

Cultural Objects Subcommittee

Cultural Objects Subcommittee

Sept (?) 49

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.

SUBCOMMITTEE ON REPLACEMENT OF LOST CULTURAL OBJECTS

1 October 1947 at 1:45 p.m.

ATTENDANCE:

United States	Mr. R. B. Smith (Chairman), Mr. H. Baker
China	Dr. Anthony Koo
Netherlands	Dr. R. H. van Gulik
Philippines	Mr. J. U. Jovellanos
United Kingdom	Mr. M. B. Thresher
Secretary	Mr. D. K. Eichler

The Chairman canvassed the opinions of members on the tentative U. S. policy proposal, CI-272.

CHINA:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly". Feels that if real intent is to exclude losses resulting from normal military operations the U. S. paper should be more specific.

Para. 3 -- No comments.

Para. 4 -- (a) Would also delete the word "wantonly" in line 3.
 (b) Would delete the words "in reasonable detail" in lines 5 and 6. (Felt it was too much to expect that detailed evidence of events occurring in the midst of war would have been collected by those who had lost cultural objects. Also felt that it should be assumed that anything lost during the occupation by the Japanese should be attributed to the Japanese.)

Para. 5 -- (a) Would substitute the word "roughly" for the word "substantially" in line 3.
 (b) Would delete everything from the word "individuals" to the end of the paragraph.

Para. 6 -- Would delete the entire paragraph as being unnecessary. The Chinese Member felt protection offered the Japanese in this paragraph was unnecessary.

Para. 7 -- No comments.

NETHERLANDS:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly".

Para. 3 -- No comments.

Para. 4 -- (a) Would delete the word "wantonly".
 (b) Does not object to evidence "in reasonable detail" being required provided appropriate emphasis is given the final clause in this para., namely, that "the presumption should be in favor of the claimant country" in cases of doubt.

Para. 5 -- Would amend last sentence as follows: Property belonging to Japanese public institutions, except for duplicates, replacements, etc. will not be used to fulfill claims for replacement of privately owned cultural objects.

Para. 6 -- Those objects of art which are included in the Japanese Imperial Household Collection (see statement by Mr. Stout (CI-002/18) should not be available as replacements under this policy. These should remain in Japan as part of the national cultural heritage of the Japanese.

Para. 7 -- No comments.

PHILIPPINES:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly".

Para. 3 -- No comments.

Para. 4 -- Would delete the word "wantonly".

Para. 5 -- Would delete restrictive provision in last part of first sentence to permit replacements from cultural objects held by all Japanese private owners, not merely those "whose property is subject to seizure because of their wartime activities."

Para. 6 and para. 7 -- No comments.

UNITED KINGDOM:

1. The U. K. Member said that he thought it might still be worth considering limiting the paper to replacement of those cultural objects which had previously served public cultural purposes.

2. The U. K. Member further thought that the word "wantonly" might need amendment. Its application might be difficult and it might turn out to be too restrictive.

UNITED STATES:

1. The U. S. Member commenting on the word "wantonly" in paragraphs 1 and 4 said that the intention of the U. S. was to differentiate in this paper between reparations, restitution and replacement. This paper was confined to replacement but without some distinction between losses suffered as a result of normal military operations and losses from theft or wanton destruction by the Japanese the paper would inevitably become a kind of reparations policy.

2. Commenting on the intention of para. 4, the U. S. Member said that "reasonable evidence" or "evidence in reasonable detail" should be read in close connection with the last sentence where it states that "in cases of doubt the presumption should be in favor of the claimant country."

3. Commenting on the intention of para. 6, the U. S. Member said that it was the position of his Government that no replacement policy adopted by the FEC should be permitted to result in counter looting of the Japanese cultural heritage.

FEC-RESTRICTED

For Subcommittee
Circulation Only

25 November 1947

FAR EASTERN COMMISSION

Cultural Objects Subcommittee

Proposed Drafts under Discussion in Subcommittee on
Replacement of Lost Cultural Objects

1. Enclosure "A" is the majority draft of a proposed policy on replacement of lost cultural objects supported by the Chinese, Netherlands and Philippine delegations.

2. Enclosure "B" is a minority draft supported by the United States delegation and tentatively favored by the United Kingdom delegation.

3. Asterisks are used in Enclosures "A" and "B" to indicate the paragraphs in which the differences of opinion exist.

4. Enclosure "C" is a statement by the United States delegation regarding its general position on the subject of replacement of lost cultural objects.

David K. Eichler
Reparations Secretary

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ENCLOSURE "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, 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 "B"REPLACEMENT OF LOST CULTURAL OBJECTS: MINORITY DRAFT
FAVORED BY UNITED STATES DELEGATION

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, 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 "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.

Enclosure "C"

-1-

REDRAFT BY SUBCOMMITTEE AS OF 13 OCTOBER 1947
of
REPLACEMENT OF LOST CULTURAL OBJECTS: TENTATIVE U.S. PROPOSAL

1. This policy is supplementary to and not in derogation of policy decisions relating to restitution of identifiable 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 destroyed or removed from Allied countries during periods of Japanese military aggression against their 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 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. 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.
8. The SCAP should be authorized to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation of this policy.

FEC-RESTRICTEDFor Subcommittee Circ OnlyFAR EASTERN COMMISSIONSUBCOMMITTEE ON
REPLACEMENT OF LOST CULTURAL OBJECTS

(Meeting Held on 3 November 1947 at 3:00 p.m.)

ATTENDANCE:

United States	Mr. R. B. Smith (Chairman)
	Mr. H. L. Baker
	Miss A. R. Hall
China	Dr. Anthony Koo
Netherlands	Not represented
Philippines	Mr. J. U. Jovellanos
United Kingdom	Mr. M. B. Thresher
Secretary	Mr. D. K. Eichler

1. Enclosure "A" is a tentative draft by the Subcommittee of a proposed policy on Replacement of Lost Cultural Objects prepared by the Cultural Objects Subcommittee at a meeting held on 3 November 1947.

2. Enclosure "B" contains a brief summary of certain reservations on Enclosure "A" requested by Members together with a listing of points still under consideration.

3. The Netherlands Member was absent from the meeting on 3 November 1947 and was not able to be reached before the two enclosures were drafted for circulation. His position on Enclosure "A" has not, therefore, been recorded.

D. K. Eichler
Reparations Secretary

FEC--RESTRICTEDE N C L O S U R E "A"REPLACEMENT OF LOST CULTURAL OBJECTS:
TENTATIVE DRAFT BY SUBCOMMITTEE AS OF 3 NOVEMBER 1947

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 equiv

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alent 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 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. Ancient Japanese collections significant for their unity and completeness.
- 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.

