Japan has submitted to SCAP and to the Allied Far Eastern Commission a request that the Japanese Government return all cultural objects taken from China since 1895. SCAP has ignored this request and issued an order to the Japanese Government to report only books and cultural objects removed from China in the last war. The Chinese Government has compiled a list of 15,225 items taken from China between 1895 and 1937, and 3,607,074 items and 1,870 cases of rare books taken in the last 8 years. Exclusive of the Peking Man, these objects are estimated at U.S. \$3,300,000. Thus far only 71,000 books have been returned to Central and Nanking Universities and the Institute of Asiatic Studies. The Foreign Office is negotiating with Italian and German authorities for return of objects taken by their respective nationals. (Nanking in English, Mar. 16, 1948--H)

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together in face comm. threat
K
Restitution - use of secured funds -
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Hopes US can line up 10 countries
to act on gold and silver
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Japan as military aggressor - US objects
to aggression on any terms, at same time
US feels Japan must have self and economy.
1) prerequisites for democracy Passo et al
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K
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March 8, 1948.

NA - Mr. Allison

NA - R Fearey

State Department Position on SFE 202/2, "Replacement of Cultural Objects".

This problem has rather long, parallel histories in FEC and in SANACC.

Taking up the FEC situation first, the US introduced a paper on this subject in Committee No. 1 a good many months ago on an informal basis, no agreement having yet been achieved on the matter within the US Government. The paper provided for a fairly liberal replacement of lost cultural objects by Japan, but with safeguards to ensure that Japan was not deprived of too large a proportion of her cultural possessions through a program amounting to "reverse looting". Although the paper was, therefore, fairly generous, China and some of the other countries which had suffered extensive looting by the Japanese took the position that it was not generous enough and sought to broaden its scope. The result was the preparation by the Committee of majority and minority reports (CI-272/1, 13 January 1948, attached), the majority report being supported by China, the Netherlands and the Philippines, and the minority report, offering a more restricted program, being supported by the US and the UK. The essential difference between the two was that the minority report held that objects on which claims for replacement might be made must have served "public cultural purposes", while the majority report contended that privately-owned cultural objects should be subject to replacement as well as publicly-owned objects, but that publicly-owned objects in Japan should not be used to replace privately-owned objects looted from the devastated countries and subsequently lost or destroyed. The matter is now pretty well stalemated in the FEC with neither side showing any signs of giving in.

On the SANACC front the first step in the history of the problem was the submission by the State Department of SANACC 385 (attached) in October of 1947, providing substantially the same program as the one which the US delegation had been advocating in the FEC. This paper was referred to SFE for a report and after a month's interval SFE 202 (attached) was submitted containing the CAD position on the paper. This position was that the proposed replacement program would alienate Japanese goodwill toward the US and would

impose

- 2 -

impose a heavy administrative burden on SCAP, and that the entire subject should therefore be postponed until the peace conference. SCAP took substantially the same position in a telegram received about the same time. The State Member replied about a month later (SFE 202/1, attached), that State could not agree that the matter should be postponed but that it would agree to restrict the scope of the program even further so that it would be less onerous for Japan and would afford more protection for the cultural heritage of the Japanese people. The State Member accordingly presented a modified program which broadened the categories of Japanese art objects which could not be taken for replacement purposes. Some two weeks later the CAD Member submitted SFE 202/2 (attached) in which he stated that he could not accept either the original or the modified version of the replacement program, for five stated reasons.

The most important of these and the one which CAD (and P&O) emphasizes most, is that the US would lose more goodwill in Japan by a cultural replacement program than it would gain goodwill or other practical advantage as a result of such a program from the countries which would benefit from it. My own view is that this argument, besides being entirely cynical, is unsound, and that it is more important that we keep the goodwill of China and our other Allies than that we should lean over backwards at their expense to favor the Japanese. It is to be remembered that the Italian and other satellite treaties contain cultural objects replacement provisions, and I believe it would be an exaggeration to assume that we would incur serious illwill in Japan as a result of our support of a moderate and reasonable cultural objects replacement program there. On the other hand we would unquestionably incur the strong enmity of several of our Allies if we refused to permit such a program.

The second CAD argument is that a replacement of cultural objects program would set an undesirable precedent for similar programs for the replacement of many other goods and commodities taken from Allied countries by the Japanese and subsequently lost or destroyed. This argument has more validity to my mind than the first but still is not very convincing. The cultural objects replacement provision in the satellite treaties is only one of several indications that cultural objects constitute a unique category of goods by general recognition, and that specific provision for their replacement could not well be, and is not likely to be, cited as an argument for replacement of other categories of goods such as industrial raw materials or the like.

The third

- 3 -

The third CAD argument, that the program would be difficult to administer, undoubtedly has a certain amount of truth in it. A relatively large amount of administrative labor would be required for the results achieved. All that is really necessary, however, is that the principle should be established and the work begun, and the amount of labor this would require would not seem so great as to necessitate postponing the matter.

CAD's fourth argument is that the provisions in the State draft that "in cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country" gives undue favor to the claimant. Since we have agreed at Mr. Draper's insistence on the deletion of a similar provision from the restitution paper, I should think we might agree to delete it from this paper also.

Regarding CAD's fifth argument, that compensation by the Japanese Government for private Japanese required to turn over art objects for replacement purposes would aggravate the Japanese currency inflation, seems to be based on an exaggerated conception of the scope of this program as it would actually work out. Due to incomplete records, and the loss of a large proportion of the records which did exist, the claimant countries are going to have a very difficult time presenting documentary proof of loss of more than a relatively small portion of their total losses. There is now in Tokyo an entire warehouse full of art objects known by everyone concerned to have been looted by the Japanese from China but the Chinese are unable to present evidence that the property is actually theirs, with the result that it has been impossible to restore it. Even if a large amount of Japanese property is eventually provided in replacement for lost or destroyed looted objects, which is not to be expected, it is unlikely that the amount of compensation provided for the portion of the property obtained from private sources would be large enough to have any appreciable effect on the Japanese currency situation.

On the basis of the above five objections, and the fact that the State Department sticks by its view that the paper should not be withdrawn, the CAD Member proposes that a split report be forwarded by SFE to SANACC. I see no alternative but for the State Department to approve this procedure if the problem is to be decided one way or the other. The only reason for not approving it would be to hold the paper in SFE until Mr. Kennan returns and his recommendations

have been

- 4 -

have been acted on. The machinery is likely to move so slowly in any event, however, that I personally do not see any reason why the split reports should not go to SANACC or why we should not continue our efforts within the U.S. Government to reach an agreed position. We should take no further steps in the FEC, of course, until a US position has been arrived at.

NA:RAF/hhc

Clearing Offices

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May 13, 1948

NA - Mr. Allison

Dispatch of Attached Messages.

Although the attached messages to Tokyo and Nanking are largely self-explanatory, the following additional background material may be helpful.

The United States and the United Kingdom, on the one hand, and China, the Netherlands and the Philippines, on the other, have for some time been stalemated in Committee No. 1 of the FEC on alternative approaches to the problem of a program of replacement of cultural objects lost or destroyed as a result of Japanese action. The United States position has been maintained informally since the SANACC paper on the subject has not yet been approved. On May 4 the Chinese Ambassador called on Mr. Saltzman to emphasize the importance in which China held this subject and to enlist our sympathy and support for a comprehensive replacement program. He was assured by Mr. Saltzman that the United States Government would give the matter its careful and immediate consideration.

On April 23 an officer of NA, in an effort to obtain additional information on the underlying issues, discussed the matter with Mr. Verner Clapp, Chief Assistant Librarian of the Library of Congress, who had just returned from a trip to Japan and China. Mr. Clapp's views, based, he emphasized, on his impressions during a rather brief trip, were that the Chinese had not suffered such extensive cultural losses as has been commonly assumed, and that they were not greatly interested in a replacement program. A memorandum of the conversation with Mr. Clapp is attached.

It has appeared, particularly following the conversation with Mr. Clapp, that there are still two important unknowns regarding this problem on which the United States Government should seek more light before arriving at a final position. The first is the actual extent of looting and destruction of cultural objects in China and of the interest of the Chinese educated classes and general public in a Japanese replacement program, and the second is the actual volume of Japanese art objects which would be eligible for removal under the draft policy paper informally supported by the United States in Committee No. 1. Without this information it would seem that we would run the risk, on the one hand, of unnecessarily alarming and antagonizing the Japanese by supporting a more extensive replacement program than the Chinese and other claimants would later wish or be able to present actionable claims, or, on the other hand, of sanctioning the removal of large quantities of Japanese art treasures to the lasting

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detriment

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detriment of Sino-Japanese and Japanese-American relations. The purpose of the attached messages is to obtain this information.

It is not anticipated that the Army will object to transmitting the message to SCAP, notwithstanding the fact that they have previously opposed the institution of a replacement program until after Japanese peace settlement, but if they do it is believed that the Department should insist that it go forward. The essential reasonableness of the Chinese' and other devastated countries' desire that a replacement program be agreed to and instituted as soon as possible, the stalemate in the FEC, the assurances given Ambassador Koo, and the indefinite postponement of the Japanese peace settlement would seem to require that the United States arrive at a firm position on this problem, in the light of the best information available both in Washington and in the field, in the shortest possible time.

