

DR. EVATT said that, should the Commission follow his suggestion by providing that the constitution could be put into effect only on an interim basis, acceptance of Enclosure A, by the U.K Representative might be feasible.

MR. GRAVES said that his government considered that Enclosure A contained too much detail. As examples of what he had in mind he referred to paragraph 4 d, which provided that the expenses of the Imperial household should be appropriated by legislation in the annual budget. His government felt that such appropriation should be made only at the beginning of eras of rule. He said there was also objection on the part of his government to the provisions of paragraph 3, which called specifically for a republican form of government.

DR. EVATT said that paragraph d, might well be changed to agree with the U.K opinion on Imperial household appropriations. With reference to the objection to paragraph 3, he pointed out that the paragraph was entirely conditional on paragraph 2, which provided that the form of government should be established by the freely expressed will of the Japanese people.

SIR CARL BERGMANSEN said he supported DR. EVATT'S proposal to provide for deferred ratification of any constitution adopted. He said that he was concerned over the fundamental problems of relation between the Commission and the Supreme Commander. He said that during the Commission's stay in Japan the question of the constitution had been raised, and the Commission had been informed that no consideration was being given the question, which was regarded as one for study by the Commission. In the light of this statement, he said, the Commission had been surprised by the announcement of the draft constitution and its approval by the Supreme Commander. He said that attempts had been made, with no success, to establish effective liaison with the Supreme Commander with regard to this vital question. The viewpoint of the Supreme Commander he said, had been that, "The Commission

could render no better service to the cause of democracy than to permit the Japanese Government and people, as I propose to do, to proceed unshackled, unhindered, and in complete freedom to work out their constitutional reforms, examining the situation only after action thereon has been completed to determine that the results achieved meet Allied standards". (pages 7 and 8, FEC-031/11.) SIR CARL BERENDSEN pointed out that the present proposal, embodied in Enclosure A of FEC-031/13, was not in agreement with this statement of the Supreme Commander. He asked whether, therefore, it would not be well for the Commission to take the matter up again with the Supreme Commander to inform him of the proposals under consideration, and again to ask his views.

DR. EVATT said that if this course were adopted, the views of the Supreme Commander might be sought informally by the Chairman while Committee No. 3 continued its deliberations.

MR. NOVIKOV asked whether consideration by the Commission of the problem of constitutional reform would be postponed until the views of the Supreme Commander were obtained. SIR CARL BERENDSEN replied that he had only mentioned this course as a possible way of preventing the worsening of relations with the Supreme Commander. Consideration might continue within the Commission while those views were sought, he said.

MR. NOVIKOV said that he feared another request to the Supreme Commander for his views would only delay consideration of the problem by the Commission. He thought it more practical for Committee No. 3 to resume its consideration, bearing in mind the previously expressed views of the Supreme Commander.

DR. EVATT suggested that the question of further informal consultation with the Supreme Commander might be left to the discretion of the Chairman. He suggested that the matter of constitutional reform be continued on the agenda and that his suggestion with reference to deferred ratification of the constitution be referred to Committee No. 3.

MR. SAKSENA said that action by the Commission on the constitutional question should proceed from Article (10) of the Potsdam Declaration which provides that "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people". The Commission should therefore decide on what constituted such obstacles and on the proper method of removing them. He said that Enclosure B of FEC-031/13 provided for the removal of these obstacles. The Commission, he said, was not justified in prescribing the details of the form of government to be adopted by the Japanese. Once the obstacles to a democratic government were removed, further action to establish responsible government in Japan should take the form of indirect advice and persuasion. A government which might be imposed on the Japanese would not endure, he said.

The Commission unanimously agreed that the subject of basic principles for a new Japanese constitution should be continued on the Commission Agenda, and that the proposal by DR. EVATT with respect to deferred ratification of the constitution should be referred to Committee No. 3 for consideration and report.

ITEM 6 - OTHER BUSINESS

1. APPOINTMENT OF AMBASSADOR NOVIKOV AS USSR REPRESENTATIVE ON THE FAR EASTERN COMMISSION

GENERAL McCOY said that he had been informed officially that Mr. GROENKO had been relieved of his duties as the USSR Representative and had been replaced by MR. NOVIKOV.

ITEM 7 - PRESS RELEASE

GENERAL McCOY said that he would be unable to hold the usual press conference, but that he felt that the Official Release would be adequate.

THE COMMISSION unanimously approved the following press release:

The Commission unanimously approved the recommendation of the committee on Constitutional and Legal Reform that Mr. R. E. Collins, the new member for Canada of that committee, serve as Deputy Chairman of the committee. Mr. Collins replaces Mr. E. Herbert Norman of Canada, who, previous to his service on the

Commission, was attached to General MacArthur's staff in Tokyo. Mr. Norman, a well-known authority on Japan, and the author of numerous studies of Japanese affairs, including Japan's Emergence as a Modern State, is returning to Japan as head of the new Canadian Liaison Mission.

Mr. Collins has recently returned from Chungking, where he served as Second Secretary in the Canadian Embassy for approximately two years.

II. The Far Eastern Commission today approved unanimously a policy statement (text enclosed) on interim reparations removals from privately owned munitions plants. This is the first industry in addition to those enumerated in the Pauley Report on which the Commission has taken action for purposes of interim removals. Recommendations on additional industries will be forwarded to the Commission as agreements are reached in committee. The recommendation was originated in the Reparations Committee of the Commission.

III. It will be recalled that Lord Wright, Chairman of the United Nations War Crimes Commission, addressed the Commission on April 18 on leading aspects of trials of war criminals. At that time he was on his way to Tokyo, where he consulted with authorities there on legal aspects of war crimes trials. He is now returning to London, and although he was not in Washington long enough last week to attend a regular meeting of the Commission, he spoke informally to the Commission at a special meeting last Friday, June 14th.

He told Commission members that he was well satisfied with the progress to date of the Japanese war crimes trials, and he dwelt with particular emphasis on the importance of the principles of international law which were emerging from the trials of war criminals in Germany and Japan. There would be no question in the future, he said, that under international law, individuals, however exalted their political positions, would be held responsible for their acts and those of their subordinates in planning and waging war.

IV. Formal announcement was made today that, in view of the appointment of Mr. Andrei A. Gromyko as USSR Representative to the United Nations Security Council, he has been relieved of his duties on the Far Eastern Commission. Mr. Nikolai V. Novikov, Soviet Ambassador to the United States, has been designated USSR Representative on the Far Eastern Commission.

The meeting adjourned at 12 noon.

28 June 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF SIXTEENTH MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the Soviet Representative, of page 5 of the minutes of the sixteenth meeting of the Far Eastern Commission.

2. All Representatives are requested to substitute the attached page for page 5 of the minutes of the sixteenth meeting.

NELSON T. JOHNSON
Secretary General

Minutes of
18th FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Eighteenth Meeting of the Far Eastern Commission,
Held in Main Conference Room, 2516 Massachusetts Avenue, N. W.,
Tuesday, 2 July 1946

REPRESENTATIVES PRESENT

Major General Frank R. McCoy, Chairman, (U.S.)
Major James Plimsoll, (Australia)
Mr. R. E. Collins, (Canada)
Dr. Timothy T. Har, (China)
Mr. Robert Douteau, (France)
Mr. Jamshed Vesugar, (India)
Dr. A. D. A. de Kat Angelino, (Netherlands)
His Excellency Sir Carl Berendsen, (New Zealand)
Dr. Melquiades J. Gamboa, (Philippines)
His Excellency Mr. Nikolai V. Novikov, (U.S.S.R.)
Mr. H. A. Graves, (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

Minutes 18th FEC Mt'g.

Minutes of Seventeenth Meeting of the Far Eastern Commission,
Held in the Main Conference Room, 2516 Massachusetts Ave., N. W.
Thursday, 27 June 1946

ITEM 1 - APPROVAL OF THE MINUTES OF THE SIXTEENTH MEETING

MR. NOVIKOV asked that the last sentence of the second paragraph on page 5 of the Minutes of the sixteenth meeting be deleted.

THE COMMISSION unanimously approved the minutes of its sixteenth meeting, with the amendment proposed by Mr. Novikov.

ITEM 2 - SOVIET PROPOSALS FOR CHAIRMAN OF COMMITTEE NO. 4 AND DEPUTY CHAIRMAN OF COMMITTEE NO. 7 (FEC-004/16)

THE COMMISSION unanimously approved FEC-004/16.

ITEM 3 - DIPLOMATIC STATUS OF THE FAR EASTERN COMMISSION (FEC-073/1)

THE COMMISSION unanimously approved FEC-073/1.

ITEM 4 - BASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION FEC-031/13,
FEC-031/15, FEC-031/16

MR. NOVIKOV presented the following statement:

"The question of the constitution has been considered by the Far Eastern Commission for several months. I regret to note that the Commission is dealing with this matter without any success in the sense that the Commission could influence this matter to some or other extent. I mostly regret the fact that the decision which was adopted by the Commission - to the effect that the Supreme Commander should make it known to the Japanese people that not only the draft of the constitution presented by the government, but also other drafts could be presented for consideration - has not actually been fulfilled.

"The Supreme Commander, since the decision was passed upon, has had a very good opportunity to fulfill that decision - that is, to make known to the Japanese people not only that the government draft of constitution received his approval but that other drafts could be presented to the Diet - and since this was not done the Japanese people could be of the opinion that this draft represents a document approved by the Allied Powers. We have had a communication from General MacArthur in which it was stated that the Supreme Commander, together with his staff, had helped to work out this draft of the constitution.

"The circumstance that the Supreme Commander has helped in working out that draft of constitution can explain the fact that the Supreme Commander is so insistent on the document presented by the Japanese Government. Unfortunately, in this case the point of view of General MacArthur is divergent from that of the Far Eastern Commission, which was of the opinion that other drafts ought to be presented and discussed, which would express the aspirations of the Japanese public.

"Thus, we are faced with the fact that other drafts were not presented to the Diet.

"In his recent address, General MacArthur - when speaking on the Japanese Constitution - concentrated mostly on the draft worked out by the Shidehara Government, and thus he added to his approval of that draft and again brought certain confusion into Japanese public opinion about the matter.

"When I instructed one of my advisors to raise the question of the

Japanese Constitution at the meeting of Committee Number 3 first, and then at the Steering Committee, I was guided by the fact that the decision of the Far Eastern Commission had not been put into effect and therefore I thought it expedient to raise the question of taking off the agenda of the Japanese Diet the discussion of the Governmental draft of the new Japanese Constitution.

"Another consideration which was laid as the basis for our proposal is the fact that the Far Eastern Commission up to now has not been able to work out the principles for the new Japanese Constitution. For some lengthy period of time these basic principles for the new Japanese Constitution have been considered at various stages by the Far Eastern Commission but nothing has been achieved. We are thus facing the fact that the Japanese Diet is about to consider the adoption of the constitution without having the basic principles.

"That second consideration which I just mentioned was also laid as another foundation for our proposal that the discussion of the draft of the new Japanese Constitution be taken off the agenda of the Diet.

"I am aware how proposals were met at Committee Number 3 and at the Steering Committee and I know that the attitude was negative.

"I don't cherish any particular illusions as to the decision that could be possible at our meeting this morning. I wish only to emphasize the regretful fact of the absence of any progress on the question which is so important for the democratization of Japan."

GENERAL McCOY asked whether all representatives were aware of the public statement made by the Supreme Commander on June 21, 1946 (FEC-031/14). He requested that it be made part of the record for consideration in conjunction with Mr. Novikov's foregoing statement, and he asked that the first sentence in paragraph three be underscored:

"With the submission to the diet of a proposed revision of the constitution, the Japanese people face one of the vital moments in the life of Japan. The fundamental charter of their existence will be determined by the action taken on this monumental question. In its solution, it has been and continues to be imperative

"(A) That adequate time and opportunity be allowed for the full discussion and consideration of the terms of such a charter;

"(B) That the procedure followed assures complete legal continuity with the constitution of 1889 now existing;

"and (C) That the manner of adoption of such a charter demonstrates that it affirmatively expresses the free will of the Japanese people.

"These criteria governing the mechanics involved in constitutional revision thus far have been scrupulously followed, and they must continue to guide now that the issue is before the national diet. For over eight months the revision of the constitution has been the paramount political consideration under discussion by all parties and all classes of the Japanese people. Numerous drafts have been prepared by the various political parties, educational groups, publicists, and individuals of all shades of thought and opinion. The press and radio and every other medium of discussion have been employed to an extent seldom witnessed in a national forum. Rarely has a fundamental charter, regulative of national life, been more thoroughly discussed and analyzed.

"The government draft now before the diet is a Japanese document and it is for the people of Japan, acting through their duly elected representatives to determine its form and content - whether it be adopted, modified or rejected. It therefore behooves members of the diet to act upon this vital matter with the solemnity with the wisdom and with the patriotism which they owe their country and the people they represent - scrupulously avoiding the influence of political creed, undue ambition, or selfish intrigue.

"The present Japanese constitution provides in article seventy three:

"When it has become necessary in future to amend the provisions of the present constitution, a project to the effect shall be submitted to the Imperial Diet by Imperial order. In the above case, neither house can open the debate, unless not less than two thirds of the whole number of members are present, and no amendment can be passed, unless a majority of not less than two thirds of the members present is obtained."

"It was in view of this constitutional requirement that the government took measures to the end that the last election, which qualified the members of this diet, was held with the government draft constitution squarely before the people and under the paramount consideration that those elected would be charged with the duty of acting thereon. Few elections in modern times could be regarded as more truly democratic, reliable and expressive of the free will of the people. As a consequence the diet which emerged therefrom is fully representative and qualified to express the will of the people on this issue.