8. The Supreme Commander for the Allied Powers is authorized to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation of this policy.

FEC-RESTRICTEDENCLOSURE "B"EXPLANATORY MEMORANDUM ON SUBCOMMITTEE'S PAPER
ON REPLACEMENT OF LOST CULTURAL OBJECTSPara. 3

The Chinese and Philippine Members felt that this paragraph was not sufficiently broad to permit adequate replacement of cultural objects lost as a result of the war with Japan. They would substitute for paragraph 3 in the attached policy proposal, the following:

"The Japanese Government should be required to replace cultural objects destroyed or removed from Allied countries during periods of Japanese military aggression against their territories in accordance with the following provisions."

The U. S. Delegation in the Subcommittee reserved its position on the phrase "as a result of military action" in para. 3 b. The U. S. Delegation preferred the addition of the word "direct" before the word "result" in this paragraph. The phrase would then read "as a direct result of military action, etc."

Para. 6

The Chinese position in para 3 above also entailed the addition of the following sentence to para 6 of the attached policy proposal:

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.

Para. 7

The Subcommittee considered and reserved judgement on the following proposed changes to para 7 b:

1. A proposal to amend the paragraph to read:

Japanese collections established prior to the Tokugawa Shogunate.

2. A proposal to add the phrase "and which have served public cultural purposes."

3. A proposal to list all the collections referred to in this subparagraph or several examples of such collection

* * * * *

The U. S. Member was in general agreement with the draft in Enclosure "A" and suggested that the Subcommittee endeavor to finish its work within the next two weeks and report to the Committee.

FEC-RESTRICTED

The U. K. Member was also in general agreement with Enclosure "A", but thought that if agreement on paragraphs 3 and 6 could not be obtained by the Subcommittee, it might be better to attempt to work out something along the lines of Cl-002/17, the draft policy prepared by Committee No. 1 on 7 January 1947.

The Netherlands Member was absent and was not able to be reached when the two enclosures in this document were drafted for circulation. His views have, therefore, not been recorded.

It was agreed that Dr. Koo of the Chinese delegation, Miss Hall of the U. S. delegation and Dr. Van Gulik of the Netherlands delegation should meet together as a working group before the next Subcommittee meeting with a view to discussing the outstanding issues in connection with para. 7 of Enclosure "A" and formulating concrete alternatives to the present para. 7.

SUBCOMMITTEE ON REPLACEMENT OF LOST CULTURAL OBJECTS

1 October 1947 at 1:45 p.m.

ATTENDANCE:

United States	Mr. R. B. Smith (Chairman), Mr. H. Baker
China	Dr. Anthony Koo
Netherlands	Dr. R. H. van Gulik
Philippines	Mr. J. U. Jovellanos
United Kingdom	Mr. M. B. Thresher
Secretary	Mr. D. K. Eichler

The Chairman canvassed the opinions of members on the tentative U. S. policy proposal, Cl-272.

CHINA:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly". Feels that if real intent is to exclude losses resulting from normal military operations the U. S. paper should be more specific.

Para. 3 -- No comments.

Para. 4 -- (a) Would also delete the word "wantonly" in line 3.
(b) Would delete the words "in reasonable detail" in lines 5 and 6. (Felt it was too much to expect that detailed evidence of events occurring in the midst of war would have been collected by those who had lost cultural objects. Also felt that it should be assumed that anything lost during the occupation by the Japanese should be attributed to the Japanese.)

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(b) Would delete everything from the word "individuals" to the end of the paragraph.

Para. 6 -- Would delete the entire paragraph as being unnecessary. The Chinese Member felt protection offered the Japanese in this paragraph was unnecessary.

Para. 7 -- No comments.

NETHERLANDS:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly".

Para. 3 -- No comments.

Para. 4 -- (a) Would delete the word "wantonly".
(b) Does not object to evidence "in reasonable detail" being required provided appropriate emphasis is given the final clause in this para., namely, that "the presumption should be in favor of the claimant country" in cases of doubt.

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Para. 6 -- Those objects of art which are included in the Japanese Imperial Household Collection (see statement by Mr. Stout (CI-002/18) should not be available as replacements under this policy. These should remain in Japan as part of the national cultural heritage of the Japanese.

Para. 7 -- No comments.

PHILIPPINES:

Para. 1 -- No comments.

Para. 2 -- Would delete the word "wantonly".

Para. 3 -- No comments.

Para. 4 -- Would delete the word "wantonly".

Para. 5 -- Would delete restrictive provision in last part of first sentence to permit replacements from cultural objects held by all Japanese private owners, not merely those "whose property is subject to seizure because of their wartime activities."

Para. 6 and para. 7 -- No comments.

UNITED KINGDOM:

1. The U. K. Member said that he thought it might still be worth considering limiting the paper to replacement of those cultural objects which had previously served public cultural purposes.

2. The U. K. Member further thought that the word "wantonly" might need amendment. Its application might be difficult and it might turn out to be too restrictive.

UNITED STATES:

1. The U. S. Member commenting on the word "wantonly" in paragraphs 1 and 4 said that the intention of the U. S. was to differentiate in this paper between reparations, restitution and replacement. This paper was confined to replacement but without some distinction between losses suffered as a result of normal military operations and losses from theft or wanton destruction by the Japanese the paper would inevitably become a kind of reparations policy.

2. Commenting on the intention of para. 4, the U. S. Member said that "reasonable evidence" or "evidence in reasonable detail" should be read in close connection with the last sentence where it states that "in cases of doubt the presumption should be in favor of the claimant country."

3. Commenting on the intention of para. 6, the U. S. Member said that it was the position of his Government that no replacement policy adopted by the FEC should be permitted to result in counter looting of the Japanese cultural heritage.

RESTRICTEDE N C L O S U R EADDITION TO REMARKS BY MR. GEORGE L. STOUT
AT 60th MEETING COMMITTEE NO. 1 ON 3 FEBRUARYHARVARD UNIVERSITY. FOGG MUSEUM OF ART
CAMBRIDGE 38, MASSACHUSETTS

5 February 1947

Mr. Alexander B. Daspit
Office of International Information
and Cultural Affairs
Department of State
Washington 25, D. C.

Dear Mr. Daspit:

One of the representatives on the FEC brought out a point as I was leaving the meeting on Monday the Third which might have been clarified earlier and to advantage. He asked me if the Shoso-in Treasure House was included in the registry of the National Treasure. It was my understanding that it is not; because it was the property of the Imperial Household. That is definitely true of all holdings in the Imperial Household Museum and these, comprising over eighty thousand items of the first importance, could only have become National Treasure as recently as 1946. By some misunderstanding of boundaries, the Imperial holdings, even though the ones in Tokyo had been regularly housed and exhibited in a museum, were not counted as National Treasure. I did not realize until the moment that I was leaving the room that this might not be clear and forgot to speak of it when I saw you later.