It is requested if any of the clearing officers or O have questions regarding the proposed messages that they get in touch at once with NA so as to reduce the possibilities of delay to a minimum.

NA:RAFearey:lt

CONFIDENTIALDRAFT TELEGRAM (or Airmail Letter)
TO SCAP

(through Army)

State advises that since receipt urad GS 7103, 7 Dec 1947, commenting on SANACC 385 "Replacement of Cultural Objects" and recommending that matter be deferred until after peace settlement, pressure for cultural replacement program has mounted in FEC. Chinese Ambassador recently made formal representations to State contending that Chinese educated classes greatly concerned over matter and failure to institute comprehensive cultural replacement program would occasion serious disillusionment and resentment in China. State considers it essential from political point of view, in light above factors and indefinite postponement peace treaty, that replacement program be decided upon at this time and its implementation begun at maximum administratively feasible rate.

Discussions in ad hoc subcommittee of Reparations Committee of FEC has resulted in preparation of majority and minority draft policy statements. Latter, supported informally by US representatives and formally by UK, and identical with an amended version of SANACC 385 now before SANACC Subcommittee for Far East (amended to limit cultural objects for which replacement may be claimed to those which have previously served a public cultural purpose and to extend the categories of Japanese art objects which may not be used to provide replacements), reads as follows:

"a. This

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"a. This policy is supplementary to and not in derogation of policy decisions relating to restitution of looted property.

"b. For the purposes of this policy, cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

"c. The Japanese Government should be required to replace cultural objects which had previously served public cultural purposes; and which have been removed from allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories, in accordance with the following provisions:

"(1) Allied countries attached or occupied by the Japanese which claim replacement should show, in reasonable detail, amounts, kinds and quality of cultural objects lost.

"(2) In cases of doubt concerning the adequacy of evidence in support of a claim, the presumption should be in favor of the claimant country.

"(3) Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of approximately equivalent character and cultural value obtainable in Japan.

"(4) Replacement in approximate equivalents as indicated in para. (3) above should not be made from:

"(a) Cultural items designated by the Japanese Government as National Treasures (Kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (Kokuho) after 1931, if they are of Japanese origin or were owned

by Japanese

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by Japanese public institutions or private individuals prior to 1894.

"(b) Early collections significant for their unity and completeness, such as the Nara Complex of the Horiuji, Yakushiji, Toshodaiji, Todaiji, Kojukuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes, in so far as replacement can be made from other sources.

"(c) Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation particularly with respect to the program of democratization and education of the Japanese people."

Majority draft supported by China, Netherlands and Philippines differs in paragraphs ^c 3 and ^{c(3)} 4, which read as follows:

^c "3. The Japanese Government should be required to replace cultural objects which have been removed from Allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories in accordance with the following provisions.

^{c(3)} "4. Claims for replacement of specific cultural objects when approved, should be satisfied by the Japanese Government by providing cultural objects of approximate equivalent character and cultural value obtainable in Japan. Property belonging to Japanese institutions, except for duplicates, should not be used to fulfill claims for replacement of cultural objects which were privately owned and which have not served any public cultural purposes."

In his

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In his recent formal approach to State, Chinese Ambassador said his Govt prepared accept US position if first part para ^ε 3 revised to read: "The Japanese Govt should be required to replace cultural objects which ^A (ε) were publicly owned or, if privately owned, had been accessible to the public or had served to demonstrate the evolution of the national culture and art of the claimant countries or had been used for other public cultural purposes, and..."

State is requesting Nanking Embassy's estimates of relative quantities of objects which would be subject to replacement under three proposals quoted above. Also querying Embassy on general acceptability in China of recent informal proposal by Dr. Hu Shih that Japanese be required furnish microfilms of Japanese collections Chinese books in Japan to China, in preference transferring books themselves. To further assist in determination practical, internationally supportable US position this issue, which will satisfy replacement claims to maximum extent feasible but not open Japan up to "reverse looting" or involve such extensive removals as would constitute future source of ill will, State desires your best estimate total quantity and value Japanese art objects which would be eligible for removal under para ^{ε(4)} 7 of minority and majority proposals

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proposals above and the proportion of Japan's total cultural store which the eligible objects would compromise. Your comments on any other aspect this problem in light developments noted above would be appreciated.

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DRAFT TELEGRAM TO SCAP
(through Army)

State advises that since receipt urad CS 7103, 7 Dec 1947, commenting on SANACC 385 "Replacement of Cultural Objects" and recommending that matter be deferred until after peace settlement, pressure for cultural replacement program has mounted in FEC. Chinese Ambassador recently made formal representations to State contending that Chinese educated classes greatly concerned over matter and failure to institute comprehensive cultural replacement program would occasion serious disillusionment and resentment in China. State considers it essential from political point of view, in light above factors and indefinite postponement peace treaty, that replacement program be decided upon and its implementation begun at maximum administratively feasible rate as soon as possible.

Discussions in ad hoc subcommittee of Reparations Committee of FEC has resulted in preparation of majority and minority draft policy statements. Latter, supported informally by US representatives and formally by UK, and identical with an amended version of SANACC 385 now before SANACC Subcommittee for Far East (amended to limit cultural objects for which replacement may be claimed to those which have previously served a public cultural purpose and to extend the categories of Japanese art objects which may not be used to provide replacements), reads as follows:

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Majority draft supported by China, Netherlands and Philippines differs in paragraphs 3 and 6, which read as follows:

"3.

"6.

In his recent formal approach to State, Chinese Ambassador said his Govt prepared accept US position if first part of para 3 revised to read: "The Japanese Govt should be required to replace cultural objects which (a) were publicly owned or, if privately owned, had been accessible to the public or had served to demonstrate the evolution of the national culture and art of the claimant countries or had been used for other public cultural purposes, and..."

State not convinced loss and destruction Chinese cultural possessions, and interest of Chinese educated circles in Japanese replacement program, are as great as Chinese representatives here maintain, and is making inquiries in this regard of Embassy at Nanking. Embassy is also being queried on relative quantities of objects which would be subject to replacement under three proposals quoted above, and on general acceptability in China of Dr. Hu Shih's proposal Japanese be required furnish microfilms of Japanese collections Chinese books in Japan to China, in preference transferring books themselves. To further assist in determination practical, internationally supportable position on cultural replacement issue which will satisfy replacement claims to maximum extent feasible but not open Japan up to "reverse looting" or involve such extensive removals as would constitute future source of ill will, State desires your best estimate total quantity and value Japanese art objects which would be eligible for removal

under

- 3 -

under para 7 of minority and majority proposals above and the proportion of Japan's total cultural store which the eligible objects would comprise. Your comments on any other aspect this problem in light developments noted above would be appreciated.

NA:RAFearey:mp
5-7-48

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Airgram
~~DRAFT TELEGRAM~~ TO NANKING

Probably will be made on our own

United States

The DEPT desires *the* EMB's assistance and advice in *the* formulation of US policy *regarding proposals for the* replacement with comparable Japanese objects of Chinese and other cultural objects (books, paintings, porcelains, etc.) lost or destroyed as result of Japanese action.

The Chinese representatives *on the* FEC have led *the* Netherlands and Philippines in efforts *representatives* to secure broad replacement program, and *the* Chinese Ambassador recently made *a* formal approach to DEPT to request our sympathy and support for such a program. *The* Ambassador stated that *the* Chinese educated classes *were* greatly concerned over this matter and that failure to institute *a* comprehensive replacement program would occasion serious disillusionment and

resentment in China. *a high library of Congress* ~~An American~~ official recently returned *a brief* from *confidentially that* a trip to China, however, has stated it was his impression *the* that Chinese have lost relatively little of their store of cultural possessions *(he was referring particularly but not solely to books)* and that educated circles were not greatly interested in a replacement program. This report conflicts

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the with general assumption here that China suffered extensive losses. *The* US representatives *on the* FEC have advocated more restrictive program than Chinese desire, designed to satisfy legitimate claims for replacement *the* to maximum feasible extent without opening Japan up to "reverse looting" or sanctioning such extensive removals as would constitute future source of ill will.

the Specifically Chinese, Netherlands and Philippines position

the FEC is that

"The Japanese Government should be required to replace cultural objects which have been removed from Allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories. . . .Property belonging to Japanese public institutions, except for duplicates, should not be used to fulfill claims for replacement of cultural objects which were privately owned and which have not served any public cultural purposes."

US

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- 2 -

^{The} US position, supported by ^{the} UK, has been that

"The Japanese Government should be required to replace cultural objects (A) which have previously served public cultural purposes, and (B) which have been removed from Allied countries by the Japanese or their agents but have not been found within a reasonable period or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories."

^{that} In his recent formal approach to ^{the Dept. the} ~~State~~ Chinese Ambassador said his Govt ^{were} prepared to accept US position if (A) revised to read "which were publicly owned or, if privately owned, had been accessible to the public or had served to demonstrate the evolution of the national culture and art of the claimant countries or had been used for other public cultural purposes."

Both sides agree ^{that} replacement should not be made from

"a. Cultural items designated by the Japanese Government as National Treasures (kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

"b. Early collections significant for their unity and completeness, such as the Nara Complex of the Horiuji, Yakushiji, Toshidaiji, Todaiji, Kosokuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes, in so far as replacement can be made from other sources.