"In the course of legislative action upon this matter, it is incumbent upon the diet that it assure to all members the free, fair and untrammelled right of discussion and debate, and that it give thoughtful consideration to every suggestion offered by its membership, regardless of strength or party affiliation. If it approach its task with that high sense of duty, it will serve the nation well, as on the issue of a democratic constitution rests the future well being of the Japanese people."

DR. EVATT said that he did not favor adoption of the Soviet proposal (FEC-031/16), which he considered a negative measure. He preferred that the Commission take positive steps by expediting agreement on its own position with respect to the constitution. Adoption of the Soviet proposal would result in the continuation in force of the old constitution. He said that in the light of the public statement by the Supreme Commander, it would seem that the Supreme Commander had complied with the previous directive (FEC-031/1) and that therefore the charge of non-compliance had not been substantiated.

Mr. NOVIKOV moved the adoption of FEC-031/16. The motion lapsed for lack of a second.

THE COMMISSION then considered FEC-031/15. GENERAL McCOY said that he was in sympathy with the underlying principle of paragraphs 1 and 3 of Enclosure "B" of FEC-031/15. However, he said he was not prepared to approve paragraph 2. He said that the official United States position would be made available to him shortly, and he suggested that the Commission hold a subsequent meeting to reach a decision on the constitution.

DR. EVATT said that Enclosure "B" of FEC-031/15 was satisfactory, but he did not think it should be considered apart from the document on basic principles for a new constitution. He said that the provision that review of the constitution should be not sooner than one year and not later than two years after it went into effect, was perhaps too limiting. He said it might well prove feasible to postpone the time for such review more than two years.

GENERAL McCOY pointed out that the Commission had not expressed views on the substance of the draft constitution other than to refer to it as a "document of obvious merit" (FEC-031/1).

SIR CARL BERENDSEN said that without any intention of making the task of the Supreme Commander more difficult and with a full realization that the Supreme Commander was better informed on all phases of the situation in Japan than the Commission, which was far removed from Japan and which did not have access to adequate information, his Government, nevertheless, was convinced that the present Diet was not competent to approve or otherwise dispose of a new constitution.

DR. LOUDON referred to Enclosure "B" of FEC-031/15 and asked whether this document confused "approval" of the constitution and "revision." He asked whether, if a constitution were adopted, it should be submitted for the approval of the Japanese people before its promulgation. He said that on psychological grounds it seemed to him desirable that any new constitution be approved by the Japanese people before it should become effective.

GENERAL McCOY suggested that the third criterion for the adoption of a new Japanese Constitution (FEC-031/7) that "The new Constitution should be adopted in such a manner as to demonstrate that it affirmatively expresses the free will of the Japanese people" met the point raised by Dr. Loudon.

DR. EVATT said that the purpose of the last paragraph of Enclosure "B" of FEC-031/15 was to make it clear that final approval would not be given the constitution at the same time that it became effective. To put a new constitution into effect, he said, and to provide for reconsideration of it after it had been in operation for some time, was better than indefinite postponement of consideration of a new constitution with the consequent continuation in effect of the old constitution. He suggested the probable impracticability of obtaining the immediate approval by the Japanese people

of any constitution.

DR. LUDON said he had been impressed by the experience in France, where recently the people had rejected a constitution which had been approved by an apparently representative body. He asked whether, therefore, it might be better to seek the approval of the Japanese people before the adoption of a proposed constitution.

SIR CARL BERESENSEN said that he considered the real point of issue at the moment was whether approval by the present Diet fulfilled the criterion laid down in subparagraph (C) of FEC-031/14, "That the manner of adoption of such a charter demonstrates that it affirmatively expresses the free will of the Japanese people." It was the view of his Government, he said, that approval by the present Diet did not fulfill this criterion.

DR. EVATT said that if a referendum were held immediately on a constitution, the possibility of defeat must be provided for. Disapproval of a constitution in France a country with a long democratic tradition, did not mean disaster. In Japan, however, where no tradition of government by democratic process existed, such disapproval at this time might result in such instability as to make the position of the Supreme Commander untenable.

DR. LUDON said that, although impressed by the cogency of Dr. Evatt's views, he nevertheless felt concern over the possible creation of an impression that the constitution was temporary. Such an impression, he feared, would serve to encourage the activities of anti-democratic forces during the period between the effective date of the constitution and the final referendum. DR. EVATT replied that no final resolution of this doubt as expressed by Dr. Loudon was possible. Whether or not anti-democratic forces were encouraged would depend on the length of the period which elapsed before referendum, on whether the people were given an opportunity to vote directly on the present constitution, and on the type of revisions that might be proposed at the time of review of the new constitution.

DR. LUDON said that he assumed that a constitution would be approved if it were referred to the people while the occupation forces were present and, in effect, guaranteed democratic procedure. He said the constitution might better withstand anti-democratic pressures if it were now approved by the people. DR. EVATT replied that review would be unnecessary if the constitution were adopted now by a referendum of the Japanese people, but added that the Supreme Commander did not think a referendum desirable just now.

In connection with FEC-031/13, SIR GEORGE SANSOM said that his Government

did not wish to delay agreement on a set of basic principles with respect to a constitution, and to expedite such agreement he was now prepared to accept Enclosure "A". As a general principle, his Government had not favored the inclusion of detailed procedure in conjunction with such a formulation of basic principles, and had felt that a constitution framed by the Japanese people would prove more successful than one imposed by aliens.

GENERAL McCOY said that he personally had preferred Enclosure "B", but was prepared to approve Enclosure "A" in general. He desired to propose minor changes, which, he said, would not affect the substance of Enclosure "A", but would clarify and simplify its language. He suggested that Enclosure "A" be referred to Committee No. 3 for reconsideration in conjunction with the changes proposed by the United States Government, and such minor changes as the United Kingdom Government might desire to submit.

THE COMMISSION unanimously agreed to refer Enclosure "A" of FEC-031/13 to Committee No. 3 for consideration in conjunction with changes to be proposed by the United States Government and possibly by the United Kingdom Government, with instructions to report directly to the Commission at a meeting to be held Tuesday, 2 July 1946, at 10:30 A.M. FEC-031/15 was also referred to Committee No. 3 for consideration in the light of United States reservations on the second paragraph, and for possible combination with FEC-031/13.

ITEM 5 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to defer consideration of FEC-072.

ITEM 6 - OTHER BUSINESS

a. APPLICABILITY OF PROPOSED JAPANESE EXTRAORDINARY TAX LAWS TO NON-JAPANESE INDIVIDUALS AND CORPORATIONS (FEC-063/1)

SIR GEORGE SANSOM asked whether the Supreme Commander had informed the United States Government as to whether he had taken any action under the directive to him of 11 April 1946 (FEC-063/1) before receipt of the interim directive (FEC-063/3). GENERAL McCOY replied that the Supreme Commander had taken no action, and was now very anxious to receive a directive from his Government, based on a policy decision of the Commission.

SIR GEORGE SANSOM presented the following statement of the views of his Government on the proposed Japanese extraordinary tax laws:

"His Majesty's Government in the United Kingdom wish to refer to the following draft Japanese Laws:

"Capital Levy Law - (C2-003/2)

"Increased Property Tax Law - (C2-003/1)

"War Profits Tax Law as Imposed on Juridical Persons (C2-003) - and to state that the object of British property and rights in enemy and satellite countries is that they should not be subject to any extraordinary taxation designed to meet war damage costs or other charges falling on the nationals of the country concerned as a result of the war.

"2. His Majesty's Government consider that the proposed Japanese Capital Levy Law, Increased Property Tax Law and the War Profits Tax Law as imposed on Juridical Persons are undoubtedly all designed to meet such war damage costs and other similar charges as well as to combat inflation which is equally a direct result of the war. Their view is therefore that the property and interests of United Nations' nationals and juridical persons should be exempt from the application of all three laws."

MAJOR PLIMSOLL said that the matter was pending consideration by Committee No. 6, and now only awaited an expression of views by the United States Government. MR. BARNETT said that the U. S. Government hoped to be able to present its policy on this matter soon. GENERAL MCCOY said he would attempt to expedite his Government's decision on this matter.

ITEM 7 - PRESS RELEASE

THE COMMISSION unanimously approved the following press release:

"I. The Commission unanimously approved the recommendation that Mr. G. G. Dolbin, of the Soviet Delegation, serve as Chairman of Committee No. 4: Strengthening of Democratic Tendencies. This position has previously been held by Ambassador Novikov, who, because of additional duties, is unable to continue as Chairman of this committee. Likewise, Rear Admiral Ramishvili, now the Soviet member of the Steering Committee, has found it impossible to continue as Deputy Chairman of Committee No. 7, and the Commission approved the recommendation that Major General A. V. Vasiliev should serve as Deputy Chairman of this Committee.

"II. The Commission is continuing to give consideration to the subject of constitutional reform. It was agreed to hold a special meeting of the Commission on Tuesday, July 2, in order to reach final approval of a policy with respect to constitutional reform.

"III. On Tuesday, June 25, a special meeting of Committee No. 5: War Criminals was convened to hear remarks by Joseph B. Keenan, Chief of Counsel, International Prosecutions Section of Headquarters of the Supreme Commander for the Allied Powers. He talked on the progress of the trials in Tokyo and answered questions from the floor."

Minutes of
19th FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Nineteenth Meeting of the Far Eastern
Commission Held in Main Conference Room, 2516 Mass-
achusetts Avenue, N. W., Thursday, 11 July 1946

REPRESENTATIVES PRESENT

Major General Frank R. McCoy, Chairman, (U.S.)
Major J. Plimsoll, (Australia)
Mr. R. E. Collins, (Canada)
His Excellency Dr. K. V. Wellington Koo, (China)
Mr. Robert Douteau, (France)
Mr. Janshed Vesugar, (India)
Dr. A. D. A. de Kat Angelino, (Netherlands)
His Excellency Sir Carl Berendsen, (New Zealand)
Dr. Jose Imperial, (Philippines)
Rear Admiral S. S. Ramishvili, (U.S.S.R.)
Sir George Sanson, (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

Minutes 19th FEC Mt'g.

for further consideration in the light of the foregoing discussion.

ITEM 3 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to defer consideration of FEC-072.

ITEM 4 - OTHER BUSINESS

a. DIVISION OF JAPANESE REPARATIONS (FEC-075)

MR. GRAVES said that he had presented FEC-075 on instructions from his Government. He recalled of the statement by General McCoy at the meeting of June 20th, to the effect that external assets would perhaps be discussed by the Foreign Ministers at the Paris conference, but his Government considered that the subject matter of the paper dealt with another aspect of the problem and that it would not be an embarrassment if this problem of division of shares were now dealt with by the Commission. The document constituted an attempt, he said, to focus the attention of the Commission on an important problem which his Government felt should be considered by the Commission.

MAJOR PLIMSOLL said that the Australian Government was in agreement with the principle that reparations should be allotted along broad political lines. His Government also agreed with the position of the United Kingdom that assets outside the main islands must be considered.

SIR CARL BERENDSEN, MR. COLLINS and MR. VESUGAR expressed general agreement with the principles in the document.

DR. MAR said he was prepared to support the principles expressed in the document. He suggested that the paper be referred to Committee No. 1.

MR. GAMBOA said that he was not prepared to express any view on the document until he had communicated with his Government. However, he had no objection in the meantime to consideration of the paper by the appropriate committee.

MR. NOVIKOV said that he personally considered FEC-075 acceptable, with the exception of the last paragraph with reference to external assets, to which he must object.

THE COMMISSION agreed to refer FEC-075 to Committee No. 1 for consideration. The Representative of the United Kingdom, however, expressed his preference for retention of FEC-075 on the Commission Agenda.

b. COMMUNICATION FROM CHAIRMAN OF COMMITTEE NO. 6

SIR CARL BERENDSEN said that Mr. Lacoste, Chairman of Committee No. 6, had asked him to report that Committee No. 6 had prepared two documents (FEC-063/5 and FEC-055/1) with respect to the Japanese extraordinary tax laws. He pointed out that the United States position on both

these documents had been reserved and that the Steering Committee had not yet considered the documents, which had just been circulated that morning.

THE COMMISSION agreed unanimously to refer FEC-063/5 and FEC-055/1 to the Steering Committee for consideration.

ITEM 5 - PRESS RELEASE

The Secretary General prepared the following press release on behalf of the Commission:

"The Commission today considered and unanimously approved a policy on 'Basic Principles for a New Japanese Constitution.' The Commission also agreed that the paper should be released to the press at a later date, after consultations with the Supreme Commander for the Allied Powers as to its release."

10 July 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF EIGHTEENTH MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the United Kingdom Representative, of page 6 of the minutes of the eighteenth meeting of the Far Eastern Commission.

2. All members are requested to substitute the attached page for page 6 of the minutes of the eighteenth meeting.

10 July 1946

NELSON T. JOHNSON
Secretary General

for further consideration in the light of the foregoing discussion.

ITEM 3 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to defer consideration of FEC-072.

ITEM 4 - OTHER BUSINESS

a. DIVISION OF JAPANESE REPARATIONS (FEC-075)

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MR. GAMBOA said that he was not prepared to express any view on the document until he had communicated with his Government. However, he had no objection in the meantime to consideration of the paper by the appropriate committee.

MR. NOVIKOV said that he personally considered FEC-075 acceptable, with the exception of the last paragraph with reference to external assets, to which he must object.