It was a pleasure to see you, and I trust you will let me know if there is any way in which I might be useful.

Sincerely yours,

George L. Stout

C1-022/25RESTRICTEDC1-002/2511 February 1947FAR EASTERN COMMISSIONCOMMITTEE NO. 1: REPARATIONS

REPLACEMENT OF LOST CULTURAL OBJECTS
(Reference: Appendix to Minutes of
the 60th Meeting, Committee No. 1,
C1-002/17, /18)

Note by the Secretary General

The enclosure, an addition by Mr. George L. Shout, Fogg
Museum, Harvard University, to his remarks on Japanese National
Treasures at the 60th meeting of Committee No. 1 on 3 February
1947, is circulated herewith for the information of COMMITTEE NO. 1:
REPARATIONS.

NELSON T. JOHNSON
Secretary General

C1-022/25

FAR EASTERN COMMISSION

19 December, 1946

The enclosure, together with the covering letter, was submitted to the Secretary of the Restitution Subcommittee by the U. S. member for circulation at the next scheduled meeting of the Subcommittee.

To the Secretary of the Restitution Subcommittee:

Attached is a new revision of Mr. Rodriguez' policy statement on compensation for cultural losses redrafted in the light of our latest discussion.

We should like to have it clearly understood that this redraft represents our personal view of what is required in this policy statement. After the next meeting of the Subcommittee we shall attempt to secure official approval of our work.

R. W. BARNETT
A. B. GASPIT

(a) ~~copy of [unclear] as Nat'l [unclear] or~~
~~approved by [unclear]~~

DRAFT

ENCLOSURE

(2) The SCAP should require the Japanese Government to make compensation for losses of cultural objects suffered by allied countries during the periods of Japanese occupation.

(3) 4. Cultural objects are defined to include all objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through commercial channels.

(4) 3. Allied countries occupied by the Japanese which make claim for compensation of losses of cultural objects should provide reasonable evidence that cultural objects were removed, lost, or destroyed, as a direct or indirect result of Japanese occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost.

(5) 4. Where possible, the Japanese Government should be required to compensate for particular cultural objects lost by providing to claimant countries cultural objects in Japan of roughly equivalent character and cultural value. *held either by public or private owners.*

(6) In the case of losses of cultural objects which have served public cultural purposes, and for which rough equivalents cannot be found in Japan, claims should be satisfied from a pool comprising cultural objects owned by Japanese public agencies, and all cultural objects known to have been looted, in proportion to the unfulfilled recognized claims of claiming countries.

(7) Neither replacement in equivalents as indicated in paragraph 4 nor compensation from the pool of cultural objects referred to in paragraph 5 should include any cultural items:

- a. Listed in Japanese inventories of "national treasures" prior to 1905.
- b. Required by the SCAP to accomplish the objectives of the occupation, particularly with respect to the program of democratizing the education of the Japanese people.

FAR EASTERN COMMISSION

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R. W. BARNETT
A. B. GASPIT

DRAFTENCLOSURE

1. The SCAP should require the Japanese Government to make compensation for losses of cultural objects suffered by Allied countries during periods of Japanese occupation.
2. Cultural objects are defined to include all objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through commercial channels.
3. Allied countries occupied by the Japanese which make claim for compensation of losses of cultural objects should provide reasonable evidence that cultural objects were removed, lost, or destroyed, as a direct or indirect result of Japanese occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost.
4. Where possible, the Japanese Government should be required to compensate for particular cultural objects lost by providing to claimant countries cultural objects in Japan of roughly equivalent character and cultural value.
5. In the case of losses of cultural objects which have served public cultural purposes, and for which rough equivalents cannot be found in Japan, claims should be satisfied from a pool comprising cultural objects owned by Japanese public agencies, and all cultural objects known to have been looted, in proportion to the unfulfilled recognized claims of claiming countries.
6. Neither replacement in equivalents as indicated in paragraph 4 nor compensation from the pool of cultural objects referred to in paragraph 5 should include any cultural items:
 - a. Listed in Japanese inventories of "national treasures" prior to 1905.
 - b. Required by the SCAP to accomplish the objectives of the occupation, particularly with respect to the program of democratizing the education of the Japanese people.
7. The SCAP should secure the advice and assistance of authorized restitution representatives of claiming countries, acting individually, or, if he desires, collectively, to assure equitable implementation, in the light of established precedents, of the foregoing policy, particularly as it relates to recognition of claims, determination of standards for the rough equivalents mentioned in paragraph 4 above, and determination of what may be considered available for inclusion in the pool of cultural objects specified in paragraph 5 above.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO :

DATE: 18 December 1946

FROM :

SUBJECT: War Booty

See Alwyn Freeman's Memorandum to Nelson T. Johnson
for General McCoy, 19 July 1946.

Hague Convention, 1907 (No. IV) Articles 46, 47, 52,
53, 55, 56.

cf Article 55 and U.S. W.D. Rules of Land Warfare
para 315, 316

"The occupant does not have the absolute right of disposal or sale of enemy real property. As administrator or usufructuary, he should not exercise his rights in such wasteful and negligent manner as seriously to impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. A lease or contract should not extend beyond the conclusion of the war."

FAR EASTERN COMMISSION

19 December, 1946

The enclosure, together with the covering letter, was submitted to the Secretary of the Restitution Subcommittee by the U. S. member for circulation at the next scheduled meeting of the Subcommittee.

To the Secretary of the Restitution Subcommittee:

Attached is a new revision of Mr. Rodriguez' policy statement on compensation for cultural losses redrafted in the light of our latest discussion.

We should like to have it clearly understood that this redraft represents our personal view of what is required in this policy statement. After the next meeting of the Subcommittee we shall attempt to secure official approval of our work.