"c. Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation particularly with respect to the program of democratization and education of the Japanese people."

In its efforts to arrive at a realistic, internationally supportable position on this problem the Dept would appreciate receiving your best estimates on the following topics.

1. ^{The} General extent ^{of} cultural looting and destruction by ^{the} Japanese in China.

2. ^{The degree of} Interest of ^{the} Chinese educated classes and general public in a Japanese replacement program.

3. ^{The} Relative quantities of objects which would be ^{eligible} subject for replacement if ^{the} program ^{were} limited to objects which had served public cultural purposes, as proposed by US and UK, if program ^{were} not so limited, as proposed by China, ^{the} Netherlands and ^{the} Philippines in ^{the} FEC, or if limited as more recently proposed by Ambassador Koo. ^{it were}

4. ^{The} Proportion of instances in which ^{the} Chinese would be able to present specific, detailed, actionable claims for ^{the} replacement of items held to have been lost or destroyed by Japanese.

5. Probable

- 3 -

5. ^{The} Probable reaction of Chinese educated circles as whole
to ^{the} plan advanced by ^{Dr.} Hu Shih ^{to the above mentioned official of the Library of Congress} to require ^{the} Japanese to furnish
microfilms of valuable Chinese and other books in Japan to
China and other claimants rather than ^{in preference to transferring the} ~~transfer~~ books themselves.
6. ^{The} General desirability and practicability of ^{the} replacement
programs presently supported by China and ^{the} US, ~~respectively.~~

~~REC~~NA:RAFearey:mp
5-7-48

CA FE OE O

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

CONFIDENTIAL

TO : FE - Mr. Penfield

FROM : FE - Mr. Hamilton *m.m.H.*

SUBJECT: Replacement of Cultural Objects (Japan) (SANACC 385 and SFE 202 Series)

FAR EASTERN AFFAIRS
APR - 6 1948
DIRECTOR
Department of State

DATE: April 6, 1948

*File
HW*

I have held this paper pending the return of Mr. Kennan.

In the light of his report, any action on this subject, if it is to be taken, should preferably be taken before the peace treaty. This runs counter to SCAP's view that this matter should be left for handling in the peace treaty.

This is one of those unfortunate cases where US members of FEC committees have taken action before the US Government has authorized action or adopted a position.

While in principle something along the proposed line seems all right, I think we should know more about what is actually involved before we reach any agreement. I understand that the paper is designed principally to enable Chinese libraries, destroyed by the Japanese, to obtain from Japan as replacements similar library material. Just what is involved? What particular libraries? How many books and what type of books? Some one told me that Hu Shih and some other Chinese scholars did not want to obtain as replacements in Chinese libraries the actual books in Japanese libraries -- they wanted microfilms of the books in Japanese libraries.

On March 10 Mr. Barnett told me that he felt that the Chinese would come to Mr. Butterworth on this subject. So far as I know the Chinese have not taken the matter up with FE. When the Chinese next raise the question, I suggest that an effort be made to get precise information.

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STANDARD FORM NO. 64

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Office Memorandum • UNITED STATES GOVERNMENT

TO : NA - Mr. Allison
FROM : CA - Mr. Ringwalt
SUBJECT: Replacement of Lost Cultural Objects

DATE: April 9, 1948

File HW

In the opinion of CA Mr. Fearey has analyzed the situation well in his memorandum to you of March 8, 1948. CA concurs in Mr. Fearey's conclusions which are set forth therein.

It is apparent that a compromise will have to be reached between the Chinese position that the Japanese Government should return all cultural objects taken from China since 1895, which would appear to be unreasonable, and the position of SCAP, which would appear to reflect undue concern over the possible alienation of Japanese goodwill toward the United States.

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J. Allison

13 February 1948

MEMORANDUM FOR General McCoy

From: R. W. Barnett

Subject: Reparations Committee Meeting of 11 February 1948

1. The Reparations Committee discussed at some length its two most troublesome current problems, JAPANESE TECHNICAL INFORMATION (C1-280/1, C1-280) and REPLACEMENT OF LOST CULTURAL OBJECTS (C1-272/1, C1-272). It did not discuss the U. S. proposal dealing with the DEFINITION OF JAPANESE OCCUPATION COSTS (FEC-288).

2. The State Department, as you know, has taken steps to put before SANACC a proposal dealing with the problem of Japanese scientific and technical processes to which FEC countries desire to gain access in Japan. The SANACC machinery has not yet started to move. It is hoped that when it does, representatives of the JCS can participate in discussion of the problem of what administrative or military complications might arise from giving to Allied personnel, as has been proposed in JAPANESE TECHNICAL INFORMATION, the right to make drawings and take details on Japanese technical processes. Although it is well known, both in the Reparations Committee and throughout the U. S. Government, that an executive order of the President's has made it American policy that enemy information on technical and scientific processes should be made freely available to all the Allies, members of the Reparations Committee are unaware of steps which the State Department has found it necessary to take in establishing a U. S. Government position on this matter. They know only that at the present time the U. S. member has no position on the simple, but concrete proposals which have been made by the Australian, Philippine and New Zealand members and which have been agreed to in principle by all the other members of the Reparations Committee. In reply to repeated requests for an indication of U. S. views, the U. S. member has stated that while he could say nothing at present, he hoped he would have a position by the next meeting of the Reparations Committee on February 18. The Committee was divided in its opinion as to whether its policy proposal should be held over to await the U. S. views, or whether it should be sent forward to the Steering Committee at once. After tedious discussion of this procedural question, a vote was taken, with six countries favoring the forwarding of the policy proposal and five countries abstaining. This proposal will, therefore, now appear on the agenda of the Steering Committee.

3. The Committee discussed the majority and minority reports on a policy dealing with replacement of lost cultural objects. At the last meeting of the Reparations Committee the Italian Treaty was cited as a justification for the broadest kind of construction of how a program of replacement of cultural objects should operate. The U. S. member at this meeting challenged any such

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C O N F I D E N T I A L

- 2 -

interpretation of the intent of the Italian Treaty. He felt that some explanation should be given regarding the real difference between the Italian Treaty and the two alternative pending FEC policy proposals. He pointed out that the Italian Treaty provided that only cultural objects actually "removed" from an occupied country to Italy should be replaced in equivalents out of such art objects in Italy which might belong to the cultural heritage of the occupied country. Proof of removal was required. The policies under consideration by the Reparations Committee would allow claim for lost cultural objects removed or destroyed. It was, therefore, a much more sweeping policy. To restrict it in such a way as to make its implementation administratively practical, the U. S. and the U. K. had felt that claims should be recognized only for such lost cultural objects as had served "public purposes" in the occupied country. It was to this restrictive provision in the U. K.-U. S. draft that the majority of the Reparations Committee had taken exception. The remarks of the U. S. member came as a surprise to Committee members who had been believing that the Italian Treaty was broader and not, as is the case, far more narrow in its terms. Seemingly out of pique, the Netherlands member expressed the opinion that in discussions of this problem the U. S. and the U. K. had shown a particular interest in protecting Japan, whereas other countries were interested in recognizing the proper rights of the countries which had been occupied and devastated by Japan. Both the U. K. and the U. S. members protested this interpretation of their position. The U. S. member, in fact, pointed out that no other member of the Committee had taken a greater interest over a longer period of time in study of the feasibility of a program of replacement of lost cultural objects. He noted that the FEC had at present a policy of restitution which required the return of identified looted cultural objects; the FEC was working on a reparations policy the purpose of which was to compensate claimant countries for all types of losses and damage. That a separate program of replacement of lost cultural objects was under consideration at all indicated a recognition of the special interests of occupied countries in the rehabilitation and restoration of their respective cultural heritages.

The State Department has approved of the minority report on replacement of lost cultural objects. That position, however, has not yet received SANACC sanction.

4. No other business was discussed.

C O N F I D E N T I A L

CONFIDENTIALCOPY NO. 18SFE 2022 January 1948Page 1STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EASTREPLACEMENT OF CULTURAL OBJECTS (JAPAN)References: a. SANACC 385
b. SANACC 385/1Note by the Secretary

The enclosure, a memorandum by the CAD Member, is circulated for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
Secretary

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E N C L O S U R E

MEMORANDUM BY THE CAD MEMBER

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

1. The CAD Member cannot approve SANACC 385.
2. It is our view that the preference shown to claimant countries by the presumption established in paragraph 4 d of the conclusions would serve to alienate Japanese good will from the United States. This preference is considerably broader than that established in paragraph 13, SWNCC 227/22.
3. The principle of restitution "in substantial equivalents" for certain cultural objects serves to weaken the position taken with respect to "Final Restitution Policy" in SWNCC 227/22, and if approved may suggest a precedent for either restitution in kind or current production reparations in Japan.
4. Action on this matter should be suspended until a general, revised policy on restitution is forthcoming. The matter is now pending as FEC 011/42. The Replacement of Cultural Objects is not a matter of urgency, is not important to the economy of Japan or the other countries involved, and would severely tax the administrative and technical facilities of SCAP at this time.
5. I propose that SFE recommend to SANACC that SANACC 385 be withdrawn from consideration by the Committee.
6. The P&O and AAF members concur.