THE COMMISSION unanimously agreed to refer FEC-075 to Committee No. 1 for consideration.

b. COMMUNICATION FROM CHAIRMAN OF COMMITTEE NO. 6

SIR CARL BERENDSEN said that Mr. Lacoste, Chairman of Committee No. 6, had asked him to report that Committee No. 6 had prepared two documents (FEC-063/5 and FEC-055/1) with respect to the Japanese extraordinary tax laws. He pointed out that the United States position on both

Minutes of Eighteenth Meeting of the Far Eastern Commission,
Held in Main Conference Room, 2516 Massachusetts Avenue, N. W.,
Tuesday, 2 July 1946

GENERAL McCOY opened the Meeting at 10:30 A.M.

ITEM 1 - APPROVAL OF THE MINUTES OF THE SEVENTEENTH MEETING

THE COMMISSION unanimously approved the minutes of its seventeenth meeting.

ITEM 2 - BASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION (FEC-031/19 and FEC-031/20)

GENERAL McCOY opened discussion first on FEC-031/19 and referred to paragraph 2 of the cover page, which contained the recommendation of Committee No. 3 that the Commission should decide whether the document should be released to the press prior to transmission of the policy statement to the Supreme Commander or whether the Supreme Commander should decide as to its publication. He said that he would like the policy statement to reach the Supreme Commander before he became acquainted with it in a garbled version through the press. It was important to the prestige of the Supreme Commander, GENERAL McCOY said, that he have adequate information on which to base plans for dissemination of the policy in Japan.

MAJCR PLIMSOLL said that his Government felt that the policy should be published, although he agreed that the Supreme Commander should be informed of the policy first.

MR. GRAVES said that publication of the policy might be left to the discretion of the Supreme Commander.

MAJOR PLIMSOLL said that it was preferable to provide for publication after reasonable time for consideration by the Supreme Commander. Later misunderstanding of the policy due to unofficial reports would thus be obviated. In reply to a question by General McCoy, he said that he had no objection to publication in Tokyo of the policy by the Supreme Commander.

GENERAL McCOY said that the policy decision could be forwarded to the Supreme Commander with the understanding that, after reasonable time for consideration by the Supreme Commander, publication could take place either in Washington or in Tokyo, whichever the Supreme Commander preferred.

MR. COLLINS moved and MAJOR PLIMSOLL seconded the motion that the Commission approve FEC-031/19 with the understanding that the policy

decision would not be released to the press until after the Supreme Commander had received the United States directive and had decided whether the policy should be released in Tokyo or in Washington. The motion was carried un-animously.

THE COMMISSION then considered FEC-031/20.

GENERAL McCOY said that he was prepared to remove the reservation of his Government on the last paragraph of the document, but that he must maintain the reservation on the last sentence of the first paragraph. He said that it could not now be certain that a popular referendum would be desirable in the future, and that, indeed, to prescribe a future popular referendum would have the effect of instructing the Supreme Commander as to the timing and method of his implementation of basic policy. If the document were considered as a whole, he said, the absence of the last sentence of the first paragraph would not conflict with the intention of the Commission. This intention, he added, was not in conflict with the views of the Supreme Commander, as was evidenced in the recent interpretation by Mr. Acheson of the Supreme Commander's views (MI-034). He said that he desired to record the following statement of reasons for objection to the final sentence of the first paragraph:

"Paragraph 1 of the proposed policy calls for a review of the constitutional situation by the Diet and by the FEC one to two years after it goes into effect. What happens after such review should be determined in the light of:

- a. The provisions of the then existing Constitution;
- b. The history of the adoption of the Constitution;
- c. Japanese experience under the Constitution;
- d. The advice of SCAP at that time;
- e. The opinions of Japanese political leaders at that time;
- f. Expressions of Japanese public opinion between now and then; and
- g. Allied opinion as to whether the Constitution is consistent with the Potsdam Declaration, and has been freely accepted by the Japanese people."

MAJOR PLIMSOLL said that it was the view of his Government that a referendum should take place either immediately, to obviate any feeling on the part of the Japanese that the constitution had been imposed on them, or in the future, after the constitution had been in operation for some time. The Supreme Commander had stated (FEC-031/11), "I personally believe that provision for such direct ratification, however, is both unnecessary and undesirable. It would be cumbersome, and involve further protracted

delay, with little likelihood of beneficial result." MAJOR FLIMSOLL said that he interpreted this statement to mean that the Supreme Commander opposed an immediate referendum, but would probably not oppose one in the future.

MAJOR FLIMSOLL said that he understood from General McCoy's remarks that the United States Government was not necessarily opposed to a referendum, but that it did not consider it wise to lay down a hard and fast rule at present. Under these circumstances, the Australian Government would accept a compromise in order to secure agreement on the main principle of review.

MAJOR FLIMSOLL said that he was therefore prepared to agree to the deletion of the last sentence of the first paragraph of FEC-031/20, as suggested by General McCoy, provided it was made a matter of record that, at whatever time the Commission reviewed the constitution, the Commission might then stipulate that the constitution should be submitted to a referendum.

GENERAL McCOY suggested that the following paragraph might be inserted in FEC-031/20, to follow the first paragraph:

"The Supreme Commander, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution."

SIR CARL BERENDSEN said that the paragraph proposed by General McCoy did not meet his objection because the Supreme Commander, who, indeed, was in a better position to judge the situation in Japan than the Commission, had already said that he regarded the present Diet as competent to approve the Constitution. He said that his Government did not consider the present Diet qualified to give final approval to the constitution. He pointed out that the constitution had not been one of the campaign issues before the Japanese people in the election of the present Diet, since the Japanese people had not been aware of the draft constitution until six weeks before the election.

GENERAL McCOY said that the opinions expressed by the Supreme Commander directly and through the communication from Mr. Acheson stressed the importance of early action on the part of the Commission, to obviate the continuation in effect of the old constitution. It was the desire of the Supreme Commander, he said, to establish order and stability as a basis for reform.

MAJOR FLIMSOLL moved and MR. GRAVES seconded the motion that the Enclosure to FEC-031/20 be amended as follows:

"In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than ~~two~~ four years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. ~~After review by the Diet and the Far Eastern Commission the resultant form of the constitution shall be submitted to the people at a referendum.~~

"The new constitution, unless previously disapproved by the Far Eastern Commission will in due season after promulgation become the legal successor of the present constitution without awaiting review ~~by the Diet and approval of the people~~ in terms of the foregoing paragraph."

GENERAL MCCOY said that this proposal would be acceptable to his Government.

MAJOR FLIMSOLL also moved that the Commission adopt the following resolution:

"In reviewing the constitution the Far Eastern Commission may take account of the methods of consideration and adoption and may as a result of its review adopt the policy that a referendum should be held."

MR. VESUGAR said that the proposal to extend the time for possible review to four years implied the assumption that the Commission would be in existence for four years and that the United Nations would be in a position at that time to enforce this provision. He pointed out that once a peace treaty with Japan had been signed and the occupation forces had been withdrawn, provision for review of the constitution could not be enforced. Consequently, he said, the aim of the Commission should be the establishment of a constitution which the Japanese people would themselves desire to continue in effect after the withdrawal of occupation forces.

MAJOR FLIMSOLL replied that a referendum could be provided for prior to withdrawal of occupation forces, if that occurred before the four years had run. Should the Commission be terminated before the expiration of the four years, or before its review of the constitution had taken place, the function of review could be delegated to the United Nations or some other body in accordance with Paragraph VII of the Commission's Terms of Reference.

MR. NOVIKOV said that he did not favor the proposal to extend the time for review to four years. Furthermore, he said, he could not approve the motion by Major Flimsoll, which was in contradiction to his proposed amendments.

MR. NOVIKOV moved that FEC-031/20 be amended as follows:

- a. In line 9 strike out "the Diet" and add:
"by a constituent assembly or a new Diet elected specially for this purpose."
- b. In line 12 strike out "the Diet" and add:
"by the constituent assembly or the new Diet elected specially for this purpose."
- c. Strike out the second paragraph and add a new paragraph as follows:

"The new Constitution, following approval by the Far Eastern Commission, will in due season after promulgation become the legal successor of the present constitution."

The motion lapsed for lack of a second.

SIR CARL BERENDSEN said that he could not reconcile the revision of the document as proposed by Major Flimsoll with his objections to final approval of the constitution by the present Diet. However, he said, if this revision were the only policy decision on which agreement could be obtained, he would accept it. He added that the members of Committee No. 3 had been almost unanimous in their agreement that a definite provision for referendum should be included in the policy decision.

DR. de KAT said that, while he favored a referendum as early as possible, for the sake of agreement he was prepared to accept the compromise proposed by Major Flimsoll.

MR. VESUGAR said that review by the same Diet that passed the constitution would be of little significance, and that he therefore considered unimportant the time of such review. He said that while he considered a referendum necessary, to obtain unanimous agreement he was prepared to accept the proposals of Major Flimsoll.

MR. NOVIKOV said that he was not at present prepared to approve the revision of FEC-031/20 proposed by Major Flimsoll. He suggested that the document be referred to Committee No. 3, with a view to reconciliation of the conflicting viewpoints in the light of the foregoing discussion.

THE COMMISSION unanimously agreed to refer FEC-031/20 to Committee No. 3

Minutes of
22nd FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twenty-Second Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N. W.
Thursday, 1 August 1946

REPRESENTATIVES PRESENT

The Honorable John H. Hildring, Chairman Pro Tem (United States)
Major J. Plimsoll (Australia)
Dr. George S. Patterson (Canada)
His Excellency Dr. V. K. Wellington Koo (China)
Mr. Francis Lacoste (France)
Major M. O. A. Baig (India)
Dr. A. D. A. de Kat Angelino (Netherlands)
Colonel G. R. Powles (New Zealand)
His Excellency General Carlos P. Romulo (Philippines)
Rear Admiral S. S. Ramishvili (U.S.S.R.)
Mr. H. A. Graves (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

Minutes of Twenty-Second Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, 1 August 1946

ELECTION OF CHAIRMAN PRO TEM

In the absence of the Chairman, MR. JOHNSON opened the meeting and asked for the nomination of a Chairman pro tem. COLONEL POWLES moved and MR. GRAVES seconded the motion that General Hilldring serve as Chairman pro tem. The motion was carried unanimously.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 21st MEETING

THE COMMISSION unanimously approved the minutes of the 21st meeting.

ITEM 2 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION
(FEC-031/28)

ADMIRAL RAMISHVILI said that he had not yet received instructions from his Government with respect to FEC-031/28.

MAJOR PLIMSOLL said that general agreement existed on the document in its present form. Delay of approval had been occasioned only by the Soviet desire to add a further paragraph on the approval of the constitution. He pointed out that the interests of all member Governments, including the Soviet, would be served by approval of the document. He was agreeable to deferment of consideration if it were considered likely that the Soviet representative would soon receive his instructions. However, he added, he could not agree to indefinite postponement of this urgent matter.

COLONEL POWLES asked if it would not be possible to call a special meeting of the Commission to consider FEC-031/28 at the time of receipt of instructions by the Soviet member. GENERAL HILLDRING replied that it was already the understanding (Minutes, 20th FEC Meeting page 7) that a special meeting of the Commission would be convened as soon as the Soviet representative notified the Secretary General of receipt of instructions.

ITEM 3 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to postpone consideration of FEC-072.

ITEM 4 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE
(FEC-081)

GENERAL ROMULO presented the following statement:

"The Government of the Republic of the Philippines is in full accord with the proposed United States plan for the calling of a reparations conference for Japan on August 15th. It is of utmost importance to the prompt rehabilitation of the war-devastated countries that such a conference be convened immediately. No purpose can be served by a policy of postponing the settlement of the Japanese reparations question except the creation of further confusion and the obstruction of all efforts to speedily achieve the avowed objectives of the occupation of Japan."

DR. DE KAT said that his Government also favored the United States proposal to hold a reparations conference at an early date.

MR. GRAVES said that his Government approved the general principles of the United States proposal for a reparations conference. It was the view of his Government, however, that a decision with respect to the level of industry in Japan should be taken by the Far Eastern Commission itself, and he expressed the hope that this decision might be agreed upon before the conference was convened.

GENERAL HILLDRING agreed that the Commission should decide on the level of industry in Japan, and that this decision must be based either on work done by a committee of the Commission or by the reparations conference. Furthermore, he said, it was indeed desirable that this decision be made before the reparations conference was convened. However, he added, he did not consider it desirable to delay the reparations conference until such decision had been taken by the Commission. He pointed out that the study and research upon which such a decision would be based must be done either by a committee or by the reparations conference, and he added that his Government did not consider the identity of the group to which such work was delegated a matter of importance.

DR. PATTERSON said that his Government would support the United States proposal and would be agreeable to participating in a reparations conference. He urged that, if possible, a decision be reached in respect to the level of industry in Japan before the conference was convened. With respect to the suggestion that the conference take place at a site outside of Washington, he said that his

Government found it very difficult to supply personnel for the many international conferences in progress, and he would therefore suggest that the conference take place in Washington.

MAJOR PLIMSOLL said that he had not yet received instructions from his Government with respect to FEC-081.

COLONEL POWLES said that he had not yet received instructions on the general proposal. He said, however, that if a reparations conference were held, he would support the views of Dr. Patterson, that it be held in Washington.

MR. GRAVES referred to the statement by General Hilldring (Minutes 21st FEC Meeting, page 6) to the effect that the same voting rules should apply to the conference as applied to committees of the Commission. He asked General Hilldring if he could be more specific on this point. GENERAL HILLDRING replied that the decision with respect to voting procedure might well be left to the conference itself. MR. GRAVES agreed but added that he would like to know what the probable position of the United States Government would be on this matter. GENERAL HILLDRING said that his Government would prefer a plan whereby voting in the conference would be by majority, with the veto restricted to the final ratification of the conference report by the Commission itself.