R. W. BARNETT
A. B. GASPIR

DRAFTENCLOSURE

1. The SCAP should require the Japanese Government to make compensation for losses of cultural objects suffered by Allied countries during periods of Japanese occupation.
2. Cultural objects are defined to include all objects of artistic, historical, religious, or educational character, including collections of books, which are irreplaceable through commercial channels.
3. Allied countries occupied by the Japanese which make claim for compensation of losses of cultural objects should provide reasonable evidence that cultural objects were removed, lost, or destroyed, as a direct or indirect result of Japanese occupation and have not been found. Such evidence should show, in reasonable detail, amounts, kinds, and quality of cultural objects lost.
4. Where possible, the Japanese Government should be required to compensate for particular cultural objects lost by providing to claimant countries cultural objects in Japan of roughly equivalent character and cultural value.
5. In the case of losses of cultural objects which have served public cultural purposes, and for which rough equivalents cannot be found in Japan, claims should be satisfied from a pool comprising cultural objects owned by Japanese public agencies, and all cultural objects known to have been looted, in proportion to the unfulfilled recognized claims of claiming countries.
6. Neither replacement in equivalents as indicated in paragraph 4 nor compensation from the pool of cultural objects referred to in paragraph 5 should include any cultural items:
 - a. Listed in Japanese inventories of "national treasures" prior to 1905.
 - b. Required by the SCAP to accomplish the objectives of the occupation, particularly with respect to the program of democratizing the education of the Japanese people.
7. The SCAP should secure the advice and assistance of authorized restitution representatives of claiming countries, acting individually, or, if he desires, collectively, to assure equitable implementation, in the light of established precedents, of the foregoing policy, particularly as it relates to recognition of claims, determination of standards for the rough equivalents mentioned in paragraph 4 above, and determination of what may be considered available for inclusion in the pool of cultural objects specified in paragraph 5 above.

December 16, 1946

1. The Japanese Government should replace cultural objects located in an Allied country at the time of occupation of that country which were removed by fraud or duress by the Japanese or their agents but cannot now be found (in Japan) or which were destroyed in situ as a result of war operations, or which were lost in transit from such Allied country to Japan, and, therefore, cannot be subject to restitution, by objects of roughly equivalent character and cultural value from stocks of cultural objects existing in Japan, belonging to the Japanese Government or Japanese nationals, subject to the limitation in paragraph 3 below.

2. For the purpose of this paper, cultural objects should be understood to include all objects of artistic, historical, educational or religious character, including collections of books, which are irreplaceable ^{thru} ~~from regular~~ commercial channels of ~~goods in production~~.

3. The stocks of cultural objects existing in Japan from which replacement by rough equivalents as provided in paragraph 1 shall be taken, should not include "national treasures" of the Japanese as listed in catalogs published up to 1905, nor such cultural objects as are needed in the fulfillment of the educational program of the Japanese people.

4. Cultural objects which were lost or destroyed, but which cannot be replaced under the provisions of paragraph 1 of this paper, should be subject to compensation from a "gold pot" of cultural objects

subject cannot be restituted under this

- 2 -

available for this purpose, in proportion to the unfulfilled claims of the different countries. The "gold pot" herein referred to should include cultural objects existing in Japan, which are not used for replacement by rough equivalents, and which are in excess of the level required by the Japanese in the fulfillment of their educational program.

5. Other cultural objects which were lost or destroyed but which do not fall within the definition of cultural objects given in paragraph 2 should not be subject to replacement by equivalents nor to compensation from the "gold pot", but should be included in the claim for reparations.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Members of Restitution Subcommittee DATE: 10 December 1946

FROM : D. K. Eichler (Secretary) RE 5600 Ext 3515

SUBJECT:

The Restitution Subcommittee will meet Friday, 13 December, at 9:30 a.m.

If it is at all possible, and if you think it might expedite our work on Friday, try to let me have five copies of your draft policy paper on the Restitution of Looted Cultural Objects by Thursday noon, and I will see that each member of the Subcommittee receives a copy so that he may have a chance to look at it before our discussion on Friday.

I am asking each of the five members of the Subcommittee to do the same, and will let you have any of the draft policies I may receive.

If you should be unable to make five copies, the Secretariat will be glad to make them up from any typed or handwritten copy you may give us.

FEC-RESTRICTED

For Subcommittee Circulation Only

FAR EASTERN COMMISSION

SUBCOMMITTEE ON
REPLACEMENT OF LOST CULTURAL OBJECTS

(Meeting Held on 27 October 1947 at 3:00 p.m.)

ATTENDANCE:

United States:

Mr. R. B. Smith (Chairman)

Mr. H. L. Baker

Mr. F. O. Bundy

Miss A. R. Hall

China:

Dr. Anthony Koo

Mr. S. Y. Huang

Netherlands:

Dr. R. H. van Gulik

Philippines:

Mr. J. U. Jovellanos

United Kingdom

Mr. M. B. Thresher

Secretary

Mr. D. K. Eichler

1. Enclosure "A" is the tentative redraft by the Subcommittee of the original policy proposal submitted by the U. S. Member in Cl-272, showing amendments to this redraft submitted by the U. S. Member at the meeting on 27 October.

2. Enclosure "B" contains a brief summary of the discussion of the U. S. amendments shown in Enclosure "A". This summary is by no means exhaustive. It deals only with the most significant features of the U. S. amendments discussed by the Subcommittee.

D. K. Eichler
Reparations Secretary

FEC-RESTRICTEDENCLOSURE "A"

TENTATIVE REDRAFT BY SUBCOMMITTEE AS OF 27 OCTOBER 1947
of
REPLACEMENT OF LOST CULTURAL OBJECTS: TENTATIVE U. S. PROPOSAL

1. This policy is supplementary to and not in derogation of policy decisions relating to restitution of identifiable 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 destroyed or removed from Allied countries during periods of Japanese military aggression against their territories in accordance with the following provisions. The~~
Japanese Government should be required to replace cultural objects

- a. which had previously served public cultural purposes, and
- b. which have been destroyed or removed from Allied Countries by the Japanese or their agents or destroyed as a result of direct military action during periods of Japanese military aggression against their 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.

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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

8. The SCAP should be authorized to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation of this policy.

FEC-RESTRICTEDENCLOSURE "B"BRIEF SUMMARY OF DISCUSSION AT MEETING OF CULTURAL OBJECTS
SUBCOMMITTEE ON 27 OCTOBER 1947

Discussion centered around the amendments submitted by the U. S. Member in the light of the Subcommittee's revision at its last meeting of the original U. S. paper. The U. S. amendments are shown on the attached draft of the policy. The summary that follows is organized around these amendments.

1. Paragraph 3 a

The Chinese Member commented on the U. S. proposal to qualify "cultural objects" by the addition of the phrase "which have served public cultural purposes." He suggested that such an amendment would mean that owners of lost or destroyed cultural objects which have not served public cultural purposes would have to rely wholly on reparations as a means of recouping their losses. However, in many cases it would be very difficult, if not impossible, to place a monetary value on some types of cultural objects, particularly since they are considered as "not replaceable through normal channels of production and commerce". Replacement in such cases would seem to be the only just alternative.