CONFIDENTIALCOPY NO. 56SANACC 385/1

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15 December 1947Page 10STATE-ARMY-NAVY-AIR FORCE COORDINATING COMMITTEEREPLACEMENT OF CULTURAL OBJECTS (JAPAN)

Reference: SANACC 385

Note by the Secretaries

The enclosure is circulated to the Committee for information and has been referred to the Subcommittee for the Far East for consideration in connection with their study of SANACC 385.

W. A. SCHULGEN

V. L. LOWRANCE

J. P. GARDINER

Secretariat

SANACC 385/1CONFIDENTIAL

FD 894.403 / 4948 CONFIDENTIAL FD

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E N C L O S U R E

From: SCAP Tokyo Japan

To: CSCAD

Nr: CS 7103

4 December 1947

Reurlet file AGAO-3007 (27 October 47) CSCAD, 29 October 1947, subject, "Request for comment on SANACC 385," recommend this matter be deferred until peace treaty is signed and administered by an international cultural objects tribunal consisting of specialists, established for the purpose of adjudicating such claims.

End.

CM-IN-790 (5 Dec 47)

SANACC 385/1

- 10 -

Enclosure

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COPY NO. _____

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SFE 202/219 February 1948Pages 1 and 2.STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EASTREPLACEMENT OF CULTURAL OBJECTS (JAPAN)

References: a. SANACC 385
b. SANACC 385/1
c. SFE 202
d. SFE 202/1

Note by the Secretary

The enclosure, a memorandum by the CAD Member, is circulated for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
Secretary

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E N C L O S U R E

MEMORANDUM BY THE CAD MEMBER

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

1. The CAD member neither favors the original proposal contained in SANACC 385 nor the modified version contained in SFE 202/1 for the following reasons:

a. The U. S. has agreed that the Japanese will make reparations in kind and that the Japanese will restore identifiable looted property. Going beyond these two agreements and making restitution in kind of cultural objects could serve to alienate Japanese good will from the U. S. and set a precedent for restitution in kind of all types of material and commodities.

b. The limited quid pro quo accruing to the U. S. from the FEC nations concerned would appear to be more than offset by the alienation of Japanese good will towards the U.S.

c. The carrying out of restitution in kind would be difficult to administer fairly, and SCAP has already indicated that he would recommend the resolution of such matters in the Japanese peace settlement by a cultural objects tribunal of specialists.

d. Paras. 4. c.(1) and (2) of SFE 202/1, in the light of reparations and restitution of identifiable property, give undue favor to the claimant.

e. The Army has no information as to the number or value of claims that might be forthcoming if such a policy were approved. If such claims were extensive, presumably, the Japanese government would have to provide some yen payment or credit to Japanese owners of cultural objects whose property was to be used for restitution in kind -- thus lessening the already deflated value of the yen.

2. The CAD member has been advised by Mr. Burr Smith

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(speaking for the Department of State) that his department cannot concur in the proposal to withdraw SANACC 385 as modified by SFE 202/1, which recommendation was contained in SFE 202. Therefore it is recommended that divergent views of the two departments be promptly presented to SANACC for resolution.

3. The P&O member concurs in the recommendation contained in para. 2. above.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

DATE: 4/28/48

TO : MMT

FROM : HB

SUBJECT: FEC Refutations Mtg April 21, Item #1.

Refer to statement in item #1, Barnett informs me he has written a memo to the effect that something should be done to implement the promise Saltzman gave Ambassador Koo. Someone in O is going to talk to Allison about it. Do you want me to get more information on it for you?

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 FBI

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

DATE:

April 29

TO :

Mr. Allison

FROM :

Mr. Hamilton

SUBJECT :

What about item #1?

MLA

FWD 894 403 / 4-948

General McCoy

CONFIDENTIAL

26 April

OFFICE OF
FAR EASTERN AFFAIRS

APR 27 1948

DIRECTOR
DEPARTMENT OF STATE

Reparations Committee Meeting of April 21

1. REPLACEMENT OF LOST CULTURAL OBJECTS, C1-272 series. member was requested to report on the results of diplomatic conversations between the Chinese and U.S. Governments on this subject. The U.S. member stated that the Chinese Ambassador had made an approach to the Department of State and presented certain views which were now under consideration by the U.S. Government. The Reparations Committee decided that no action should be taken on this paper until a report could be made on the final outcome of the talks.

2. REMOVALS OF ACCESSORY PLANTS, C1-299/3. The Chairman polled the Committee to determine how many members had received instructions on the revised policy proposals worked out by a subcommittee on the basis of certain Chinese and French suggestions. Only the Chinese and Philippine members had received instructions to vote for the proposals as a whole. The U.K. member could not approve the whole paper but could vote for paragraph 3 in it, which is not more than a reiteration of a provision contained in FEC 084/22.

3. POLICY TOWARDS PATENTS AND UTILITY MODELS IN JAPAN, FEC 284 series. This statement represents the work of a subcommittee chaired by Mr. Powles, the New Zealand member. Its contents are consistent with the terms of a SANACC policy proposal upon which final action has not yet been taken. The paper remains upon the agenda of the Reparations Committee.

4. REPARATIONS CLAIMS AGAINST JAPAN, C1-283/1. This is a report from a subcommittee which defines the nature of reparations claims and the manner in which they should be satisfied. The U.S. member of this subcommittee was General Snow. The only substantive comment made upon the report was brought up by the U.K. member, who believed that industrial reparations should be distributed to member countries of the FEC only, and that non-member countries which were at war with Japan should obtain satisfaction for their reparations claims from other sources.

The Committee seemed to agree that it was not at all urgent to make any public announcement regarding the procedure for non-FEC countries to lodge reparations claims. They did not study a proposed announcement which had been drafted.

5. DEFINITION OF JAPANESE OCCUPATION COSTS, FEC 288 series. The New Zealand member stated that his government had instructed him to say that this problem should be studied within the FEC but that the New Zealand Government was not at present prepared to state that it could agree in the U.S. proposals.

The Chinese member stated that paragraph 2(c) of the U.S. proposal (dealing with application of the priority charge against Japanese-owned gold, silver and precious metals) conflicted with the terms of an existing FEC policy, paragraph 16(c) of FEC 032/26. He then requested the U.S. member to supply as full data as possible on what occupation costs actually had been to date.

The Soviet member who had indicated heretofore that he opposed FEC consideration of this proposal at this time moved that the U.S. proposal be dropped from the agenda. A vote was taken on this motion. Ten countries opposed it.

At the suggestion of the U.S. member, a subcommittee was formed to make a careful analysis of the intent and effects of policy proposals put forward by the U.S. Government.

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6. TREATMENT OF JAPANESE ASSETS IN NEUTRAL COUNTRIES, FEC 295. The New Zealand member stated that his government took the stand that the U.S. proposal lay within the jurisdiction of the FEC. If the jurisdictional question was raised, it should be raised either at the Commission or Steering Committee level.

The Soviet member desired the U.S. proposal to be removed from the agenda of the Reparations Committee, saying that if it were not done it should be sent to the Far Eastern Commission for a jurisdiction ruling. This action would put the Soviets on the right side of the veto in the FEC. The Canadian member opposed the Soviet suggestion and proposed instead that the U.S. proposal be referred to the subcommittee which had been formed to study the details of occupation costs.

7. SETTLEMENTS OF AMOUNTS DUE REPATRIATED JAPANESE, FEC 294, FEC 090. The Canadian member inquired whether the U.S. member could accept his two amendments to that policy proposal. The U.S. member stated that since the Canadian amendments were in accord with existing policy they were not objectionable.

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DEPARTMENT OF STATE

ASSISTANT SECRETARY

*File
Hw*

April 13, 1948

0 - Mr. Ray:

Ambassador Koo called on me this afternoon and brought up the matter of restoration of cultural objects to China. This, as you know, has been the subject of discussion in the FEC and of a SANACC paper which has been apparently kicked around in the sub-committee since last October.

Dr. Koo left with me the attached suggestion of an amendment to the appropriate language in the papers presently before the FEC on this subject.

It appears to me that we should take steps immediately to get something done about this in SANACC. If, as I understand, the Army and we are in disagreement in the sub-committee, perhaps it would be well to have a split report submitted to the full SANACC Committee at its next meeting on April 22nd so that we could have some discussion there of the two viewpoints and provide a means of finding some solution.