DR. KOO said that he was not yet informed on the views of his Government on FEC-081. He referred to paragraph 1.c(3) and said that he assumed that the reference to assets which claimant countries most wanted did not preclude consideration at the conference of a procedure by which claimant countries would obtain other assets than those in the "most wanted" category. GENERAL HILLDRING replied that paragraph 1.c(3) referred to interim removals and that paragraph 1.c(4) referred to settlement with respect to total reparations. He agreed that the conference was not precluded from discussion of assets other than assets to be allocated for interim removal.

ITEM 5 - OTHER BUSINESS

There was no other business.

ITEM 6 - PRESS RELEASE

THE COMMISSION unanimously agreed not to release a statement to the press.

The meeting adjourned at 11 A.M.

Minutes of the Twenty-first Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N. W.
Thursday, 25 July 1946

ELECTION OF A CHAIRMAN PRO TEM

MR. JOHNSON opened the meeting at 10:30 A.M. He stated that the Chairman, General McCoy, was unavoidably absent, and asked for nominations for a Chairman pro tem.

DR. KOO moved and ADMIRAL RAMISHVILI seconded the motion that General Hilldring serve as Chair pro tem. The motion was carried unanimously.

ITEM 1 - APPROVAL OF THE MINUTES OF THE TWENTIETH MEETING.

THE COMMISSION unanimously approved the minutes of its twentieth meeting.

ITEM 2 - CHAIRMAN PRO TEM OF THE FAR EASTERN COMMISSION (FEC-004/19)

DR. KOO referred to the first paragraph of FEC-004/19 and said that, to represent more truly the motion made by the Chinese member of the Steering Committee on 23 July 1946, the first paragraph should be amended to read as follows: "1. THE STEERING COMMITTEE at its 22nd meeting, 23 July 1946, approved, by a majority vote, a motion to the effect that the question of the election of Vice-Chairmen should be put in abeyance and that in the meantime during the absence of the Chairman of the Commission a Chairman pro tem should be elected." He suggested that the second paragraph of FEC-004/19 be deleted.

ADMIRAL RAMISHVILI asked what purpose would be served by the deletion of paragraph 2 of FEC-004/19. DR. KOO replied that, since it had not been possible to reach an agreement in the Steering Committee or in the Commission on the proposal for the representatives of the United Kingdom, the Soviet Union and China to serve as Vice-Chairmen, the object of his present proposal was to provide for a Chairman pro tem as a temporary expedient pending later discussion of the question of the election of Vice-Chairmen.

SIR CARL BURENSEN asked concerning the effect of paragraph 2 on FEC-004/19. If it should be agreed that FEC-018 remained in effect, he inquired, would the decision that there should be three Vice-Chairmen of the Commission remain in force. If so, would those three Vice-Chairmen be the three individuals named in FEC-018, who had, subsequent to the approval of FEC-018, severed all connection with the Commission. He added that it was still his view that the problem would best be solved by an agreement that, in the absence of the Chairman, the United States alternate member would preside.

ADMIRAL RAMISHVILI moved that no further consideration be given FEC-004/19 and that it be recorded that, since the Commission was unable to agree on the candidates enumerated in FEC-004/17 consideration of the whole matter was deferred. There was no second to the motion.

MAJOR PLIMSOLL said that he was prepared to agree to deferment of consideration of FEC-004/19 but could not agree to record a reiteration of the validity of the principle that there should be three Vice-Chairmen of the Commission. Since the three individuals enumerated in FEC-018 were no longer connected with the Commission, he added, they had automatically withdrawn from the positions as Vice-Chairmen of the Commission. He said he would prefer that the matter of election of Vice-Chairmen be held in abeyance and that FEC-004/19 be referred back to the Steering Committee for consideration.

DR. KOO said that his suggestion had been made with the object of clarifying the record of what had actually happened in the Steering Committee.

MAJOR PLIMSOLL said that Dr. Koo's amendment was acceptable to him as a clarification of the record, but that he was not prepared to vote for FEC-004/19 if it were amended in accordance with Dr. Koo's motion.

MR. VESUGAR moved and DR. KOO seconded the motion that FEC-004/19 be referred back to the Steering Committee for reconsideration in view of the question raised with respect to the interpretation therein of the motion by the Chinese member at the twenty-second meeting of the Steering Committee, 23 July 1946 and the consequent decision of the Steering Committee. The motion was carried unanimously.

ITEM 3 - COMPOSITION OF THE NEW JAPANESE GOVERNMENT (FEC-070/2)

MAJOR PLIMSOLL moved and DR. DE KAT seconded the motion that the recommendation contained in paragraph 2 of FEC-070/2 be adopted. The motion was carried unanimously.

ITEM 4 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/28)

ADMIRAL RAMISHVILI said that he had not yet received instructions from his Government on FEC-031/28.

THE COMMISSION unanimously agreed to postpone consideration of FEC-031/28.

ITEM 5 - CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE TEXT OF THE CONSTITUTION (FEC-031/29)

SIR CARL BERENDSEN referred to the statement made by Dr. Blakeslee at the 22nd meeting of the Steering Committee, 23 July 1946, to the effect that the Supreme Commander had expressed a desire for information regarding the views of the Commission with respect to the Constitution. He said that

numerous attempts had been made by the Commission to cooperate with the Supreme Commander in regard to the Constitution. These attempts had been unsuccessful, he said. The latest word from the Supreme Commander (FEC-031/11) had been to the effect that "The Commission could render no better service to the cause of democracy than to permit the Japanese Government and people.... to proceed unshackled, unhindered, and in complete freedom to work out their constitutional reforms examining the situation only after action thereon has been completed to determine that the results achieved meet allied standards." Therefore, SIR CARL continued, it seemed to him that it was not in accordance with the wishes of the Supreme Commander that a communication along the lines of FEC-031/29 be sent by the Commission.

SIR CARL BERENDSEN said that FEC-031/29 represented the unanimous opinion of Committee No. 3 and of the Steering Committee that the constitution failed in certain respects to conform with the Potsdam Declaration and to Commission policy. He pointed out that the conflict between the constitution on the one hand and the Potsdam Declaration and Commission policy on the other hand could be reconciled in either one of two courses:

1. Amendment of the constitution, which should be done before its approval by the Diet, or
2. Amendment of Commission policy to eliminate the inconsistency between the constitution and Commission policy.

He said that he would support the first of these alternatives and would oppose the second. However, he said that the Commission must either follow one of these alternatives or acknowledge the futility of its consideration of the constitution. He said that he was satisfied with FEC-031/29 as a method of consultation with the Supreme Commander, but he pointed out that in his opinion the Commission could not stop with mere consultation on this question.

ADMIRAL RAMISHVILI asked whether, if a communication were forwarded to the Supreme Commander, it would be conveyed by him to the appropriate members of the Japanese Government. SIR CARL BERENDSEN replied that, in view of the acceptance by the Commission of the decision of the Supreme Commander not to publicize the Commission policy decision on the constitution, the Japanese Government could not therefore be informed of FEC-031/29.

MR. COLLINS pointed out that, coupled with the acceptance by the Commission of the Supreme Commander's recommendation against publicity, there had been assurances from General McCoy (Minutes, 19th Far Eastern Commission Meeting, 11 July 1946) that the appropriate members of the Japanese Government would,

nevertheless, be informed of the policy decision of the Commission. GENERAL HILLDRING agreed that there was no other practical method by which the Supreme Commander could implement the Commission decision. The Supreme Commander would have either to inform members of the Japanese Government personally of the policy decision or to include the policy decision in a directive to the Diet.

MR. COLLINS asked if it was yet known whether the Supreme Commander had informed the Japanese Government of the Commission policy decision. GENERAL HILLDRING replied that he did not know what steps the Supreme Commander had taken, but that this information could be obtained.

ADMIRAL RAMISHVILI asked what it was expected to accomplish by sending a communication to the Supreme Commander along the lines of FEC-031/29. GENERAL HILLDRING replied that the Commission views would be expressed to the Supreme Commander and that the Supreme Commander in turn would inform the Commission of what could be done to have these views accepted by the Diet. The fact that the Commission's views would be sent to the Supreme Commander without further delay was important, because the constitution was now before the Diet. ADMIRAL RAMISHVILI pointed out that since it was the policy of the Supreme Commander not to intervene in the work of the Diet, he doubted whether important results would be obtained by simply informing him of the views of the Commission. GENERAL HILLDRING agreed that the Supreme Commander would probably issue no orders to the Diet, but that, if he agreed with the views of the Commission, he could inform the Diet of the respects in which the constitution failed to conform to the provisions of the Potsdam Declaration and the Commission policy decision.

ADMIRAL RAMISHVILI said that he considered FEC-031/29 too weak a statement of the views of the Commission, particularly since there was unanimous opinion that the draft constitution failed in certain respects to meet the given requirements. It did not provide the Supreme Commander with a document which contained definite statements of policy upon which he could act, and he might well reply that he was still awaiting the decisions of the Far Eastern Commission.

ADMIRAL RAMISHVILI moved and DR. KOO seconded the motion to delete the words "if practicable" in the second line on page 1 of FEC-031/29. The motion was carried unanimously.

DR. KOO said that in general he could agree with Admiral Ramishvili that the paper was not worded as strongly as might be desirable. He referred, however, to the assurance from the Supreme Commander (FEC-031/24) that "scrupulous care will be exercised to insure that the constitution finally adopted by the Diet contains no provision inconsistent with FEC-031/19." He said that he had confidence in this assurance from the Supreme Commander and therefore urged that the Commission adopt FEC-031/29.

MR. COLLINS pointed out that the word, "sufficiently" should be inserted in the sixth line on page 2 of FEC-031/29 before the word, "specific".

DR. KOO moved and MR. COLLINS seconded the motion that FEC-031/29 be approved with the two amendments above noted. The motion was carried unanimously.

ITEM 6 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to postpone consideration of FEC-072.

ITEM 7 - OTHER BUSINESS

a. PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081)

GENERAL HILLDRING introduced FEC-081 as a proposal from his Government. He said that his Government was greatly concerned because no substantial progress had been made on Japanese reparations. He urged that the Commission consider the proposal as soon as possible and he suggested that the representatives consult their respective Governments immediately and vote on the proposal as soon as instructions could be obtained. He said that the proposed conference could best be held in some locality other than Washington.

MR. VESUGAR asked why General Hilldring had advocated a site outside of Washington for the Conference. GENERAL HILLDRING replied that if the conferees were removed from Washington, where they would inevitably have other duties, they would be enabled to give undivided attention to the specific problems of the conference.

MR. DOUVEAU referred to the first sentence of FEC-081 and asked the precise meaning in this context of the word, "sponsor". GENERAL HILLDRING replied that it was envisaged that the Conference would be established by the Commission and would make its final report to the Commission.

SIR GEORGE SANSOM referred to paragraph 1 - c (1) and pointed out that to reach agreement on the extent of Japanese assets available for reparations it would be necessary to determine what the future economic level of life in Japan should be. He said the Commission had made some study of this

question and asked whether the information so obtained would be turned over to the Conference or whether the Conference would be expected to make a fresh start on the entire question. Furthermore, he said, his Government was of the opinion that the division of shares for reparations should not be left to the determination of a body other than the Far Eastern Commission itself.. GENERAL HILLDRING said that the work of the Conference could probably be expedited by the consideration of all information relevant to the level of economic life in Japan. As to the decision on the division of shares in the reparations pool, he said that it was probable that some changes must be made in the views of all member Governments if a satisfactory agreement on this urgent matter was to be reached. He said that in the opinion of his Government a conference on reparations under the auspices of the Commission would not endanger United States interests nor the interests of other member Governments as well.

SIR GEORGE SANSOM referred to paragraph 2 and asked whether ratification of the report of the Reparations Conference would be by unanimous vote. GENERAL HILLDRING replied that no change in the voting procedure of the Commission was contemplated, and that the same voting rules would apply to the conference as applied to committees of the Commission, with the usual voting provisions of the Commission itself applying to the final ratification by the Commission of the Conference report.

MR. VESUGAR pointed out that voting in committees was by simple majority but that at the Commission level the concurrence of all four of the so-called veto powers was necessary to carry a measure. He therefore asked whether anything would be accomplished if the Conference report was not also supported by all veto powers. GENERAL HILLDRING replied that even though a Conference report should fail of ratification, the Commission would at least have before it a complete program for the treatment of reparations.

DR. KOO referred to paragraph 1 - g (4) and inquired as to the meaning of the phrase, "resolving disputes". GENERAL HILLDRING replied that the disputes foreseen would be of the nature of two or more Governments filing reparations claims for identical assets. The program to be prepared by the conference must necessarily include machinery for the settlement of such disputes.

MAJOR PLIMSOLL referred to paragraph 1 - g (1) and asked whether the question as to the availability of external assets for reparations would be considered by the conference. GENERAL HILLDRING replied in the affirmative.

ITEM 8 - PRESS RELEASE

THE COMMISSION unanimously agreed not to release a statement to the press
The meeting adjourned at 11:50 - 6 -

ATTENDANCETwenty Second FEC Meeting - 1 August 1946AUSTRALIA

Major J. Plimsoll
Mr. H. W. Bullock

CANADA

Dr. Geo. S. Patterson

CHINA

Dr. V. K. Wellington Koo
Dr. S. H. Tan
Dr. T. T. Mar
Mr. Hsuan-Tsui Liu
Mr. Tsui Tswen-ling
Mr. King Ching
Mr. Anthony Y. C. Koo
Mrs. L. Guo

FRANCE

Mr. Francis Lacoste
Mr. Robert Douteau

INDIA

Major M. O. A. Baig

NETHERLANDS

Dr. A. D. A. de Kat Angelino

NEW ZEALAND

Col. G. R. Powles
Air Commodore J. L. Findlay

P. I.

Brig. Gen. Carlos P. Romulo
Col. Amado N. Bautista
Major S. Lopez
Mr. Virata
Mr. Pelayo Llamas

U.S.S.R.