The U. S. Member said he wanted to emphasize that his delegation felt that a policy on replacement of lost or destroyed cultural objects should serve primarily the public cultural interests of the victimized countries. He further pointed out that since it was unlikely that any country would ultimately receive reparations for more than a fractional part of the damage sustained in the war against Japan, private claimants for damages could hardly expect to receive indemnification of more than a fractional part of their claims. To grant full indemnification (via replacement) to private owners of one type of property (cultural objects) would be to discriminate against private owners of other types of property. He saw little reason to show special consideration for collectors of "cultural property" if such property had never served any cultural purpose beyond those of its owners.

The Netherlands Member asked whether cultural objects originally used by Governments, though not available to the general public, would, under the U. S. interpretation, be considered as having served "public cultural purposes." As an example he cited the library of the Far Eastern division of the Netherlands East Indian Foreign Office in Batavia which was lost during the war. The U. S. Member said he felt reasonably sure his Government would consider that in such instances a public cultural purpose had been served. The Netherlands Member thought the Subcommittee might consider the possibility of amending the U. S. proposal in some such way as the following:

".....cultural objects which had previously served public or Governmental cultural purposes."

No action was taken on this suggestion.

FEC-RESTRICTED2. Paragraph 3b.

The Subcommittee suggested the inclusion in 3 b of the phrase "or destroyed as a result of direct military action". The U. S. delegation said it would not object to having this phrase included in the Secretariat's working draft of the paper but would like to reserve its opinion until its legal experts had given their interpretation of the extent of its application.

3. Paragraph 6.

The Subcommittee pointed out that acceptance of the U.S. proposals in para 3 would entail the deletion of the last sentence in para 6. This has accordingly been stricken out in the accompanying tentative draft of the paper.

4. Paragraph 7.

The Chinese Member commented on the U. S. proposal that a new subparagraph b be added to paragraph 7, the former subparagraph b becoming subparagraph c. He felt that a provision protecting "ancient Japanese collections significant for their unity and completeness" should be balanced by equivalent and equally explicit protection of the victimized countries. For example, if an ancient Chinese collection "significant for its unity and completeness" were lacking 3 or 4 volumes, and these 3 or 4 were available from a similarly unique Japanese collection, it could hardly be considered just or proper that the Japanese collection should remain intact while the Chinese remained incomplete.

Mrs. Hall, of the U. S. Delegation, suggested that such situations might be taken care of through the use of microfilm substitutes for such volumes from Japanese collections as might be turned over to claimants under the replacement program. The Chinese Member said he would like to study the U.S. proposal in paragraph 7 in more detail before making any concrete suggestions.

The Netherlands Member said he was inclined to agree with the Chinese Member that the U.S. amendment in paragraph 7 produced an imbalance in the paper which might result in giving preferential treatment to the Japanese over the victimized countries. He thought the Committee should give some attention at its next meeting to possible provisions for giving equal protection to the claimant countries.

The Netherlands Member also suggested that the phrase "antique Japanese collections" was rather vague and might be improved if altered to read "Japanese collections established prior to the Tokugawa Shogunate." The U. S. Member said he would check this suggestion with the experts in his Government and report back at the next meeting.

* * * * *

REDRAFT BY SUBCOMMITTEE AS OF 13 OCTOBER 1947
of
REPLACEMENT OF LOST CULTURAL OBJECTS: TENTATIVE U.S. PROPOSAL

1. This policy is supplementary to and not in derogation of policy decisions relating to restitution of identifiable 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 destroyed or removed from Allied countries during periods of Japanese military aggression against their 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 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. 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.
8. The SCAP should be authorized to secure the advice and assistance of authorized restitution representatives of claimant countries to assure equitable implementation of this policy.

FEC-RESTRICTEDSUMMARY OF DISCUSSION AT THIRD MEETING OF AD HOC
SUBCOMMITTEE ON RESTITUTION OF LOOTED PROPERTY (FEC-011/32)

(Time of Meeting: 9 September 1947 at 3 p.m.)

ATTENDANCE:

United Kingdom	Mr. Graves (chairman), Mr. Thresher
China	Dr. Tan, Dr. A. Koo
USSR	Admiral Ramishvili, Mr. Korobochkin
United States	Mr. Barnett, Mr. B. Smith
Secretary	Mr. Eichler

The Chairman, Mr. Graves, suggested that the six proposed amendments to FEC-011/32 be discussed one at a time beginning with those on which there appeared to be the widest area of agreement.

ITEM 1 - Amendment to Paragraph 14.

The Chinese Member at the first meeting of the Subcommittee had proposed extending the period for filing claims mentioned in paragraph 14 from 8 months to 12 months.

The U. S. Member recalled that the original U. S. proposal was for a 6 months period. As a result of Committee discussions the U. S. Government had agreed to an extension of this period to 8 months. While it was reluctant to extend the period further it would agree to do so provided reasonable compromise was possible on some of the other proposed Chinese amendments. The U. K. Member said that while his Government preferred 8 months it would also agree to 12 months if this would facilitate early passage of the paper. The Soviet Member had no comment but was not opposed to the amendment.

ITEM 2 - Amendment to First Sentence of Paragraph 2

The Chinese Member at the first meeting of the Subcommittee had proposed the following amendment to the first sentence of paragraph 8:

~~After full opportunities have been given for inspection of objects known to have been looted~~ After twelve months from the issuance of a directive to SCAP giving effect to this policy decision, SCAP should be authorized to liquidate, etc.

The Subcommittee, after discussing the Chinese proposal at the 2nd meeting of the Committee, suggested the following compromise:

After full opportunities have been given, in accordance with the provision of para. 14, to inspect and claim for inspection-of objects known to have been looted, etc.

The U. S. Member said that it was the view of his Government that the wording of this first sentence in FEC-011/32 gave ample protection to the interests of the looted countries. Furthermore he pointed out that paragraphs 7 and 14 provided additional protection. However, if a compromise could be expected on other Chinese proposals his Government could agree to the Subcommittee's version.

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The Chinese Member said that he was not wholly satisfied with the Subcommittee's compromise version (above) and suggested the following wording:

After full opportunities have been given, following the filing of claims as provided for in paragraph 14, to inspect and claim objects known to have been looted, etc.

He pointed out that this version tied in the idea of "full opportunities" to inspect and claim more closely with paragraph 14.

The U. S. Member said the new Chinese wording would not be acceptable to his Government because it authorized a 12-months delay in the operation of paragraph 8.

The U. K. Member then suggested the following as an alternative:

After full opportunities have been given, and having regard for the provisions of paragraph 14, to inspect and claim objects known to have been looted, etc.

The Chinese Member, while preferring his earlier versions, said he could give his personal support to the U. K. Member's version. The U. S. Member said that the U. K. version would also be acceptable to his Government. The Soviet Member had no comments but was not opposed to the amendment.