C. E. Saltzman

[Handwritten signature]

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<i>Hw</i>
<i>[Signature]</i>

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3. The Japanese Government should be required to replace cultural objects:
- a. which were publically owned;
 - b. which, if privately owned, had been accessible to the public or had served to demonstrate the evolution of the national culture and art of the claimant countries or had been used for other public cultural purposes;

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FEC-RESTRICTED

C1-272

30 September 1947

C1-272 *L*

FAR EASTERN COMMISSION

COMMITTEE NO. 1: REPARATIONS

REPLACEMENT OF LOST CULTURAL OBJECTS: TENTATIVE

UNITED STATES PROPOSAL

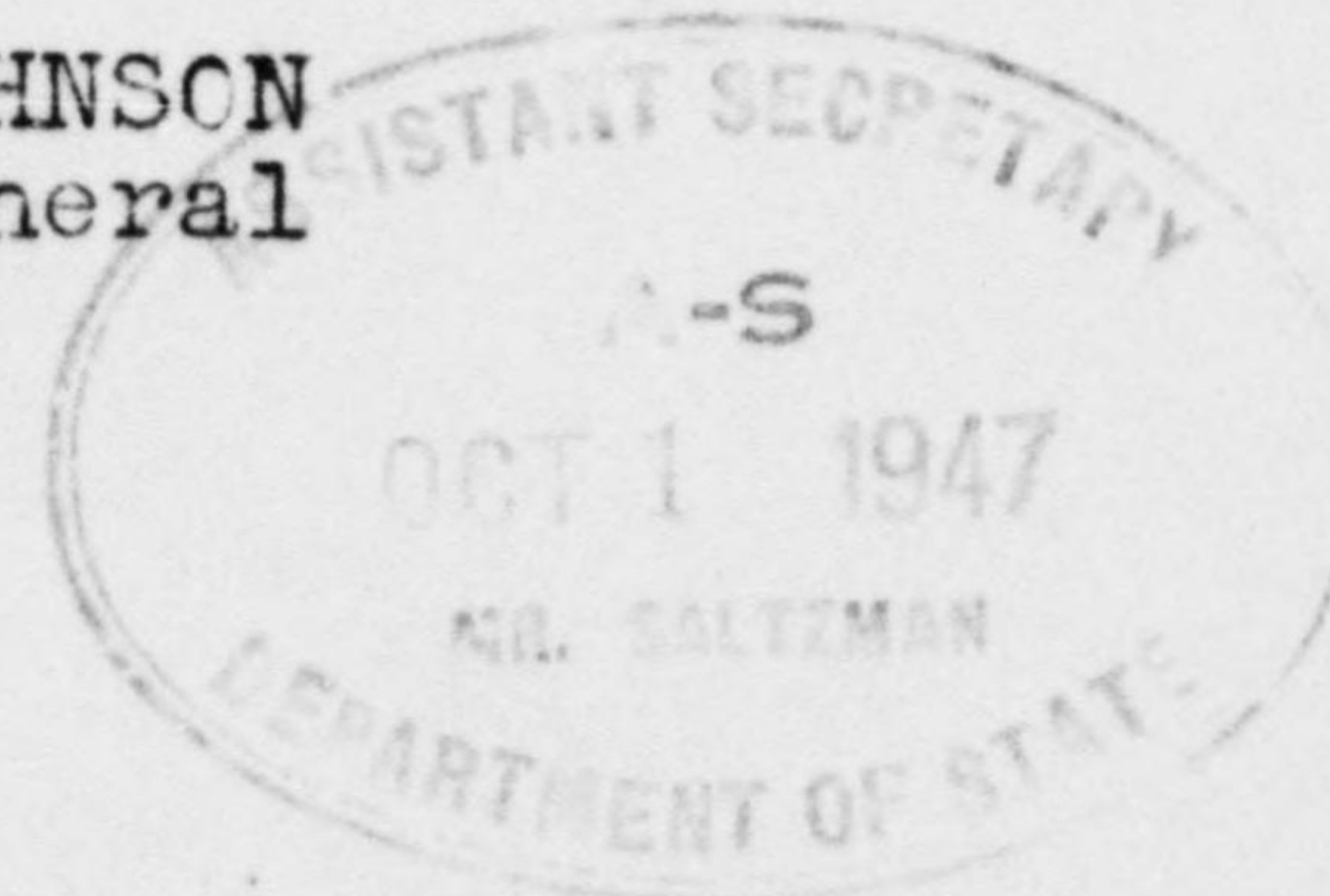
(References: C1-002/17, /18, /25)

Note by the Secretary General

1. The enclosure, a tentative policy proposal of the United States Department of State concerning replacement of lost cultural objects, submitted by the United States Member at the one hundred and twenty-sixth meeting of Committee No. 1 on 24 September 1947, is circulated herewith for the technical study of COMMITTEE NO. 1: REPARATIONS.

2. At its one hundred and twenty-sixth meeting on 24 September 1947, Committee No. 1 agreed to refer the United States policy proposal referred to in paragraph 1 above to the original Subcommittee on lost cultural objects comprising the Chinese, French, Netherlands, Philippines, United Kingdom and United States Members.

NELSON T. JOHNSON
Secretary General



C1-272

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FEC-RESTRICTEDE N C L O S U R EREPLACEMENT OF LOST CULTURAL OBJECTS: TENTATIVE
UNITED STATES PROPOSAL

1. This policy is supplementary to and not in derogation of accepted policy decisions relating to restitution of identifiable looted property.
2. The Japanese Government should be required to replace cultural objects wantonly destroyed or removed from Allied countries during periods of Japanese military aggression against their territories as required below.
3. Cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.
4. Allied countries attacked or occupied by the Japanese which claim replacement should provide reasonable evidence that cultural objects were removed or wantonly destroyed as a direct or indirect result of Japanese operations or occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost. In cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country.
5. Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of substantially equivalent character and cultural value held either by Japanese public institutions or Japanese individuals whose property is subject to seizure because of their wartime activities. Property belonging to Japanese public institutions will not be used to fulfill claims for replacement of privately owned cultural objects.
6. Replacement in substantial equivalents as indicated in Paragraph 5 above should not include:
 - a. Cultural items designated by the Japanese Government as National Treasures prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.
 - b. Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation, particularly with respect to the program of democratization and reeducation of the Japanese people.
7. The SCAP should be authorized, at his discretion, to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation, in the light of established precedents, of the foregoing policy, particularly as it relates to approval of claims and determination of standards for the substantial equivalents mentioned in Paragraph 5 above.

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C1-272/1

FEC-RESTRICTED

C1-272/1

13 January 1948

FAR EASTERN COMMISSION

COMMITTEE NO. 1: REPARATIONS

REPLACEMENT OF LOST CULTURAL OBJECTS: REPORT OF SUBCOMMITTEE
(References: C1-272; C1-002/17, /18, /25)

Note by the Secretary General

1. Enclosure "A" and "B" have been prepared by the Subcommittee on Replacement of Lost Cultural Objects and are submitted herewith for the consideration of COMMITTEE NO. 1: REPARATIONS.
2. Enclosure "A" is the majority draft of a proposed policy on replacement of lost cultural objects supported by the Chinese, Netherlands and Philippine delegations.
3. Enclosure "B" is a minority draft of a proposed policy on replacement of lost cultural objects supported by the United Kingdom and United States delegations.
4. Enclosure "C" is an explanatory statement by the United States delegation regarding its position on the subject of replacement of lost cultural objects.
5. The asterisks before paragraphs 3 and 6 in Enclosure "A" and "B" indicate the paragraphs in which the differences of opinion exist.
6. The Chinese, Netherlands and Philippine Members emphasized in the Subcommittee that their delegations' acceptance of paragraphs 6 and 7 of Enclosure "A" was contingent upon the acceptance of paragraph 3 of that Enclosure. Similarly, the United Kingdom and United States Members emphasized that failure to include paragraph 3 as it stood in Enclosure "B" would probably require further modifications by their delegations' of paragraphs 6 and 7.
7. The Subcommittee comprised of the United States (Chairman), Chinese, Netherlands, Philippine and United Kingdom Members.

NELSON T. JOHNSON
Secretary General

C1-272/1

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FEC-RESTRICTEDENCLOSURE "A"REPLACEMENT OF LOST CULTURAL OBJECTS: MAJORITY DRAFT
SUPPORTED BY CHINA, NETHERLANDS, PHILIPPINES

1. This policy is supplementary to and not in derogation of policy decisions relating to restitution of looted property.

2. For the purposes of this policy, cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

*3. The Japanese Government should be required to replace cultural objects

which have been removed from Allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories

in accordance with the following provisions.

4. Allied countries attacked or occupied by the Japanese which claim replacement should show, in reasonable detail, amounts, kinds and quality of cultural objects lost.

5. In cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country.

*6. Claims for replacement of specific cultural objects when approved, should be satisfied by the Japanese Government by providing cultural objects of approximately equivalent character and cultural value obtainable in Japan. Property belonging to Japanese public institutions, except for duplicates, should not be used to fulfill claims for replacement of cultural objects which were privately owned and which have not served any public cultural purposes.

7. Replacement in approximate equivalents as indicated in para. 6 above should not be made from:

a. Cultural items designated by the Japanese Government as National Treasures (Kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (Kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

b. Early collections significant for their unity and completeness, such as the Nara Complex of the Horiuji, Yakushiji, Toshidaiji, Todaiji, Kosokuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes, in so far as replacement can be made from other sources.

c. Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation particularly with respect to the program of democratization and education of the Japanese people.

FEC-RESTRICTEDENCLOSURE "B"REPLACEMENT OF LOST CULTURAL OBJECTS: MINORITY DRAFT BY
UNITED KINGDOM AND UNITED STATES DELEGATIONS

1. This policy is supplementary to and not in derogation of policy decisions relating to restitution of looted property.

2. For the purposes of this policy, cultural objects are defined to include all movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

*3. The Japanese Government should be required to replace cultural objects

a. which had previously served public cultural purposes, and

b. which have been removed from Allied countries by the Japanese or their agents but have not been found within a reasonable period, or which have been destroyed by the Japanese or their agents or as a result of military action during periods of Japanese military aggression against Allied territories

in accordance with the following provisions.