Rear Admiral S. S. Ramishvili
Mr. P. K. Koulakov

U. K.

Mr. H. A. Graves
Mr. M. B. Thresher

U. S.

The Honorable John H. Hilldring
Dr. Geo. H. Blakeslee
Mr. Erle R. Dickover
Mr. Robt. W. Barnett
Capt. Frank J. Fenno
Lt. Col. Jean K. Lambert
Col. Dan Fahey
Lt. Col. A. G. Pixten
Mr. H. M. Stout
Mr. Edwin Martin
Dr. Hugh Borton
Mr. Geo. M. Pollard
Mr. E. O. Reischauer

SECRETARIAT

Mr. Nelson T. Johnson
Mr. Hugh D. Farley
Mr. Henry L. Trepagnier Jr.
Mr. Carl H. Pfuntner
Mr. C. H. Pendleton
Mr. Richard B. Finn
Mr. Donald Badger
Mrs. Dorothy Barstow
Miss Voce (Court Reporter)
Mr. Franklin G. Falkenhainer
Miss Barbara Quandt
Miss Lucille De Pretis

Also:

Mr. Richard Weigle
Professor K. Colegrove
Lt. Cdr. W. T. de Bary
Lt. P. F. Dur

Minutes of
21st FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twenty-first Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N. W.
Thursday, 25 July 1946

REPRESENTATIVES PRESENT

The Honorable John H. Hildring, Chairman Pro Tem, (U.S.)

Major J. Plimsoll, (Australia)

Mr. R. E. Collins, (Canada)

His Excellency Dr. V. K. Wellington Koo, (China)

Mr. Robert Douteau, (France)

Mr. Jamshed Vesugar, (India)

Dr. A. D. A. de Kat Angelino, (Netherlands)

His Excellency Sir Carl Berendsen, (New Zealand)

Dr. Melquiades J. Gamboa, (Philippines)

Rear Admiral S. S. Ramishvili, (U.S.S.R.)

Sir George Sansom, (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

Minutes of Twentieth Meeting of the Far Eastern
Commission, Held in the Main Conference Room, 2516
Massachusetts Ave., N. W., Thursday, 18 July 1946

ELECTION OF CHAIRMAN PRO TEM

In the absence of the Chairman, MR. JOHNSON opened the meeting at 10:30 A.M. and asked for the nomination of a Chairman Pro Tem.

GENERAL HILLDRING moved and SIR GEORGE SANSOM seconded the motion, that Dr. Koo serve as Chairman Pro Tem.

The motion was carried unanimously.

ITEM 1 - APPROVAL OF THE MINUTES OF THE NINETEENTH MEETING

THE COMMISSION unanimously approved the minutes of the nineteenth meeting.

ITEM 2-- VICE CHAIRMEN OF THE FAR EASTERN COMMISSION
(FEC-004/17)

ADMIRAL RAMISHVILI moved and GENERAL HILLDRING second the motion that paragraph 1 of the cover page of FEC-004/17 be approved. MR. DOUTEAU asked whether consideration was to be given to the French Statement contained in the enclosure to the document. DR. KOO replied that the enclosure would be considered following disposition of the motion by Admiral Ramishvili. MR. DOUTEAU said he desired to record a reservation on the adoption of paragraph 1 of the cover page of FEC-004/17.

DR. EVATT said that he objected to the principle of electing three Vice-Chairmen of the Commission, particularly since these three were representatives of the Governments with the veto power. He said that he must register dissent to the implication that the interests in the Pacific of any group of powers should take priority over those of Australia. He said that he regarded the proposal as an affront to Australia, whose contribution to the war effort in the Pacific had been second only to that of the United States. He said that the proposed addition of the representative of France to the list of Vice-Chairmen, if it were based on the fact that France was a permanent member of the United Nations Security Council, was not relevant to matters involving Pacific interests.

DR. EVATT said that if the proposal in FEC-004/17 were

carried, he would move the addition of Sir Carl Berendsen as an additional Vice-Chairman, a member of the Commission whose leadership in the business of the Commission was unchallenged. He said that it was preferable that the Commission not elect Vice-Chairmen, but that, in the absence of the Chairman, his alternate should preside over Commission meetings.

MR. DOUTEAU said that the French proposal to add the name of Mr. Naggiar to the list of Vice-Chairmen of the Commission was based solely on the ground of individual qualifications for the position. He referred to a previous discussion on the matter (Minutes, 4th Steering Committee Meeting) and pointed out that the Vice-Chairmen had at that time been nominated on the basis of their individual qualifications.

SIR CARL BERENDSEN said that at the fourth meeting of the Steering Committee the Canadian member had suggested that Vice-Chairmen be elected on the basis of their personal qualifications and had suggested the representatives of China, the Soviet Union and the United Kingdom as the members so qualified.

DR. EVATT replied that only pretense had made it possible to nominate Vice-Chairmen on the basis of individual qualifications and simultaneously to find that these qualifications resided in the representatives of the three veto powers. He said that the matter was one of major significance in that it would undoubtedly lay down a precedent for choosing participating nations in a future peace conference. If it were deemed advisable to choose Vice-Chairmen for the Commission he suggested that such choice be based on the degree of participation in the war in the Pacific.

(At this point Dr. Evatt explained that it was necessary for him to leave the meeting.)

DR. KOO said that it was not clear to him whether Dr. Evatt had desired to nominate Sir Carl Berendsen in addition to the list of three Vice-Chairmen as proposed in FEC-004/17 or whether such nomination was intended to be in addition to the French nomination, making a proposed total list of five Vice-Chairmen.

MAJOR PLIMSOLL explained that the Australian preference was for the United States alternate member to preside over Commission meetings in the absence of the Chairman. MAJOR PLIMSOLL moved and SIR CARL BERENDSEN seconded the motion that there be no Vice-Chairmen of the Commission and that in the absence of the Chairman the United States alternate member preside over meetings of the Commission.

ADMIRAL RAMISHVILI said that the entire question of whether or not vice-chairmen should be elected might be referred to the Steering Committee for reconsideration. However, he said, only the proposals in FEC-004/17 were properly before the Commission at this time.

DR. GAMBOA expressed agreement with the views of Dr. Evatt and Sir Carl Berendsen.

MR. VESUGAR said that he considered the correctness of the viewpoint of Dr. Evatt to be self-evident and he identified himself with that viewpoint.

MR. DOUTEAU said that all representatives on the Commission who had been sitting under the chairmanship of General McCoy were equally competent. He moved that they all be considered eligible and that they serve in the capacity of Vice-Chairman in turn. The motion lapsed for lack of a second.

MR. VESUGAR said that the understanding had existed at the formation of the Commission that a representative of the United States should preside over all meetings of the Commission. If that understanding was no longer binding, he said, the French proposal in the enclosure to FEC-004/17 was appropriate, as would also be appropriate a proposal to elect a Chairman Pro Tem at each meeting from which the Chairman was absent.

DR. KOO pointed out that the Terms of Reference contained no provision with respect to the nationality of the Chairman of the Commission.

MR. COLLINS said that since General McCoy had been elected Chairman of the Commission on the basis of his personal qualifications, it did not follow that his alternate should preside in the absence of the Chairman.

MR. COLLINS moved and GENERAL HILLDRING seconded the motion that the question of Vice-Chairmen of the Far Eastern Commission be referred to the Steering Committee for reconsideration.

The motion was carried unanimously.

ITEM 3 - REQUEST FOR INFORMATION RELATIVE TO REPARATIONS CLAIMS
(FEC-077/1)

MR. VESUGAR suggested that the word "those" in the third line from the end of paragraph 2 of FEC-077/2 be deleted.

MAJOR PLIMSOLL moved and GENERAL HILLDRING seconded the motion that FEC-077/2 be approved with the amendment suggested by Mr. Vesugar. The motion was carried unanimously.

ITEM 4 - ADDITIONAL RULES OF PROCEDURE (FEC-067/3)

SIR GEORGE SANSOM moved and MR. DOUTEAU seconded the motion that FEC-067/3 be approved. The motion was carried unanimously.

ITEM 5 - JAPANESE TAXATION OF ALIENS (FEC-055/4)

MR. DOUTEAU pointed out that approval of FEC-055/4 should include the recommendation embodied in paragraph 3 of the cover page that the Supreme Commander be informed that the Far Eastern Commission had currently under consideration additional policy with respect to extraordinary taxation designed to meet war costs or other charges falling on the Japanese as a result of the war, such as the Increased Property Tax Law and the War Profits Tax Law as Imposed on Juridical Persons.

MAJOR PLIMSOLL moved and MR. COLLINS seconded the motion that FEC-055/4 be approved. The motion was carried unanimously.

ITEM 6- CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE EFFECT OF THE TOURS OF THE JAPANESE EMPEROR
(FEC-068/2)

MR. COLLINS moved and GENERAL HILLDRING seconded the motion that FEC-068/2 be approved. The motion was carried unanimously.

ITEM 7 - LIAISON WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS
(FEC-044/2)

SIR CARL BERENDSEN said that he desired to record again his view that liaison between the Supreme Commander and the Commission was not satisfactory. He admitted that, perhaps, little could be done to improve this relationship, and said that he therefore was not pressing for any specific action at this time. He remained

convinced, however, that the Commission could never function adequately unless a system of liaison were established whereby the Commission had a permanent officer on the Supreme Commander's Staff and the Supreme Commander likewise had a permanent officer assigned to the Commission.

GENERAL HILLDRING said that the object of the United States delegate in presenting FEC-044/2 had been to record the current situation with respect to liaison with the Supreme Commander. It was not to be implied, he said, that the United States Government considered the current situation entirely satisfactory. He stated that the United States Government was interested in effective liaison between the Commission and the Supreme Commander and was undertaking to improve the current arrangements.

MR. COLLINS said that Committee No. 3 would commence work soon on a preliminary appraisal of the draft constitution. He asked whether the United States representative might informally obtain information as to the exact status of the present text of the draft constitution and also as to the effect on the Japanese political situation of discussion of the constitution in the Diet. GENERAL HILLDRING replied that the United States Government would attempt to obtain such information and supply it to the Commission.

SIR GEORGE SANSOM referred to paragraph 1-f of FEC-044/2 and said that his Government contemplated the assignment of an official to the staff of the Supreme Commander. The duties of this official would include the care of property in Japan owned by United Kingdom nationals. He had hoped that the arrangements for the assignment of this official might be made directly between the United Kingdom liaison mission in Japan and the Supreme Commander. However, he had received indications from the Department of State that such arrangements could only be made through the Commission, as outlined in FEC-069. GENERAL HILLDRING replied that there was no objection on the part of his Government to arrangements of this kind being made between the chief of the liaison mission in Japan and the Supreme Commander. MR. JOHNSON added that the method described in FEC-069 for handling such arrangements had not been intended to preclude direct arrangements in the case of those governments which had liaison missions in Japan.

THE COMMISSION unanimously agreed to accept FEC-044/2.

ITEM 8 - RESTITUTION OF LOOTED PROPERTY (FEC-011/12)

GENERAL HILLDRING asked that the following statement, appearing in the second paragraph of the cover page of FEC-011/12, be made a part of the minutes:

"At the 23rd meeting of Committee No. 1: Reparations the U.S. member agreed to the rejection of his amendment for the insertion of the words 'by the Supreme Commander for the Allied Powers' in paragraph 1 and 2 of the document but asked that it be recorded in the minutes of the committee and subsequently in the minutes of the Commission meeting that it is recognized that the Supreme Commander for the Allied Powers is the final implementing authority of policy decisions of the Far Eastern Commission."

MAJOR PLIMSOLL moved and MR. DOUTEAU seconded the motion that the Commission approve FEC-011/12. The motion was carried unanimously.

ITEM 9 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION
(FEC-031/28)

ADMIRAL RAMISHVILI said that he was awaiting instructions from his Government with respect to FEC-031/28. He desired therefore that consideration of the document be postponed.

MAJOR PLIMSOLL agreed that consideration of the document might be postponed to allow the Soviet representative time to receive instructions from his Government. He emphasized the urgency of the matter, however, and pointed out that unless the Commission took a decision soon with respect to review of the Constitution, it might lose its opportunity to make its influence felt in this matter. He therefore suggested that, should the Soviet representative receive instructions before the next regularly scheduled meeting of the Commission, a special meeting be called to consider FEC-031/28.

SIR CARL BERENDSEN said that from the point of view of his Government, FEC-031/28 was not a satisfactory document, since his Government did not consider the present Diet a competent body finally to approve or dispose of the constitution. Under the provisions of FEC-031/28, he said, the Diet could give final approval to the constitution unless the Commission should disapprove of the constitution. However, he added, the provision for review by the Commission contained in FEC-031/28 was better than no provision at all, and if the matter came to a vote he

would probably abstain from voting rather than actively oppose adoption of the paper.

THE COMMISSION unanimously agreed to defer consideration of FEC-031/28 until its next meeting, with the understanding that a special meeting might be called upon receipt of instructions by the Soviet representative.

ITEM 10 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to defer consideration of FEC-072.

ITEM 11 - OTHER BUSINESS

(a) SCHEDULE OF MEETINGS FOR AUGUST

THE COMMISSION unanimously agreed to schedule meetings during the month of August on the first, fifteenth and twenty-ninth, with the understanding that, in case of urgency, special meetings might be called. It was understood that the Committees, including the Steering Committee, would continue their normally scheduled meetings during August.