ITEM 3 - Drafting Changes to Last Two Sentences of Paragraph 8

The Subcommittee agreed to adopt a drafting proposal by the Chinese Member amending the last two sentences of paragraph 8 as follows:

The secured fund should finally be distributed among the countries herein specified in accordance with the percentages mentioned above, payable in U. S. dollars, or, at the discretion of SCAP, in foreign exchange acceptable to the recipient countries concerned. Such distribution should be effected not later than 1 January 1950.

The Subcommittee agreed that the Chinese redraft above did not alter the substance of the last two sentences of paragraph 8 as contained in FEC-011/32. It was the view of the Subcommittee that the redraft constituted a simplification of the language of the original. The Chinese Member said that his support of this redraft was not such as to prejudice any later views he might care to express concerning the date in the last sentence.

ITEM 4 - Immediate Distribution of Proceeds from Unidentified Looted Property

The Chinese Member at the first meeting of the Subcommittee had proposed an amendment to paragraph 8 providing for distribution of the proceeds from the liquidation of unidentified looted property immediately upon liquidation. This would require abandonment of the idea of using unidentified looted property as collateral for a "secured fund" for imports into Japan of raw materials for self-liquidating manufacturing projects.

The U. S. Member said that his Government was strenuously opposed to any change in paragraph 8 which would prevent the use of the proceeds from the liquidation of unidentified looted property in a revolving fund for Japanese imports. The position of the U. S. Government, he said, was that the concept of the

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revolving fund in paragraph 8 was an equitable one for all concerned for the following reasons: (1) It granted looted countries an equity in unidentified looted property. The U. S. Member pointed out that it was not a self evident principle that looted countries should receive an equity in property which they were unable to identify, but his Government had been willing to concede this point to the looted countries in recognition of the losses which they had suffered at the hands of the Japanese. (2) The use of unidentified looted property as collateral for a revolving fund for Japanese imports seemed to the U. S. Government a realistic approach to the problem of rehabilitating the Japanese economy. The U. S. Member pointed out that the countries on the FEC were in general agreement that it would be necessary to create a viable economy for the Japanese and had apparently recognized the usefulness of the "revolving fund" project to this end at the time the paper was forwarded to the Steering Committee. At that time a majority of countries had expressed their approval of paragraph 8.

The U. S. Member further observed that the revision of FEC-011/12, the original FEC policy decision on restitution, had been begun nearly a year ago. At that time the U. S. delegation had made quite clear that its Government was satisfied with FEC-011/12, and that its participation in the redrafting of that paper had been motivated by a desire to give full considerations to the views of the looted countries. The U. S. Government had been willing during the past year to consider a substantial liberalization of the standards of identification and an expansion of the categories of looted property, as well as numerous other minor changes. The result of these changes would be a more valuable restitution program for the looted countries than that originally agreed to by those countries in FEC-011/12. In the circumstances the U. S. Government did not feel that the proposal in paragraph 8 was in any way an unreasonable one.

The U. K. Member said that his Government preferred the original paragraph 8 to the proposed Chinese amendment. It was the view of his Government, he said, that unidentified looted property should be dealt with on as realistic a basis as possible. His Government would, therefore, not oppose the use of such property for the purpose of rehabilitating in some degree the Japanese economy.

The Chinese Member said that it was the position of his Government that the use of unidentified looted property in the manner prescribed by paragraph 8 discriminated against the looted countries in favor of the Japanese. His Government was of the opinion that the degree to which looting was carried on by the Japanese during the years of their aggressive policy in the Far East was not fully appreciated by the countries which were not looted. It was felt that those who had suffered from looting during the Japanese occupation should be given the earliest possible opportunity to recoup their losses.

The Soviet Member said that although he was without formal instructions on the Chinese proposal, he would be able to give it his informal support.

There was no further discussion of this item.

ITEM 5 - 60% Share of Unidentified Looted Property for China

At the first meeting of the Subcommittee the Chinese Member proposed giving special consideration to China in the distribution of the proceeds from liquidation of unidentified looted

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property. The Chinese proposal was that China, by reason of the extraordinary looting of her country by the Japanese, should receive not less than 60% of the proceeds from the liquidation of unidentified looted property.

In support of his Government's proposal, the Chinese Member said that few countries realized how thoroughly systematic the Japanese were in looting China. To every Japanese military unit was attached a special group for the express purpose of handling loot. This group was usually divided into 4 or 5 sub-groups. The first of these would be responsible for seeking out and seizing gold, silver, precious stones, etc. The second group would be responsible for seeking out and seizing cultural objects of the highest value. A third group would be responsible for seizing valuable manufactured goods and machinery. A fourth group would concern itself with such minor goods as wearing apparel. A fifth group would give its attention to the systematic looting of minor household items, etc. In this way the Japanese systematically looted virtually every square mile of territory in which their armies operated. Recent reports from his Government indicated that large quantities of looted materials cannot be found or identified, and for this reason it was felt that a large share for China in the proceeds from the sale of unidentified looted property was a reasonable request.

The U. S. Member said that he was not inclined to favor the Chinese proposal since it would require negotiation among the seven looted countries of percentage shares for restitution. Experience in dealing with the reparations problem indicated that negotiation of percentage shares was an extremely complex and time-consuming operation. It was felt that if negotiation had to take place on restitution shares it would be a very long time indeed before a final restitution policy could be implemented. The U. S. Member said, however, that if the seven looted countries could agree quickly and easily that pro-rating in accordance with reparations shares was inequitable and that they desired to negotiate separate restitution percentages he was confident that the U. S. Government would not object to such a procedure. In this event, he said, it might be possible to substitute in paragraph 8 for the phrase "in accordance with the percentages mentioned above" (namely "recognized national reparations percentage shares") some such phrase as "such percentages as the looted countries may decide in due course among themselves".

The U. K. Member said that his Government preferred the retention of the present wording of paragraph 8 on this point, namely that ultimate distribution of the secured fund should be in accordance with recognized national reparations percentage shares.

The Soviet Member said that he would probably be able to support the Chinese proposal if the seven looted countries favored it.

There was no further discussion of this item.

ITEM 6 - Salvaging, Repairing and Refitting Looted Ships Found in Non-Japanese Waters

The Soviet Member, supported by the Chinese Member, proposed the following amendment to paragraph 10:

The cost of the necessary work of salvaging, repairing and refitting of ships in the cases where they were sunk or damaged should be borne by the Japanese Government.