4. Allied countries attacked or occupied by the Japanese which claim replacement should show, in reasonable detail, amounts, kinds and quality of cultural objects lost.

5. In cases of doubt concerning the adequacy of evidence provided in support of a claim, the presumption should be in favor of the claimant country.

*6. Claims for replacement of specific cultural objects, when approved, should be satisfied by the Japanese Government by providing cultural objects of approximately equivalent character and cultural value obtainable in Japan.

7. Replacement in approximate equivalents as indicated in para. 6 above should not be made from:

a. Cultural items designated by the Japanese Government as National Treasures (kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (Kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894.

b. Early collections significant for their unity and completeness, such as the Nara Complex of the Horiuji, Yakushiji, Toshidaiji, Todaiji, Kosukuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes, in so far as replacement can be made from other sources.

c. Items required by the Supreme Commander for the Allied Powers to accomplish the objectives of the occupation particularly with respect to the program of democratization and education of the Japanese people.

FEC-RESTRICTEDENCLOSURE "C"STATEMENT BY THE UNITED STATES MEMBER ON CULTURAL
OBJECTS REPLACEMENT POLICY

The Far Eastern Commission has established policies covering the restitution of identified property found in Japan which was looted by the Japanese in countries invaded and occupied by the Japanese. Under these policies cultural property looted by the Japanese and found in Japan will be returned to the country from which it was taken.

The United States has for some time been aware of the problems arising from the loss and destruction of valuable and irreplaceable works of art and historic monuments of great significance. In 1943 the American Commission for the Protection and Salvage of Artistic and Historical Monuments in Europe was formed for the purpose of formulating plans for the protection and preservation of cultural property during the war period and for the restitution of such property at the close of hostilities. In April 1944 the activities of the Commission were extended to cover the war areas of the Far East.

Consistent with the policies adopted by the Commission the Department of State has presented for the consideration of the Far Eastern Commission a tentative proposal which would require Japan to replace public cultural property which has been lost or destroyed as a result of military action and occupation. Following World War I the only replacement of cultural property made was that of the collections of the University of Louvain Library (Article 247 of the Treaty of Versailles). The policy proposed herein thus represents an international precedent placing a new obligation on defeated countries. In the view of the Department of State, the importance of significant cultural objects to the public education and development of nations justifies the adoption by the Far Eastern Commission of such a policy.

The amendments to the original proposal of the Department of State recommended by the subcommittee, however, would extend the application of this policy to private property which has not served any public purpose. In the view of the Department of State such an extension, in view of the precedent it would establish, should not be acted on by the Far Eastern Commission except after the fullest and most careful consideration of its implications. It should also be noted, that by providing for replacement in full of cultural losses of private owners, the proposed policy would accord owners of such property more complete and direct compensation than provided for private owners of other types of property.

*Please return
to O-Records, Room
4202, NS.*

C1-272/2

FEC-RESTRICTED

C1-272/2

9 February 1948

FAR EASTERN COMMISSION

CHINESE STATEMENT ON REPLACEMENT OF
LOST CULTURAL OBJECTS

Note by the Secretary General

The enclosure, a statement on replacement of lost cultural objects presented by the Chinese Member at the one hundred forty-sixth meeting of Committee No. 1 on 4 February 1948, is circulated herewith for the further consideration of COMMITTEE NO. 1: REPARATIONS in connection with its consideration of C1-272/1, Replacement of Lost Cultural Objects.

NELSON T. JOHNSON
Secretary General

FW 899.403/4-1348

C1-272/2

FEC-RESTRICTEDE N C L O S U R ECHINESE STATEMENT ON REPLACEMENT OF
LOST CULTURAL OBJECTS

The Chinese Delegation to the Far Eastern Commission has given full consideration to an explanatory statement by the U.S. Member on the subject of replacement of lost cultural objects as embodied in enclosure C of this document CI-272/1, and wishes to make the following observations:

During periods of Japanese military aggression against China, the extent of losses and destruction of cultural items in China as a result of such actions have found no parallel in the history of any country. I do not intend to indulge in describing in detail such losses, but it is sufficient to point out that they have been a staggering blow to the cultural heritage of China. Consequently, even an extension of the application of this policy to cover privately owned cultural objects, which have not previously served public culture purposes, would be far from adequate to redress the damage that has been wrought.

The meaning of the clause "which had previously served public cultural purposes" is elusive. Essentially, it is difficult to draw a clear-cut distinction between those cultural objects which have served public cultural purposes and those which have not. The ambiguity, if not clarified, would unavoidably cause grave administrative difficulty and consequent delay of implementation, which should be avoided as much as possible.

In the course of discussion in the Sub-Committee, it was pointed out that the amendments to the original U.S. proposal recommended by the majority of the Sub-Committee might be held as a charge against Allies for looting Japanese cultural objects. If this has been the concern or the apprehension of some members, we wish to draw the attention of the members to the fact that in the Peace Treaty with Italy, there is no such qualifying clause as the one proposed by the U.S. Member. Instead, the phrase "objects belonging to the cultural heritage of the United Nations" was used. It may be argued that the provision concerned in the Italian Peace Treaty does not obligate Italy to replace cultural objects destroyed during the period of hostilities. But it should be pointed out that neither does it exempt cultural objects in the following three categories from being used to fulfill replacement claims: (a) Almost all cultural items designated as National Treasures. (b) Early collections significant for their unity and completeness. (c) Items required to accomplish the objectives of the occupation, particularly with respect to the program of democratization and education.

In view of the three exceptions under the proposed policy, cultural objects significant to Japanese public education and development of the nation could be fully protected and preserved in Japan. Further, according to the recommendation of the majority of the Sub-Committee, the property belonging to Japanese public institutions, except duplicates, will not be used to fulfill claims for replacement of cultural objects, which have not served any public cultural purposes. The latter claims could only be satisfied from the rather limited sources of privately owned objects.

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The proposed policy before us is a matter of urgency. To the peoples of all looted countries, it is important to have a policy on the subject as early as possible, but it may be equally, if not more, important to them to have a paper with equitable terms under which replacement would be made. For they see in it an indication of our faith in the essential value of the cultural object to the civilization which we share together, an expression of our common bonds and beliefs and an affirmation of the principle of justice.

To sum up our position, we find the clause "which had previously served public cultural purposes" unsound in principle and unworkable in practice, and it should not, therefore, be adopted by the Commission.

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COPY NO. 2

SFE 202/2

19 February 1948

Pages 1 and 2.

STATE-ARMY-NAVY-AIR FORCE COORDINATING SUBCOMMITTEE
FOR THE FAR EAST

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

References: a. SANACC 385
b. SANACC 385/1
c. SFE 202
d. SFE 202/1

Note by the Secretary

The enclosure, a memorandum by the CAD Member, is circulated for consideration by the Subcommittee.

J. B. CRESAP
Comdr., USN
Secretary

FU 894.403/4-1348

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E N C L O S U R E

MEMORANDUM BY THE CAD MEMBER

REPLACEMENT OF CULTURAL OBJECTS (JAPAN)

1. The CAD member neither favors the original proposal contained in SANACC 385 nor the modified version contained in SFE 202/1 for the following reasons:

a. The U. S. has agreed that the Japanese will make reparations in kind and that the Japanese will restore identifiable looted property. Going beyond these two agreements and making restitution in kind of cultural objects could serve to alienate Japanese good will from the U. S. and set a precedent for restitution in kind of all types of material and commodities.

b. The limited quid pro quo accruing to the U. S. from the FEC nations concerned would appear to be more than offset by the alienation of Japanese good will towards the U.S.

c. The carrying out of restitution in kind would be difficult to administer fairly, and SCAP has already indicated that he would recommend the resolution of such matters in the Japanese peace settlement by a cultural objects tribunal of specialists.

d. Paras. 4. c.(1) and (2) of SFE 202/1, in the light of reparations and restitution of identifiable property, give undue favor to the claimant.

e. The Army has no information as to the number or value of claims that might be forthcoming if such a policy were approved. If such claims were extensive, presumably, the Japanese government would have to provide some yen payment or credit to Japanese owners of cultural objects whose property was to be used for restitution in kind -- thus lessening the already deflated value of the yen.

2. The CAD member has been advised by Mr. Burr Smith

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(speaking for the Department of State) that his department cannot concur in the proposal to withdraw SANACC 385 as modified by SFE 202/1, which recommendation was contained in SFE 202. Therefore it is recommended that divergent views of the two departments be promptly presented to SANACC for resolution.