ITEM 12 - PRESS RELEASE

THE COMMISSION unanimously approved the following press release:

"I. In the absence of General Frank R. McCoy, Chairman and United States Representative on the Far Eastern Commission, the weekly meeting of the Commission took place today with His Excellency Dr. V. K. Wellington Koo, Chinese Ambassador and Representative on the Commission, presiding as Chairman pro tem. General J. H. Hilldring, Assistant Secretary for Occupied Areas of the United States Department of State and alternate to General McCoy on the Commission, attended the meeting as the United States Representative.

"II. The Commission unanimously adopted a policy statement with respect to Japanese extraordinary tax laws (text enclosed) and agreed that the Supreme Commander should be informed that the Commission has under consideration policy with respect to the Increased Property Tax Law and the War Profits Tax Law as Imposed on Juridical Persons.

"III. The Commission unanimously adopted a policy statement (text enclosed) with respect to the restitution of looted property. The United States Representative, General Hilldring, made the following statement for the record:

"At the 23rd meeting of Committee No. 1: Reparations the United States member agreed to the rejection of his amendment for the insertion of the words 'by the Supreme Commander for the Allied Powers' in paragraph 1 and 2 of the document but asked that it be recorded in the minutes of the committee and subsequently in the minutes of the Commission meeting that it is recognized that the Supreme Commander for the Allied Powers is the final implementing authority of policy decisions of the Far Eastern Commission."

"IV. In reply to a request by the Commission on April 10, 1946 for the Chairman to consult with the Supreme Commander with respect to the establishment of effective liaison between the Commission and the Supreme Commander for the Allied Powers headquarters, the Chairman submitted a statement (text enclosed) containing a summary of current arrangements for liaison, and presenting the opportunity to the Commission to send a liaison officer to Tokyo to acquire current first-hand information from the Supreme Commander and his staff for the benefit of the Commission. The United States Representative, General Hildring, stated, in this connection, that the United States Government is interested in effective liaison between the Commission and the Supreme Commander for the Allied Powers and is undertaking to improve current arrangements."

The meeting adjourned at 12 noon.

Minutes of
20th FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twentieth Meeting of the Far
Eastern Commission Held in Main Conference
Room, 2516 Massachusetts Avenue, N.W., Thursday,
18 July 1946

REPRESENTATIVES PRESENT

His Excellency Dr. W. K. Wellington Koo, Chairman Pro
Tem, (China)

The Right Honorable Dr. H. V. Evatt (Australia)

Mr. R. E. Collins, (Canada)

Mr. Robert Douteau, (France)

Mr. Jamshed Vesugar, (India)

Dr. A. D. A. de Kat Angelino, (Netherlands)

His Excellency Sir Carl Berendsen, (New Zealand)

Dr. Melquiades J. Gamboa, (Philippines)

Rear Admiral S. S. Ramishvili, (U.S.S.R.)

Sir George Sanson, (United Kingdom)

The Honorable John H. Hilldring, (U.S.)

SECRETARY GENERAL

Mr. Nelson T. Johnson

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MAJOR PLIMSOLL said that the second paragraph of FEC 031/20, dealing with either the approval or disapproval of the constitution should be considered apart from the question of review of the constitution in the first paragraph and now before the Commission in FEC 031/23. The question of review was an urgent matter, he said and unless the Commission could decide to approve FEC 031/23 without prejudice to later consideration of the substance of the second paragraph, the Japanese might approve the Constitution without the Commission having provided for review.

MR. VESUGAR said that he had been convinced that in the second paragraph of FEC 031/20 the words "unless previously disapproved" carried an implication of greater freedom of choice on the part of the Japanese people than did the words "following approval", as proposed by the Soviet member. He asked whether the Soviet representative could accept FEC 031/23 with the inclusion of the second paragraph of FEC 031/20, but not including his proposed amendment thereto. GENERAL McCOY asked whether the Soviet representative could adopt the suggestion proposed by Mr. Vesugar, with the understanding that the question of approval or disapproval of the Constitution by the Commission would be reconsidered by Committee No. 3.

SIR CARL BERENDSEN pointed out, in conjunction with the question directed to the Soviet representative by General McCoy, that the Soviet position was guarded by the fact that the Commission had already issued a policy decision on the Constitution. Consequently, by the provisions of the Terms of Reference of the Allied Council, if the proposed constitution was not satisfactory to the Soviet Government, objections could be raised by the Soviet member of the Allied Council and the question subsequently referred back to the Commission.

ADMIRAL RAMISHVILI said that the right of the Commission to approve the Japanese constitution constituted no more "interference with the free exercise of the will of the Japanese people, than the right of the Commission to disapprove of the Japanese constitution. He regretted that some representatives on the Commission objected to making approval by the Commission a prerequisite to the establishment of the constitution because they feared the representatives with the veto privilege would

not be able to agree on a constitution. He said that if the Japanese produced a definitely bad constitution, and agreement could not be reached on the Commission with respect to disapproval of that constitution, the result would be continuance in effect of this bad constitution. In the result he felt that there was no practical difference between "approval" or "disapproval".

DR. KOO said that, if it were deemed advisable to adopt the second paragraph of FEC-031/20, it might be added with the inclusion of a modification of the Soviet proposal, that is, with the words "following approval" changed to "pending approval".

ADMIRAL RAMISHVILI said that he could not accept any modification of his proposal without further consideration and consultation with his Government.

THE COMMISSION unanimously agreed to refer FEC-031/23 to the Steering Committee for consideration in the light of the foregoing discussion.

ITEM 4 - DIVISION OF JAPANESE REPARATIONS (FEC-075/2)

SIR GEORGE SANSOM said that the proposal by his Government (FEC-075) with respect to a plan for the division of Japanese reparations had been presented in the belief that, although it was not known what might be the total amount of these reparations, consideration could be given the matter of the proportionate shares of total reparations to be received by each beneficiary nation. He said that although the proposal had been referred to Committee No. 1, the members of that Committee felt that, since they were operating without terms of reference, they should ascertain whether or not the Commission desired them to commence the formulation of a plan for the sharing of reparations. He said that his Government felt that the question of proportionate shares could be discussed without prejudice to other phases of the reparations question. His Government also felt that in such discussion a broad political approach was preferable to a statistical approach.

SIR CARL BERENDSEN said that the general question of reparations was an urgent matter. At present, he said, he could see no better method of approach than that suggested by Sir George Sansom.

DR. de KAT agreed with Sir George Sansom's remarks and suggested that delegations submit proposals for percentages of total reparations to Committee No. 1 for discussion.

MAJOR PLIMSOLL said that the Commission might first discuss such percentages and then refer them to Committee No. 1. SIR GEORGE SANSOM suggested that the Commission instruct Committee No. 1 to begin consideration along broad political lines of the division of reparations and invite each member Government to indicate without commitment a program of proportionate shares.

MR. VESUGAR inquired as to the status of the proposed Inter-Allied Reparations Committee. MAJOR PLIMSOLL replied that this proposal had been considered at length by Committee No. 1 but that consideration had not been conclusive, partly because of lack of agreement as to whether or not external assets should be considered for reparations purposes. SIR GEORGE SANSOM added that should an Allied Reparations Commission come into existence, the information that would have meanwhile been obtained by Committee No. 1 under his proposal would be of value to the Inter-Allied organization.

MAJOR PLIMSOLL said it was the view of his Government that the Commission was the appropriate body to consider shares of reparations. SIR GEORGE SANSOM said that this was the view of his Government also.

DR. KOO said that without reference to any position on external assets or on the nature of the body to deal with reparations, he could voice general support of the proposal of the United Kingdom Government to formulate a plan for the allocation of the percentages of reparations, such plan to be formulated along broad political lines together with whatever statistical information might be available.

MR. COLLINS suggested that Committee No. 1 begin the formulation of a plan as soon as possible. However, he said, to begin planning on this matter some factual information was required and this information would necessarily take the form of more or less accurate statistics.

MR. DOUVEAU expressed general agreement with the U. K. proposal with the provision that the approach along broad political lines should not exclude common sense and statistics. He pointed out that any final decision on this matter must be made by the Commission and not by the Committee. His Government, he said, would favor the inclusion of external assets as part of the Japanese estate for reparations purposes. Furthermore, if an Inter-Allied Reparations Commission were established, he said, it should be under the Far Eastern Commission and not an independent body. Such an Inter-Allied Reparations Committee, he said, should be constituted as an adjunct of the Commission for purposes of technical assistance, and perhaps later should be transferred to Tokyo.

SIR GEORGE SANSOM said that with reference to consideration of external assets for reparations purposes, the total amount of available assets was not relevant to the problem of proportionate shares. The two problems could be considered separately. His proposal, he said, involved procedure rather than policy. He agreed that statistics should not be excluded in the formulation of a plan for division of reparations.

MR. COLLINS moved and MR. DOUVEAU seconded the motion that the Commission direct Committee No. 1 to commence the preparation of a plan for the division of reparations in the light of the foregoing discussion.

The motion was carried unanimously.

ITEM 5 - BASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION
(FEC-031/24)

MAJOR PLIMSOLL repeated the view of his Government that all policy decisions by the Commission should be published, allowing time for prior transmission of such decision to the Supreme Commander. He pointed out that with respect to FEC-031/19, the Commission had already announced to the press that a decision had been reached and would be published and that consequently the danger of rumors concerning the decision had increased. However, he said, in the light of the views of the Supreme Commander

as expressed in Fec-031/24, his Government was willing to agree to a delay in the publication of FEC-031/19, with the suggestion that the statement be published as soon as possible. He recalled a suggestion by General Sir John Lavarack at a prior meeting of the Commission to the effect that such decisions be released for publication simultaneously by the Supreme Commander and by all member Governments of the Commission. He therefore suggested that the Supreme Commander inform the Secretary General prior to the date of publication of his decision to publish the decision.

COLONEL POWLES said that had the question of publication of this decision arisen three or four months earlier, when the situation was such that it could have been expected that the document would take its place as one of the controlling documents during consideration of a new constitution, his Government would have urged immediate publication of the decision. However, the situation had changed in the last three months and that a draft constitution was before the Diet, and he therefore agreed that the views of the Supreme Commander should be accepted and publication of the decision in FEC-031/19 should be deferred.

GENERAL McCOY called attention to the second sentence in the first paragraph of FEC-031/24 which read "It would appear however that the public release of the directive at this time would be a grave if not fatal error." He said that obviously this implied that in the Supreme Commander's view later publication would be feasible.

ADMIRAL RAMISHVILI said that it was the view of his Government that political decisions of the Commission must be published. He moved that FEC-031/19 be published without reservation as to time. The motion lapsed for lack of a second.

MR. COLLINS referred to the first sentence of FEC-031/24 which read "Scrupulous care will be exercised to insure that the constitution finally adopted by the Diet contains no provision inconsistent with FEC-031/19. He said that he assumed from this that the Supreme Commander would acquaint the appropriate authorities in Japan with

Minutes of
25th FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twenty-Fifth Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, 12 September 1946

REPRESENTATIVES PRESENT

Major General Frank R. McCoy (United States) (Chairman)

Major J. Plinsoll (Australia)

His Excellency Lester B. Pearson (Canada)

His Excellency Dr. V. K. Wellington Koo (China)

Mr. Francis Lacoste (France)

Mr. Jamshed Vesugar (India)

Dr. A. D. A. de Kat Angelino (Netherlands)

His Excellency Sir Carl Berendsen (New Zealand)

Mr. Leclides S. Virata (Philippines)

Rear Admiral S. S. Ramishvili (U.S.S.R.)

Sir George Sansom (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

basic characteristics the Japanese House of Councillors would have. If the House of Councillors should be of the first type, the discrimination with respect to its electors on the basis of age was not important. However, if the House of Councillors should be of the second type, it was advisable, in his opinion, to provide that its electors comply with a provision for a higher minimum voting age than the electors of the lower House. Only by such provision, he said, could the upper House avoid becoming a duplication of the lower House. He suggested that there be no statement in the constitution to the effect that there should be no discrimination between the electors of the two Houses on the basis of age, but that the whole matter be left to provision by the Japanese in the electoral law.

GENERAL MCCOY said that even should the upper House become obstructive, the lower House would be able to override its decisions by a two-thirds majority vote.

COLONEL POWLES replied that it was not practical to expect two-thirds majorities, once the party system was well developed.

MR. GRAVES expressed the personal view that the constitution should contain a reference to universal adult suffrage. This did not necessarily mean that the same definition of adulthood should apply to all electors. Different age minima for different types of elections might well be prescribed. He added that in Japan only the older generations had had any experience of democratic processes, and that a slightly higher age for upper House electors would not, therefore, be necessarily disadvantageous.

ADMIRAL RAMISHVILI said that he considered it unfortunate that the function of the upper House was not known to the Commission. He said that territorial representation was not necessary in Japan, where little division of local interest was possible. Furthermore, he said, he could not agree to the creation of an upper House, with the principal duty of checking the activities of the lower House. He said that the Commission should ascertain the function of the upper House. If it should develop that territorial representation was desirable in Japan, such representation could be accomplished by the same lower House. With respect to the minimum age qualifications for

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electors, in his opinion these qualifications should be included in the constitution. He felt that this age should be uniform, and that otherwise the provisions would not be in accordance with the principles of the Potsdam Declaration.