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The U. S. Member said that there were two questions he would like to discuss in connection with this proposed amendment: (1) is it practically feasible to adopt a policy requiring the Japanese to pay the costs of salvaging, repairing and refitting ships found in non-Japanese waters? (2) Even if feasible, has such a policy any place in a restitution paper? The U. S. Member said that the "costs" referred to in the Soviet proposal could not possibly have been yen costs since it would be manifestly impracticable to suppose the Japanese would be able to carry on salvaging, repairing and refitting operations in waters outside Japan. The costs referred to must, therefore, be local costs in the area in which the operations would take place. That is to say, the salvaging, repairing and refitting of ships sunk in the harbors of Shanghai and Hongkong would constitute, under the Soviet proposal, a charge against the Japanese economy. In the circumstances, he pointed out, this would mean simply a charge against the U. S. Government since the U. S. Government is at the present time meeting the deficit in the Japanese trading account from its own treasury. The U. S. Government could obviously not accept a proposal that it pay the costs of salvaging, repairing and refitting ships looted by the Japanese and found in non-Japanese waters.

The U. S. Member further pointed out that the salvaging, repairing and refitting of ships found in Japanese waters was not strictly a restitution matter, but since it involved repair of damage done was more appropriately a reparations matter. For this reason, he said, it would be better procedure to remove this subject from the restitution paper and treat it separately as a reparations problem. The U. S. Government recognized that the recovery of damaged shipping could be a valuable asset in the rehabilitation of the Far East and the countries concerned could count on sympathetic consideration by the U. S. Government of any program drawn up by the FEC that would approach this problem as a reparations problem and which would be consistent with the other reparations policies of the Commission.

The Chinese Member said that while his Government would prefer inclusion in the restitution paper of some statement of the principle contained in the proposed Soviet amendment, they would not object to treating this problem in a separate paper.

The U. K. Member said that his Government would welcome separation of this problem from the restitution paper.

Mr. Korobochkin, speaking for the Soviet delegation, said that his Government's position was that the policy on property looted by the Japanese should deal with looted property wherever it might be found. He suggested that it was not wholly accidental that members found it necessary to include paragraph 10 in the original restitution policy. This paragraph, he pointed out, dealt specifically with looted property found outside Japan. Mr. Korobochkin said he would like to point out to the U. S. Member that the intention of the Soviet amendment was expressly to require that the Japanese themselves bear the costs in connection with restoring all looted ships found outside Japan. There was no intention that the U. S. Government should pay these costs. Commenting on the resources from which Japan could possibly pay these costs, Mr. Korobochkin said that the Japanese could use any one or a combination of the following methods:

- (1) Current production of gold.
- (2) Proceeds from its export surplus.

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- (3) Special arrangements for payment with the countries concerned.

The Soviet Member said that he had no instructions on removing this subject from the restitution paper and that it was still, therefore, his view that a statement of general principle be included in the restitution paper with the understanding that the details would be worked out later.

The U. S. Member, commenting on Mr. Korobochkin's observations, said that it should be noted that paragraph 10 in FEC-011/12 (and FEC-011/32) did not itself constitute a policy decision, since by its very nature it could not be implemented by General MacArthur. Competence of the FEC was limited to the formulation of policies which the SCAP can himself implement. Paragraph 10 was merely a recommendation to the countries looted by Japan that they act in a specific manner with respect to looted property found in their territories. General MacArthur had no authority inside the territories of other countries than Japan. Any proposal, therefore, which concerned the salvaging, repairing and refitting of ships outside Japan would have to stand on its own feet as a full-fledged policy decision. In other words, it would have to be a policy decision that General MacArthur can reasonably be expected to implement.

The U. S. Member also commented on Mr. Korobochkin's remarks concerning Japanese resources available for paying these costs. He pointed out that while a favorable Japanese trade balance did not seem a reasonable probability in the immediate future, any balance that might occur, together with such items as current production of gold, etc., must also be considered in connection with the very important item of occupation costs. He pointed out that occupation costs had been accumulating since 1945. To date the U. S. Government had been supplying the funds to cover these costs. The Commission had generally agreed that the Japanese should stand the costs of the occupation and any available capital resources which the Japanese are likely to have in the near future would have to be considered in connection with occupation costs.

There was no further discussion of this item.

The U. S. Member said he had one final comment of a general nature to make concerning the paper under consideration. He pointed out that the Supreme Commander had had a restitution policy in the field since 18 July 1946, namely FEC-011/12. The present efforts to revise that policy had been in progress since October of that year. Should the FEC be unable to adopt a revised policy within a reasonable time, the Supreme Commander would find himself in the position of having to go forward with final implementation of the policy already before him.

The Subcommittee requested the Secretary to prepare a detailed summary of the discussion at this meeting together with a brief summary of the tentative conclusions arrived at. These will be circulated informally to the members of the Subcommittee who would meet again in the near future for the purpose of preparing a report for the Commission. It was agreed that the Chairman, Mr. Graves, would request at the next meeting of the Commission on 11 September that the Subcommittee be given another week to complete its work.

The meeting adjourned at 1:30 p.m.

Time of next meeting to be arranged by the Secretary.

COM. 1 *Misc.*

COMMITTEE NO. 1: REPARATIONS

(Miscellaneous)

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

DATE:

TO :

FROM :

SUBJECT :

Chinese statement
makes the additional

points:

- a.) Reparations involve not only punishing Japan but repair damage in other countries; hence shares is an integral part.
- b.) Consideration of shares heretofore means that the requirements of II, A, 3 have been met - as would be upon adoption of the shares.
- c.) FEC has ^{power to make policy on} all ~~points~~ ^{subject} not specifically barred by II-B + perhaps C.

*File: Reparations
(Memos to
McCoy)*

7 May 1947

MEMORANDUM FOR: General McCoy

SUBJECT: Proposed Reply to Australian Statement on
Reparations, FEC-227

The following points in reply to the Australian statement on reparations (FEC-227) are offered as a possible basis for a United States position as well as a decision of the Chair in handling the parliamentary problem created by FEC-227.

1. Legal Authority of the Far Eastern Commission. The crux of the legal aspect of the Australian position is that the FEC "has no jurisdiction over the division and allocation of reparations". The Australians admit that by virtue of the Potsdam Declaration, which states that "Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to rearm for war," the Commission does have authority to "prescribe the total amount of reparations to be provided by Japan, including the kinds of reparations and the manner in which they are provided." However, "the apportionment of those reparations" among the claimant countries is not included within the meaning of the Potsdam Declaration and is therefore not a proper function of the Far Eastern Commission under its Terms of Reference. Several refutations of this argument are possible.