3. The P&O member concurs in the recommendation contained in para. 2. above.

FORM DS-516
9-13-47

DEPARTMENT OF STATE
CHARGE SLIP

FILE NUMBER	DESCRIPTION OF DOCUMENT	CHARGE TO-	DATE OF CHA
894.403/6848	Letter from Army	① Hammerding	11-22-48
/6-8-48	news. & Under Sec. fr. Mc Williams	"	"
/6-8-48	letter & Sec of Army.	"	"
6-8-48	copy of letter & Sec Army 7-9-48 fr. "O" N. Hammerding	"	"
6-8-48	copy of letter & Sec. Army 6-24-48 fr. "O" N. Hammerding	"	"
6-8-48 also news. & "O" Clayton fr. "Na" alliance	news. fr. O.G. Barnett Saracc-385	"	"

DEPARTMENT OF STATE
CHARGE SLIP

FILE NUMBER	DESCRIPTION OF DOCUMENT	CHARGE TO-	DATE OF CHARGE	CLERK'S INITIALS
403/6848	Letter from Army	O Hammendinger	11-22-48	Kd
/6-8-48	memor. & Under Sec. fr. Mc Williams	"	"	"
/6-8-48	letter & Sec of Army.	"	"	"
6-8-48	copy of letter & Sec Army 7-9-48	"	"	"
6-8-48	fr. "O" N. Hammendinger	"	"	"
6-8-48	copy of letter & Sec. Army 6-24-48	"	"	"
fr. "O" N. Hammendinger	memor. fr. O.E. Barnett	"	"	"
S.O. Clayton allison	Sarace-385			

Back file

SEP 18 1948

In reply refer to
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Dear Royall:

I am writing in reply to your letter of July 28 in which you request that I reconsider the question of replacement of cultural objects lost or destroyed as a result of Japanese aggression in the light of the views of the Department of the Army, General MacArthur and General Clay, to the end that a workable solution of this problem may be achieved.

The Department of State has now completed a review of its policy in the field of cultural replacement, and has arrived at a solution which I believe meets the essential objections of the Department of the Army and the two Theater Commanders to the earlier proposal. The proposal is so very much more restricted than those which the Far Eastern Commission has been considering that it will undoubtedly occasion keen disappointment and resentment on the part of China, the Philippines and other nations which suffered severe deprecation of their cultural heritage at the hands of the Japanese. Nevertheless it appears to me the best possible solution of a difficult problem, and I am prepared to instruct General McCoy to present it to the Far Eastern Commission as the policy of the United States.

Since the proposal and the reasoning supporting it are somewhat detailed I am asking Mr. Saltzman to take it up initially with General Eberle. If their consideration of the matter suggests the need for further consideration between ourselves, I shall be glad to undertake it.

Faithfully yours,

G. G. MARSHALL

The Honorable
Kenneth C. Royall,
Secretary of the Army.

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SEP 18 1948

In reply refer to
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Dear General Eberle:

894.403/7-2848

I am writing to you pursuant to Secretary Marshall's letter of even date to Secretary Royall on the problem of replacement of cultural objects lost or destroyed as a result of Japanese aggression.

As stated in Secretary Marshall's letter, the entire problem of the replacement of cultural objects lost or destroyed as a result of enemy action during the last war has been carefully reviewed by this Department in the light of the Department of the Army's, General MacArthur's and General Clay's objections to the earlier draft proposal. As a result of this restudy, the attached proposed new policy statement for submission to the FEC is much narrower and more restrictive than that which the Department has previously supported, and, it is believed, meets all of the essential objections raised against the old. Although it will undoubtedly occasion keen disappointment and resentment on the part of China, the Philippines and other devastated Far Eastern countries, it will at least accord token recognition of these nations' just claim to compensation to the largest practical extent for the wanton destruction of their cultural heritage perpetrated by the Japanese.

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It is the unaltered view of the Department of State that a carefully limited cultural replacement program should be instituted in the Far East. Whereas it has been possible in Europe to restore large quantities of cultural materials looted by the Germans, this has not been the case in the Far East, where much the greater part of the affected materials, numbering hundreds of thousands

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General G. L. Eberle,
Acting Chief, Civil Affairs Division,
Special Staff,
United States Army.

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thousands of items, were lost or destroyed. Also, cataloging of cultural articles in the Far East is inferior to that in Europe, so that records for the small proportion of materials which was moved intact to Japan are frequently insufficient as a basis for claim. Although the loss and destruction in the Far East must for the most part be written off as the Far East's irreparable misfortune, it is believed that maximum feasible redress must in common justice be made to the nations which suffered such destruction of their cultural heritage at Japan's hands.

As already stated, however, it is essential that the replacement program be carefully limited so as not to impair Japan's cultural heritage in the effort to alleviate the depredations to the claimants' cultural treasure, and so as not to constitute a future source of bitterness in Japan against the claimant countries. The program, accordingly, should be narrowly limited to replacement of lost objects with objects of the same period and identical, or, if that is not possible, of closely similar character, and of approximately equal value to the specific objects for which replacement is claimed, and should not be allowed to broaden into general substitution of roughly comparable items. Acceptance of this concept will require abandonment by China and the other principal claimants of their claim to substitution in bulk for the vast quantities of cultural materials lost as a result of Japanese action.

The attached draft policy statement has been prepared to accord with the above concepts. It is believed that a replacement program based on this policy would afford at least some redress for the great injury done China's and other claimants' cultural heritage by Japan, and at the same time would be so restricted in the number of items actually transferred that it would not significantly deplete Japan's store of cultural objects. There is reason to expect that the essential reasonableness and justice of a replacement program on so limited a scale would be recognized by most thinking Japanese. There would seem to be little basis for belief that such a program would have unfortunate political consequences in Japan either now or in future.

As to the administrative problems created, the extent of the program will be limited at the outset by the

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requirement that the items for which replacements may be claimed must be objects of "rarity and high value possessing important cultural significance in the country or region of loss or destruction". Only if these conditions are met must an identical or closely similar object of the same period and approximately equal value be sought in Japan. Since objects of such rarity and value are likely to be well known, their discovery and delivery by the Japanese Government under SCAP's supervision should not present too great difficulties.

It will be noted, further, that decisions are to be taken in the first instance by a board of disinterested specialists, to which the Supreme Commander's Headquarters is to afford "all practical technical assistance". A normal reading of this phrase would exclude requests for services on such a scale as to require the employment of significant numbers of additional personnel, or the utilization of existing personnel to a point where the performance of their other duties was impaired. As already stated, however, it is doubtful if the program would assume such proportions as to make its administration a problem.

The Department of State has considered its proposed policy statement in the light of Article LVI of the Annex to the Fourth Hague Convention of 1907 Respecting the Laws and Customs of War on Land, referred to in Secretary Royall's letter, and finds nothing in the statement which could be considered to run counter to the Article. The purpose of the second paragraph of the Article, which is the only paragraph in the Article bearing on the subject at hand, is to outlaw seizure or destruction of or wilful damage to objects of cultural significance by an occupying power, and to render that power liable to legal proceedings if it does commit such acts. Although the requirement that the claim be satisfied through legal proceedings constitutes a protection for the occupying power if, as in the present instance, the fortunes of war should turn, the burden and purpose of the provision is to render the occupying power subject to claims for redress of the damage done. Since the Article is not clear as to what type of legal proceedings are called for, and, indeed, could not have been clear, considering that the proceedings would be between States, it may be assumed that judgment by any qualified neutral, international body motivated by principles of justice and equity would suffice. The

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board of three neutral specialists appointed by SCAP is considered to be such a body. The Article would thus appear not to preclude a replacement program of the type herein proposed. It is contemplated that action taken under the replacement program will, as with other actions under the occupation, be ratified in the peace settlement.

General Clay states that a Japanese cultural replacement program would legalize the Soviet theft of cultural objects from Germany, and would overturn all our efforts of many years to establish cultural objects as an item outside the scope of war booty. It is difficult to see how these results could flow from the policy set forth in the attached draft statement. A carefully hedged replacement program administered by a board of experts drawn from countries not among those which suffered at Japan's hands would be scarcely comparable to the arbitrary looting of German cultural objects from their zone by the unilateral acts of the Soviets. The objects transferred under the proposed program would be taken in accordance with carefully prescribed, internationally agreed regulations, and would establish a wholly desirable precedent rather than one which any civilized nation would need to fear.

As regards General Clay's other point, that U.S. approval of a cultural replacement program for Japan would immediately prompt France to claim replacements for a great many objects from Germany, it is our understanding, as stated above, that a very substantial amount of restoration of Western Europe's store of cultural objects has been accomplished through restitution. Although there is no desire to reopen a question which has been at least temporarily laid to rest in General Clay's theater of command, it is difficult to see how the example of the replacement program proposed herein could open the door to an excessive number of French claims on Germany.

I refer you to the enclosed draft telegram to General MacArthur for the State Department's views on the additional points raised by General MacArthur in his telegram C-61096 of May 31. It is my sincere hope that after careful study of the considerations advanced in this letter and draft telegram to General MacArthur that you will find it possible to transmit the telegram to General MacArthur for his comments with an expression of Army Department support for the proposed policy statement. Since it is desirable that this Government reach an agreed

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position on this problem at the earliest possible time, I would appreciate anything you may be able to do to expedite Army Department consideration of the matter.

Sincerely yours,

Charles E. Saltzman
Assistant Secretary
for Occupied Areas

Enclosures:

- 1. Proposed new policy statement.
- 2. Proposed telegram to SCAP.

A true copy of the signed original. *JMM*

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SECRETProposed Policy Statement on Replacement of Cultural
Objects Lost or Destroyed as a Result of Japanese
Aggression During the Period 1931-1945.