MR. VESUGAR said that, according to Article XLVI of the draft constitution, representation in the upper House was not on a territorial basis, but that the apparent function of the upper House was to supply continuity to the Government, since the upper House was not subject to dissolution. He felt that the Japanese would inevitably make changes in the constitution as soon as the occupation was over. It was therefore necessary, he said, to institute as nearly perfect a constitution as possible to insure a minimum of desire on the part of the Japanese for later changes in the document.

DR. KOO said that his personal view was that the provision for the age differential of electors should be left to the Japanese themselves. The underlying principle of a bicameral system was, he said, that each House served a different purpose, and the age qualification for electors would emerge in conjunction with decisions by the Japanese on the purposes to be served by these bodies. He felt that the danger of obstruction on the part of the upper House would prove in practice to be slight. He pointed out that bills which would be passed in the lower House might often be defeated in the upper House not because of obstructive tactics, but because, since half of the members of the upper House would perhaps have been elected since the last election of the members of the lower House, the upper House might well be more representative of the contemporary will of the people. In general, he said, a higher age qualification for the electors of the upper House was not objectionable, since an important function of the upper House should be to check any hasty and ill-considered legislation passed by the lower House.

With respect to paragraph b, Implementing Legislation, of FEC-087/2, GENERAL MCCOY said that it was now the general understanding that drafts of legislation before the Diet would be made available to the Commission.

With respect to paragraph c(1), House of Councillors (Articles 59 and 60), MAJOR PLIMSOLL expressed the opinion that Article 59 would allow to the House of Councillors undue power to obstruct legislation passed by the lower House. He referred with approval to the suggestion to add a paragraph to the Article providing that if, after dissolution by the Government of the House of Representatives, a bill that had been rejected by the House of Councillors was passed by a simple majority of the new House of Representatives, it would become law without approval by the House of Councillors.

With respect to paragraph c(2), Hereditary Estates (Article 88), GENERAL MCCOY explained that the United States member of Committee No. 3 would obtain further information as to the disposition of hereditary estates.

THE COMMISSION unanimously agreed to approve paragraph 2, page 1 of FEC-087/2, the recommendation by Committee No. 3 that the proposed communication to the Supreme Commander for the Allied Powers (FEC-031/34), which was approved by the Committee on 8 August and forwarded to the Commission, be not now sent.

ADMIRAL RAMISHVILI said that he understood that the questions which had been raised in FEC-031/34 might still be raised for discussion before the Commission. GENERAL MCCOY agreed with this viewpoint. MR. COLLINS pointed out that the most important points in FEC-031/34 had, in the opinion of Committee No. 3, been incorporated in FEC-087/2.

MAJOR PLIMSOLL said that he desired to reserve the position of his Government on paragraph 3 of page 1 of FEC-087/2.

THE COMMISSION unanimously agreed to retain FEC-087/2 on its agenda, with the exception of paragraph 2.

ITEM 4 - CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE TEXT OF THE CONSTITUTION (FEC-031/34)

This item was disposed of by the Commission's decision (see Item 3 above) to approve the recommendation on paragraph 2 of FEC-087/2 that the proposed communication to the Supreme Commander for the Allied Powers be not now sent.

ITEM 5 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION
(FEC-031/36)

DR. LOUDON referred to the first sentence of FEC-031/36, containing the provision that the new constitution "...will in due season after promulgation become the legal successor of the present constitution..." He asked whether this statement meant that there was a possibility that the constitution would not become the legal successor of the old constitution. MR. COLLINS replied that this statement was a reference to Article C (100) of the draft constitution which provided, "This constitution shall be enforced as from the day when the period of six months will have elapsed counting from the day of its promulgation." DR. LOUDON suggested that the phraseology of FEC-031/36 might be improved by a direct reference to Article C of the draft constitution in place of the phrase, "in due season after promulgation."

ADMIRAL RAMISHVILI referred to the third paragraph of his statement made at the 23rd meeting of the Commission (FEC-031/35). He said that he had referred the entire subject to his Government for reconsideration following the discussion of his statement at the 23rd meeting. His Government had instructed him to request other representatives on the Far Eastern Commission to reconsider their positions with respect to approval of the draft constitution by the Commission. However, he said, if the Far Eastern Commission could not agree for the time being with the Soviet viewpoint on approval of the constitution by the Commission prior to its going into effect, he urged the recognition, as the principle task confronting the Commission, of a consideration and decision on the question of whether or not the draft constitution conformed to the principles laid down in the Potsdam Declaration. In his personal opinion the entire question of review within two years would be seen in a new light once a decision had been reached on the fundamental question of conformity with the Potsdam Declaration. He said that if the Far Eastern Commission devoted its major attention to the question of the review by the Commission of the constitution within two years, this would diminish the efforts of the Commission at present on its principle task of deciding wherein the constitution was not consistent with the Potsdam Declaration and the policy decisions of the Commission.

ADMIRAL RAMISHVILI moved that paragraph 3 of FEC-031/35 be substituted for paragraph 1 of FEC-031/36. There was no second to this motion.

THE COMMISSION unanimously agreed to a suggestion by General McCoy that it continue to consider the draft constitution urgently without prejudicing at this time the question of the review procedures. It was also agreed to continue FEC-031/36 on the Commission agenda.

ITEM 6 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081, -081/1 and -081/2)

THE COMMISSION unanimously agreed to postpone consideration of FEC-081, -081/1 and -081/2.

ITEM 7 - CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS RELATIVE TO EXTRAORDINARY TAXATION IN JAPAN (SC-016/8)

THE COMMISSION unanimously approved SC-016/8.

ITEM 8 - INTERIM REPARATIONS REMOVALS: SYNTHETIC OIL AND SYNTHETIC RUBBER INDUSTRIES (FEC-059/21)

GENERAL MCCOY said that he was not yet prepared to state the position of his Government on FEC-059/21.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/21.

ITEM 9 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to postpone consideration of FEC-072.

ITEM 10 - OTHER BUSINESS

a. REPORT BY THE ACTING SECRETARY GENERAL ON THE RELEASE TO THE PRESS OF FEC-038/1, EXERCISE OF CRIMINAL AND CIVIL JURISDICTION OVER NATIONALS OF MEMBERS OF THE UNITED NATIONS

MR. FARLEY said that he had been informed on 26 August that the Supreme Commander had received a directive based on the Commission policy statement on exercise of criminal and civil jurisdiction over nationals of members of the United Nations (FEC-038/1). Accordingly, the text of FEC-038/1 had been released to the press on 26 August. In the future, he said, the Secretariat would inform all representatives of the time at which such texts were to be released for publication prior to their release to the press.

ITEM 11 - PRESS RELEASE

THE COMMISSION unanimously agreed that SC-016/8, Consultation with the Supreme Commander for the Allied Powers Relative to Extraordinary Taxation in Japan, and FEC-055/7, Informal Communication from the Supreme Commander for the Allied Powers Relative to Extraordinary Taxation in Japan, should be released to the press following notification of the receipt of the former by the Supreme Commander.

The meeting adjourned at 1 P.M., subject to the call of the Chairman.

basic characteristics the Japanese House of Councillors would have. If the House of Councillors should be of the first type, the discrimination with respect to its electors on the basis of age was not important. However, if the House of Councillors should be of the second type, it was advisable, in his opinion, to provide that its electors comply with a provision for higher minimum voting age than the electors of the lower House. Only by such provision, he said, could the upper House avoid becoming a duplication of the lower House. He suggested that there be no statement in the constitution to the effect that there should be no discrimination between the electors of the two Houses on the basis of age, but that the whole matter be left to provision by the Japanese in the electoral law.

GENERAL MCCOY said that even should the upper House become obstructive, the lower House would be able to override its decisions by a two-thirds majority vote.

COLONEL POWLES replied that it was not practical to expect two-thirds majorities, once the party system was well developed.

MR. GRAVES expressed the personal view that the constitution should contain a reference to universal adult suffrage. This did not necessarily mean that the same definition of adulthood should apply to all electors. Different age minima for different types of elections might well be prescribed. He added that in Japan only the older generations had lived under anything approaching a democratic regime, before the militarists and ultra-nationalists came into power.

ADMIRAL RAMISHVILI said that he considered it unfortunate that the function of the upper House was not known to the Commission. He said that territorial representation was not necessary in Japan, where little division of local interest was possible. Furthermore, he said, he could not agree to the creation of an upper House, with the principal duty of checking the activities of the lower House. He said that the Commission should ascertain the function of the upper House. If it should develop that territorial representation was desirable in Japan, such representation could be accomplished by the same lower House. With respect to the minimum age qualifications for

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4 September 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF TWENTY-FOURTH MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the United Kingdom representative, of page 3 of the Minutes of the 24th Meeting of the Far Eastern Commission.

2. All representatives are requested to substitute the attached page for page 3 of the Minutes of the 24th Meeting of the Far Eastern Commission.

HUGH D. FARLEY
Acting Secretary General

GENERAL MCCOY opened the meeting at 10:30 A.M.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 23rd MEETING

THE COMMISSION unanimously approved the minutes of its 23rd meeting.

ITEM 2 - DRAFT CONSTITUTION (FEC-087/1)

GENERAL MCCOY said that the latest communication from the Supreme Commander indicated that there would be sufficient time for due consideration of the text of the draft constitution by the Commission before approval of the constitution by the House of Peers. He said that, in reply to a question from the United States Government as to the period of time within which the House of Peers would be likely to pass the constitution, the Supreme Commander had said that it was a practical certainty that the present legislative processes would continue until September 13, and that there was little likelihood that the House of Peers would advocate any changes in principle.

DR. LOUDON said that he believed that his Government would approve the draft constitution in its present form.

DR. LOUDON referred to Article LXII on page 10 of FEC-087/1 and commented that the use of the word "government" in this article did not seem sufficiently clear and he asked whether the expression found in the Japanese language version of this article clearly indicated that both "government and administration" were meant. GENERAL MCCOY replied that he would request his Government to inquire into this point. He added that the official Japanese language text of the draft constitution would soon be available to the Commission.

MAJOR PLIMSOLL said that his Government hoped to present its views very soon on the text of the draft constitution. He added that for the time being he must reserve the position of his Government as to the date of September 13. He said he assumed that the Supreme Commander's statement had been presented by the Chairman for the information of members, and that the Commission was not asked at present to determine a date for presenting its final views. GENERAL MCCOY agreed, but emphasized the need for speedy consideration by the Commission.

ITEM 3 - REPORT BY COMMITTEE NO. 3 ON ITS STUDY OF THE DRAFT CONSTITUTION (FEC-087/2)

MR. COLLINS, speaking as Deputy Chairman of Committee No. 3, explained that none of the statements in FEC-087/2 represented the official views of any Government. The report had been prepared by the members of Committee No. 3 for the purpose of emphasizing particular provisions in the draft constitution which they considered most likely to be inconsistent with the principles of the Potsdam Declaration. With particular reference to paragraph a, Suffrage, on page 2 of FEC-087/2, he said that some of the doubt entertained by members of Committee No. 3 on this point might be allayed by information as to what the Japanese would propose and by a clarification of the definition of "universal adult suffrage."

GENERAL MCCOY said that the fact that the new constitution provided for the elimination of the House of Peers, with its historical structure of prestige and nobility, should do much to eliminate the danger which might otherwise result from discrimination between the electors of the two Houses on the basis of age.

COLONEL POWLES pointed out that one of the objectives of the occupation was the democratization of Japan. This democratization must be accomplished mainly, he said, through education of the younger generation. Should the minimum voting age for electors of the House of Councillors be set at 30, he pointed out, the younger generation would be unable to vote for candidates of the House of Councillors for about ten years. He stressed the importance, in the particular circumstances found in Japan, of preserving the right to vote of the younger generation. He said that it was probable that the House of Councillors would in practice have the power to obstruct progressive legislation. This fact, he said, made the voting qualifications more important than they might otherwise have been.

DR. LOUDON distinguished between two types of upper Houses. The first, he said, resembled a diplomatic conference, and was based on territorial representation. The primary function of the second type of upper House was to check the activities of the lower House. He said it was not apparent from the constitution which of these two

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Minutes of
24th FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twenty-Fourth Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, 28 August 1946

REPRESENTATIVES PRESENT

Major General Frank R. McCoy, Chairman (United States)
Major J. Plimsoll (Australia)
Mr. R. E. Collins (Canada)
His Excellency Dr. V. K. Wellington Koo (China)
Mr. Francis Lacoste (France)
Mr. Jamshed Vesugar (India)
His Excellency Dr. A. Loudon (Netherlands)
Colonel G. R. Powles (New Zealand)
Mr. Leonides S. Virata (Philippines)
Rear Admiral S. S. Ramishvili (U.S.S.R.)
Mr. H. A. Graves (United Kingdom)

ACTING SECRETARY GENERAL

Mr. Hugh D. Farley

MR. JOHNSON opened the meeting in the absence of the Chairman, and asked for the nomination of a Chairman pro tem.

MAJOR PLIMSOLL moved and COLONEL POWLES seconded the motion that General Hilldring serve as Chairman pro tem. The motion was carried unanimously.

GENERAL HILLDRING welcomed Sir Girja Bajpai, who was attending a Commission meeting for the first time since his return from India.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 22nd MEETING

THE COMMISSION unanimously approved the minutes of its 22nd meeting.

ITEM 2 - DEPUTY CHAIRMAN OF COMMITTEE NO. 2 (FEC-004/21)

MAJOR PLIMSOLL moved and MR. GRAVES seconded the motion that the recommendation to appoint Mr. R.H. Whitman Deputy Chairman of Committee No. 2 to replace Mr. J.K. Galbraith be approved. The motion was carried unanimously.