(a) Shares An Indivisible Part of Reparations. It is wholly unrealistic and contrary to common sense to maintain that there is any practical distinction between making a decision as to the total amount of reparations, the kinds of reparations, and the manner in which those reparations are to be provided; and a decision regarding the apportionment of those reparations among claimant countries. The fact that the ultimate objective of reparations is to satisfy the needs of claimant countries on a pro rata basis necessarily must be taken into account at every stage in the determination of the amount, kind and manner of reparations. It is impractical to acknowledge that the Commission has authority to deal with a part of the question of reparations and not the whole. All of the Commission's action and thinking on the subject of reparations has proceeded upon this basis. Thus, for example, the proposed policy dealing with Selection of Plants for Reparations Removal (SC-041/6) makes provision for the representatives of claimant countries circulating throughout Japan to examine plants with a view to their acceptability in the light of the "general preferences of reparations claimants" before these plants are actually dismantled for reparations removal. Obviously the claims of reparations countries, made according to which

plants are "of special value ~~and~~ need to claimant countries", must be based upon a rough estimate of the share of reparations they intend to receive. A further example of the interconnection of the reparations problem is taken from the Commission's policy on Delivery of Reparations Goods in Japan (FEC-094/2), (which was ~~also~~ accepted, incidentally, by the Australians) in which reference is made to the fact that the costs involved in delivery of reparations will be charged toward the "reparations accounts of the recipient countries in the same proportion as their respective shares of reparations from Japan." The same policy goes on to say that the "charging of these costs to the reparations accounts of recipient countries should not affect the distribution of reparations received by claimant countries." This policy decision also makes provision for representatives of claimant countries to be consulted about and to be represented at the dismantling and preparation of reparations goods for delivery. In other words, a Commission policy covering an aspect of reparations over which the Australians acknowledge the Commission possesses authority, includes reference to the fact that these reparations are to be made available to claimant countries on a percentage basis and makes provisions that this fact be taken into consideration even prior to the delivery of goods. The Australian view would require that that portion of the Japanese industrial plant to be made available for reparations be moved in toto to some deserted Pacific Island, and there, under some other authority, be divided up on a percentage basis. This, clearly, is absurd.

(b) Australians Have Already Tacitly Accepted FEC Authority. The authority of the Commission to deal with the subject of reparations shares pursuant to the terms of the Potsdam Declaration has been tacitly accepted by the Commission since its inception. The Basic Policy paper, in which all Governments, particularly the Australian Government, have been interested, includes a reference to reparations. Members of the Commission during the trip to Tokyo recognized that the subject of reparations was perhaps the most important activity that the Commission had to handle. The Australian Government has thoroughly concurred in this tacit assumption. On the basis of that assumption Australia officially concurred in the Commission policy decision, FEC-094/2, from which, as indicated above, the authority of the Commission to deal with reparations shares is inferred. The Australian Government has participated vigorously in all portions of the basic policy document and only recently entered into a formal agreement in Committee No. 1 with representatives of all the other FEC nations to submit the precise percentage share they wanted to receive in reparations. The Australian Government has permitted its representative to sit as Chairman of the Reparations Committee. It was obvious to the Chairman, as well as to every member, that the principle function of the Reparations Committee was to achieve agreement on the subject of allocation of shares. While the Australian Government may be justified in feeling that the Commission has not been overly successful to date in handling the subject of percentage shares, the fact remains that the Australians, by their agreement on a Commission policy and by their action within the Commission, have tacitly accepted the

authority of the Commission to deal with reparations shares. Failure of the Australians to raise any dubious legal point long ago means that they have already accepted the Commission's authority in allocating percentage shares.

(c) Shares Can Be Called An "Other Matter". Even if the determination of reparations shares were not within the authority of the Commission under the terms of the Potsdam, it would still be within the authority of the Commission under the terms of Section II, A, 3 of the Terms of Reference, which provide that the Commission may deal with such "other matters" as may be assigned to it in accordance with its voting procedure. It might well be argued that the question of reparations shares is an "other matter" which has already tacitly been adopted by unanimous vote of the Commission, in the absence of any objection over a period of twelve months. Should any member question this tacit agreement, however, it would be a very simple matter to put the issue of whether the Commission should deal with reparations shares to a vote under the provisions of Article II, A, 3. (The only caveat here from the U. S. point of view would be the possibility that by the time a vote was taken the Soviets might have grabbed at the Australian bait about interim directives and gone along with the Australians!)

2. Authority of the Peace Conference. The Australian statements that only the peace conference has power to treat the question of reparations shares. The right of the peace conference to deal with reparations shares cannot, of course, be denied. If all reparations deliveries have not been made by the time a peace treaty is signed, which is not unlikely, it will be necessary to incorporate in the peace treaty the Commission's decision on shares, and to make further provision for the completion of such deliveries as are still pending at that time, since the extent of the Allied authority over Japan after that date will be determined by the contents of the peace treaty. Before a peace treaty is signed, however, all Allied control authority over Japan is vested in the FEC. The functioning of the Commission, as the Chinese Ambassador pointed out, is paving the way for the final peace settlement. No practical purpose would be solved by taking reparations out of the Commission and waiting for the conference. The Australian's plea for urgency in the convening of a peace conference may be recognized and the line of responsibility from the Commission to the conference pointed out.

3. Reparations Tribunal. The positive portion of the Australian argument is a recommendation that the question of reparations shares be remanded to a special judicial tribunal charged with examining the claims of all countries and recommending directly to the peace conference a schedule of percentages.

If, however, as the Australians maintain, the Commission has no jurisdiction over reparations shares, then the Commission would also certainly have no authority to appoint any body to deal with such a subject, since obviously the authority of that body could only stem from the authority of the Commission which created it. The Australians compared a reparations tribunal to the War Crimes Tribunal. But if this analogy is followed, it should be pointed out that the Commission established the policy under which the War Crimes Tribunal operates, and exercises complete authority in the field of war criminals. If the Commission has authority to create a reparations tribunal, then it has authority to deal with the question of shares by itself. If not, no body could set up such a tribunal except the peace conference.

4. Parliamentary Situation with Respect to FEC-227. From a parliamentary point of view, the Australian statement constitutes a point of order with regard to the authority of the Commission to adopt FEC-219/6, Division of Reparations Shares. The Australian representative in effect has made the point of order that FEC-219/6 is out of order because it deals with a subject outside the authority of the FEC's Terms of Reference. Obviously the only body which can interpret the Commission's Terms of Reference is the Commission itself. When a point of order is raised by any member it is necessary that the Chair immediately make a ruling as to whether the point of order is well taken. In this case the Chair should, in view of the above, rule that the point of order is not well taken. The Australian representative would then presumably appeal from the ruling of the Chair. This appeal would be put to a vote and the Chair would undoubtedly be sustained. The Commission would then proceed to a vote on FEC-219/6, and FEC-227 would have been completely disposed of. (It might be wise to canvass the veto powers before taking such a vote, however, in the event that the Soviets, for fear of an interim directive on final shares, or the United Kingdom, for reasons of empire solidarity, might side with the Australians.)

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