1. This policy is supplementary to and not in derogation of FEC 011/51 relating to Restitution of Looted Property.

2. For purposes of this policy, cultural objects are defined to include movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

3. The Japanese Government should be required to replace cultural objects which were removed from Allied countries by the Japanese or their agents during the period 1931-1945 which are not found within a reasonable time or which were destroyed by the Japanese or their agents, as a result of military action during that period, in accordance with the following provisions:

either
mainly or (a) Each item for which replacement is claimed must be precisely identified and described;

(b) Reasonable evidence must be presented that the item was in fact removed or destroyed by the Japanese or their agents during the period 1931-1945;

(c) The item must be shown to have been an object of rarity and high value possessing important cultural significance in the country or region of loss or destruction;

(d) The item provided by the Japanese Government in replacement must be of the same period as, of identical or closely similar character with, and of approximately equal value to the item lost or destroyed. If no such item is obtainable in Japan, the claim for replacement must be denied;

(e) Replacement should not be made from:

a. Cultural items designated by the Japanese Government as National Treasures

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(kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894, or

b. Early collections significant for their unity and completeness, such as the Nara Complex of the Koriuji, Yakushiji, Toshidaiji, Todaiji, Kosukuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes.

4. Replacement in accordance with the above provisions should be under the direction of a board of specialists on Far Eastern cultural matters. The board should be composed of three persons, not nationals of countries which suffered cultural losses at Japan's hands, selected for their competence by the Supreme Commander for the Allied Powers in Japan from a list of persons nominated by the nations suffering such cultural losses. The board should be established in Tokyo under the authority of the Supreme Commander as soon as a sufficient number of verified replacement claims have been received to warrant its entering on its duties. The foreign currency expenses of the board, which should be afforded all practical technical assistance by the Supreme Commander's Headquarters in the performance of its duties, should be allocated in an equitable manner, as determined by the Supreme Commander, among the nations submitting claims to it, and all other expenses should be borne by the Japanese Government. The Supreme Commander should take no part in formulating the decisions of the board, but should be empowered to review its decisions before transmitting them to the Japanese Government for execution.

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SECRETProposed Telegram to SCAP

REURAD G-61096 31 May.

Following from State:

DEPT of State has completed review entire problem replacement of cultural objects lost or destroyed as result enemy action during last war in light your comments and considerations advanced by DEPT of Army and General Clay during latter's recent stay in Washington. Review has not altered DEPT's conviction that carefully limited cultural replacement program should be instituted in Far East. Whereas it has been possible in Europe to restore large quantities cultural materials looted by Germans, this has not been case in Far East, where much the greater part of the affected materials, numbering hundreds of thousands of items, were lost or destroyed. Although loss and destruction in Far East must for most part be written off as Far East's irreparable misfortune, it is believed maximum feasible redress must in common justice be made to nations which suffered such destruction of their cultural heritage at Japan's hands.

It is essential, however, that replacement program be carefully limited so as not to impair Japan's cultural heritage in effort alleviate deprivations to claimants' cultural treasure, and so as not to constitute future source of bitterness in Japan against claimant countries. Following proposed new policy statement for submission to FEC, accordingly, is much narrower and more restrictive than that which DEPT has previously supported. It is believed proposed policy meets all essential objections raised against the old, and that although it will undoubtedly occasion keen disappointment and resentment on part of China, Philippines and other devastated Far Eastern countries, it will at least accord token recognition these nations' just claims:

"1. This policy is supplementary to and not in derogation of FEC 011/51 relating to Restitution of Looted Property.

"2. For purposes of this policy, cultural objects are defined to include movable objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through normal channels of production and commerce.

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"3. The Japanese Government should be required to replace cultural objects which were removed from Allied countries by the Japanese or their agents during the period 1931-1945 which are not found within a reasonable time or which were destroyed by the Japanese or their agents as a result of military action during that period, in accordance with the following provisions:

"(a) Each item for which replacement is claimed must be precisely identified and described;

"(b) Reasonable evidence must be presented that the item was in fact removed or destroyed by the Japanese or their agents during the period 1931-1945;

"(c) The item must be shown to have been an object of rarity and high value possessing important cultural significance in the country or region of loss or destruction;

"(d) The item provided by the Japanese Government in replacement must be of the same period as, of identical or closely similar character with, and of approximately equal value to the item lost or destroyed. If no such item is obtainable in Japan, the claim for replacement must be denied;

"(e) Replacement should not be made from:

"a. Cultural items designated by the Japanese Government as National Treasures (kokuho) prior to 1931 regardless of origin or ownership, or designated as Japanese National Treasures (kokuho) after 1931, if they are of Japanese origin or were owned by Japanese public institutions or private individuals prior to 1894, or

"b. Early collections significant for their unity and completeness, such as

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the Nara Complex of the Koriuji, Yakushiji, Toshidaiji, Todaiji, Kosokuji, Shin-Yakushiji temples and the Shoso-in and other similar temple complexes.

"4. Replacement in accordance with the above provisions should be under the direction of a board of specialists on Far Eastern cultural matters. The board should be composed of three persons, not nationals of countries which suffered cultural losses at Japan's hands, selected for their competence by the Supreme Commander for the Allied Powers in Japan from a list of persons nominated by the nations suffering such cultural losses. The board should be established in Tokyo under the authority of the Supreme Commander as soon as a sufficient number of verified replacement claims have been received to warrant its entering on its duties. The foreign currency expenses of the board, which should be afforded all practical technical assistance by the Supreme Commander's Headquarters in the performance of its duties, should be allocated in an equitable manner, as determined by the Supreme Commander, among the nations submitting claims to it, and all other expenses should be borne by the Japanese Government. The Supreme Commander should take no part in formulating the decisions of the board, but should be empowered to review its decisions before transmitting them to the Japanese Government for execution."

Principle underlying above statement is that program should be narrowly limited to replacement of lost objects with objects of identical, or, if that is impossible, of closely similar character to specific object for which replacement is claimed. Goal must be actually to replace specific object lost or destroyed, not to substitute another more or less similar object. Acceptance of this concept will require abandonment by China and other principal claimants of their claim to substitution in bulk for vast quantities of cultural materials lost as result of Japanese aggression.

Following is in answer specific points raised your C-61906:

1. International

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1. International Law and Precedents -- International precedents for proposed cultural replacement program are found in Article 247 of Treaty of Versailles, which obliged Germany to replace contents of Library of Louvain, and in identical Articles of Italian, Hungarian and Bulgarian Treaties following World War II, which require defeated countries to replace, where possible, cultural objects removed from United Nations territories with "objects of same kind as, and of approximately equivalent value to, the objects removed." Policy statement providing for replacement of cultural objects "of great rarity" was introduced Allied Control Authority Coordinating Committee in Germany July 1946 by U.S. and was approved in principle but has not been implemented. Article 56 of Annex to Fourth Hague Convention forbids seizure, destruction or wilful damage works of art and provides such actions "should be made subject of legal proceedings". DEPT'S Office of Legal Adviser considers this provision does not preclude replacement program under authority qualified neutral international body of type provided in above-quoted draft policy statement. Like many other acts of Allied Powers during occupation, transfers under replacement program would be ratified in peace settlement.

2. Historical U.S. Position -- Historical U.S. position has been and remains that cultural monuments and works of art of a belligerent should be protected from consequences of war. Japan, a party to Hague Conventions of 1889 and 1901 obligating signatories to protect cultural property from all seizure and destruction, disregarded this principle, however, and committed large-scale wanton destruction enemy cultural objects. By requiring Japan to make partial redress for this destruction through carefully hedged replacement program affording ample protection Japan's own cultural heritage, we would not vitiate but rather further confirm U.S. position. Secretary Hull in letter of June 21, 1943 to President Roosevelt, and of July 16, 1943 to Vice Chairman David E. Finley of the American Commission, stated:

"B. At the time of the Armistice:

"1. The American Commission for the Protection and Salvage of Artistic and Historic Monuments should urge that the Armistice terms include the restitution of public property appropriated by the

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Axis Powers. Where it is not possible to restore such property either because it has been destroyed or cannot be found, restitution in kind should be made by the Axis Powers to the countries from which the property has been taken. In such cases, the Commission should recommend a list of equivalent works of art or historic documents which should be transferred to the invaded countries from Axis museums or from the private collections of Axis leaders."

3. Cultural Objects of Value Only in Country of Origin -- Proposed policy would not involve replacement cultural losses devastated countries with art objects produced in Japan. Believed claimants would not desire objects of Japanese origin, and in any event policy is so drawn that replacement from Japanese indigenous art objects is virtually excluded.

4. Administrative Costs -- Extent of program will be limited at outset by requirement that items for which replacements may be claimed must be objects of "rarity and high value possessing important cultural significance in country or region of loss or destruction". Only if these conditions are met must an identical or closely similar object of equal rarity and approximately equal value be sought in Japan. Since objects of such rarity and value are likely to be well known, their discovery and delivery by Japanese Government under SCAP's supervision should not present too great difficulties.

It will be noted further, that SCAP is to afford the board of specialists "all practical technical assistance". Normal reading of this phrase would exclude requests for services on such a scale as to require employment significant numbers additional personnel, or utilization existing personnel to point where performance their other duties was impaired. As already stated, however, it is doubtful if program would assume such proportions as to make its administration a problem. Difficult to perceive how in light above factors program could impair Japanese economic rehabilitation.

5. Resolution of Doubt in Favor of Claimants -- It will be noted that this provision does not appear in the present proposal. However, since it would be

unreasonable

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