ITEM 3 - EXERCISE OF CRIMINAL AND CIVIL JURISDICTION OVER NATIONALS OF MEMBERS OF THE UNITED NATIONS (FEC-038/1)

GENERAL HILLDRING referred to paragraph 2 of the cover page of FEC-038/1 and suggested that publication of the document be withheld until it had been received by the Supreme Commander.

MAJOR PLIMSOLL moved and ADMIRAL RAMISHVILI seconded the motion that FEC-038/1 be approved. The motion was carried unanimously. THE COMMISSION also agreed to withhold publication of the document until it had been received by the Supreme Commander.

ITEM 4 - REQUEST FOR CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS REGARDING SHIPBUILDING AND MERCHANT SHIPPING (FEC-085)

SIR GIRJA BAJPAI suggested that the subtitle, "Number of Yards," in paragraph c be amended to read, "Number of Shipbuilding Yards."

MAJOR PLIMSOLL moved and DR. PATTERSON seconded the motion that FEC-085 be approved, with the amendment suggested by Sir Girja Bajpai. The motion was carried unanimously.

ITEM 5 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

GENERAL HILLDRING said that the United States and Soviet Governments were still considering a proposal with respect to Japanese external assets. No conclusion was yet forthcoming and he requested that consideration by the Commission be postponed.

THE COMMISSION unanimously agreed to postpone consideration of FEC-072.

ITEM 6 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/28)

ADMIRAL RAMISHVILI presented the following formal statement (subsequently circulated as FEC-031/35):

"In accordance with the instructions of the USSR Government and in reply to the Statement of the U.S. member, FEC-031/26, the Soviet Delegation hereby informs the Members of the Far Eastern Commission of its view in regard to the question of authority of the Far Eastern Commission in the matter of procedure of the approval of the new Japanese Constitution.

1. The Soviet Delegation does not in any way deny the right of the Japanese Government and people to adopt a new Constitution, subject however, to the following necessary provisions:

(a) If the new constitution is in compliance with the requirements of the Potsdam Declaration as providing the removal of all obstacles to the revival and strengthening of the democratic tendencies among the Japanese people; and

(b) If such new Constitution meets the requirements of the policy decision of the Far Eastern Commission as set out in the Document FEC-031/19 of July 2, 1946 - 'Basic Principles for a New Japanese Constitution.'

2. In order to be able to determine whether the proposed draft of the constitution is in line with the aforesaid two documents, the Far Eastern Commission must consider the draft constitution and pass on it a policy decision.

3. Only after the Far Eastern Commission has passed the decision that the new draft Constitution is in accord with the provisions of

the Potsdam Declaration and the requirements set out in FEC-031/19, the Constitution will be adopted by the Diet and will in due season become a law.

4. In case the Far Eastern Commission decides that the draft of the Constitution as a whole or in its particular articles does not comply with the Potsdam Declaration or with the other requirements as mentioned above the Japanese Diet shall insert therein the appropriate amendments."

ADMIRAL RAMISHVILI asked that the representatives express their opinions in response to his statement, and said that, following such expression of views, he would then request final instructions from his Government with respect to its position on the authority of the Far Eastern Commission to approve the new Japanese constitution.

GENERAL HILDRING said that he would interpose no objection to an immediate exchange of views on the Soviet statement, but suggested that the statement be referred to the appropriate committee for consideration after such an exchange.

COLONEL POWLES said that the basic difference in viewpoint in this matter was whether provision for authority of the Commission to approve the constitution need be linked to the policy statement on review of the constitution.

ADMIRAL RAMISHVILI said that it was the view of his Government that both provisions should be forwarded simultaneously to the Supreme Commander, and that, indeed, the provision with respect to approval by the Commission should precede, in any agreed document, the provision for review. The question of approval, he said, would arise in the very near future, whereas the provision for review of the constitution dealt with an eventuality at least a year removed.

MAJOR PLIMSOLL said that the statement by the Soviet representative contained no substantial change in the previous view of the Soviet Government that the Commission should have to approve the constitution before it might go into effect. Two questions, he said, were raised by paragraph 3 of the Soviet statement: (1) Should the Diet be allowed to adopt the constitution before it had been finally

approved by the Commission, and (2) should approval by the Commission be a prerequisite to the constitution going into effect. The view of his Government on the second of these questions, he said, was that the Commission had power to disapprove the constitution or any part of it, and that in the absence of a Commission policy decision incorporating such disapproval, the constitution would go into effect in due season after promulgation.

COLONEL POWLES said that before the Commission adopted a policy making its approval prerequisite to the constitution going into effect, the Commission should seriously consider and provide for the consequences if, at the time when such approval would be required, the member Governments should find themselves in disagreement on the fundamental question of whether the constitution was consistent with the terms of the Potsdam Declaration and the previous policy decisions of the Commission.

ADMIRAL RAMISHVILI expressed confidence that the Commission could reach the necessary agreement for the approval of the constitution. No Government, he observed, would delay the constitution going into effect because of particular provisions which it might not wholly favor.

COLONEL POWLES suggested that an ad hoc subcommittee be appointed to consider the Soviet statement and relevant documents and report back to the Commission on 22 August 1946. The subcommittee, he suggested might be comprised of representatives of the Soviet Union, the United States and Australia.

SIR GIRJA BAJPAI opposed the appointment of an ad hoc subcommittee, and said that if any committee were to consider the documents in question, it should be the regular committee on Constitutional and Legal Reform.

SIR GIRJA BAJPAI moved and MAJOR PLIMSOLL seconded the motion that FEC-031/28 and FEC-031/35, together with FEC-031/26 and any other relevant documents, be referred to Committee No. 3 for consideration, with instructions to study the matter as expeditiously as possible and to report to the Commission, with the understanding that the Commission might be called in special session when Committee No. 3 was ready to submit its report. The motion was carried unanimously.

ITEM 7 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE
(FEC-081, -081/1, -081/2)

GENERAL HILLDRING said that all member Governments, with the exception of the Soviet Government, had responded favorably to the United States proposal for a conference on reparations.

ADMIRAL RAMISHVILI said that he expected to receive instructions on this matter very soon.

SIR GIRJA BAJPAI said that, because of a shortage of personnel, he would join in the view already expressed by other representatives that the conference on reparations be held in Washington rather than elsewhere, as proposed in FEC-081. GENERAL HILLDRING said that the question of location did not offer any obstruction in reaching agreement on arrangements for the conference.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-081, -081/1 and -081/2.

ITEM 8 - CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE TEXT OF THE CONSTITUTION (FEC-031/34)

GENERAL HILLDRING said, with respect to provisions in the draft Japanese constitution for cabinet membership, that his Government, as requested by the Supreme Commander (paragraph 2(a), FEC-031/33), had reconsidered the policy decision agreed on by the Commission to the effect that the majority of cabinet members should be selected from the Diet membership. He said that his Government, during this reconsideration, had deemed the arguments of the Supreme Commander, especially weighty because of the administrative difficulties which would confront the Supreme Commander in carrying out the Commission policy and because, while it might appear that the requirement for the majority of cabinet members to be drawn from the membership of the Diet would result in a better form of government than one lacking this requirement, it was nevertheless not possible to say that a democratic cabinet could not otherwise be obtained. He said that the position of the Supreme Commander was that the enforcement of such a requirement was in effect the application of an alien standard to Japanese affairs, whereas, in the view of the Supreme Commander, a democratic cabinet could be guaranteed by the provision already contained in the draft constitution to the effect that all cabinet members must be approved by the Diet.

GENERAL HILLDRING said that his Government, in comparing the Commission position with that of the Supreme Commander, had been impressed by the narrowness of the choice. He said that it must be realized that the Supreme Commander was basing his request for a revision of Commission policy on this narrowness of choice rather than on the general principle of the provisions necessary to achieving the best possible constitution.

GENERAL HILLDRING moved and MR. VIRATA seconded the motion that the Commission revise its policy, removing the requirement that the majority of members of the cabinet be selected from the membership of the Diet.

DR. KOO said that it was advisable not to lay down provisions of too great rigidity with respect to the selection of cabinet members. He stressed the importance of the differences in the political environments of nations having well established parliamentary traditions and those not having such traditions. Many of the most competent individuals in Japan, he said, were probably not members of any party, and such non-partisan individuals were particularly valuable in times of crisis. The provision requiring that the majority of cabinet members be selected from the Diet membership would deprive the Japanese Government of the services of any of these able non-partisan individuals. He said that his Government therefore felt that the provision in question might well be relaxed and the desires of the Supreme Commander met.

MAJOR FLIMSOLL reviewed the reasons for the Commission decision that the majority of cabinet members should be selected from the Diet. Among the most compelling of these reasons, he said, had been the general principle that if an executive was composed of members of the legislature, its responsibility to the legislature would be greater, and consequently, since the legislature was an elective body, the responsibility of the executive to the people would be greater. Furthermore, he said, the administration that was in office would be strengthened politically. Such political strengthening was desirable, he said, on the general principle that political parties

should be favored in contrast to the bureaucracy and other persons not directly involved in the political life of the country. This provision, therefore, was intended to strengthen the democratic safeguards in the new constitution. He said that the services of outstanding non-partisan individuals would not be lost since such individuals might serve as expert advisors to office-holders and some could be cabinet members, since not all, but simply a majority of, cabinet members need be drawn from the Diet.

GENERAL HILLDRING reiterated that the Supreme Commander had not addressed himself to the contention that the constitution might be improved by including the requirement in question, but had rather said in effect that the present draft constitution complied with the provisions of the Potsdam Declaration. The Supreme Commander had therefore urged that the Commission not require him to direct the Japanese Government to make changes in the draft constitution which were not actually essential. The Supreme Commander, he said, was hopeful that the Allied powers would avoid placing themselves in a position of having dictated a specific pattern of democracy to which Japanese institutions must be forced to comply.

MR. VIRATA said that the view of his Government was that Japanese governmental institutions should take that form which best suited the needs of the Japanese people. He said that he assumed that the draft constitution, which had been a campaign issue in the recent election, and had been before the people for six or seven months, had been thoroughly considered by them. In addition to such thorough consideration, he said, a period of trial was necessary to insure the emergence of the most suitable political forms. For this reason he would favor a minimum of rigidity in the constitutional provisions.

COLONEL FOWLES said that he could agree with the statement that the question before the Commission was not the academic one of how to produce the most nearly perfect constitution. However, he said, the Potsdam Declaration provided for the establishment of a responsible government in Japan. Since the proposed form of government was that of a constitutional monarchy he did not believe that a parliamentary system in which no members of the cabinet were chosen from

the Diet would be responsible in any democratic definition of the word. It had therefore been necessary to provide that at least some proportion of the cabinet members be selected from the Diet, and Committee No. 3 had agreed that this proportion should be a simple majority. The Supreme Commander, in his reply to the policy decision of the Commission, had appeared to address himself to a non-existent requirement that all members of the cabinet be chosen from the Diet.

DR. PATTERSON said that certain remarks which had been made at the last meeting of the Steering Committee on 13 August had borne the implication that the decisions of Committee No. 3 had been determined by the political forms of other Governments. He said that such an implication gave a false impression of the actual course of debate in Committee No. 3. He agreed with the statement that no democratic tradition existed in Japan and said that the Commission consequently had the obligation of establishing safeguards for democratic processes. He pointed out that a detailed examination of paragraph 2(a) of FEC-031/34 would provide evidence of an awareness of this obligation on the part of the Committee and he believed it was apparent that the document as written simply fulfilled the responsibility to set up the needed safeguards of political forms.

SIR GIRJA BAJPAI also agreed that it must be recognized that no democratic tradition existed in Japan. Consequently, he said, a governing political principle for Japan must be that only those elements which had sought and obtained popular support at the polls could participate in the Government. He said that if it were proposed to abolish the emperor institution and set up an elected executive, he could then concur in the omission of the provision that the majority of the cabinet members be chosen from the Diet. However, since the emperor institution was to be retained, he felt that the Diet must be responsible to the legislature.

Furthermore, SIR GIRJA BAJPAI pointed out, the Commission was charged with the strengthening of democratic tendencies in Japan. To strengthen these tendencies, he said, the legislature must be strengthened. Without a provision similar to the one in question

for the selection of cabinet members, he said, executive power would pass into the hands of individuals not responsible to the legislature and the importance of the legislature would tend to become secondary rather than primary, since the necessity of appeal to the popular vote would be diminished. For the foregoing reasons, he said, he would support the majority opinion to adhere to the previous Commission policy.

MR. GRAVES expressed agreement with the views of Sir Girja Bajpai. He said that his Government had been informed of the reply from the Supreme Commander. His Government had considered this reply and had decided to uphold its previous position. He expressed the hope that the motion by General Hilldring now before the Commission would not be brought to a vote until further opportunity had been given for reconciliation of the opposing viewpoints.

DR. DE KAT said that the constitution of his own Government prohibited cabinet members from being members of Parliament. However, he pointed out, the present provision in the draft Japanese constitution empowered the Diet to insist that all or any proportion of the cabinet members be members of the Diet. His Government, he said, was satisfied with the present provision in the draft constitution.

MR. LACCSTE said that, bearing in mind the object to be achieved in Japan, it seemed necessary to safeguard democratic tendencies in Japan. His Government, therefore, shared the majority opinion with respect to adherence to the expressed policy of the Commission.

SIR GIRJA BAJPAI suggested that, in the light of the preponderance of opinion in favor of adherence to the previous Commission policy, the United States Government reconsider its position on this subject. GENERAL HILLDRING agreed that his Government should give such consideration to the viewpoints which had just been expressed and suggested that further consideration of his motion be postponed until the next meeting of the Commission.

THE COMMISSION unanimously agreed to postpone consideration of the motion by the United States representative on paragraph 2(a) of FEC-031/34 until the next meeting.

GENERAL HILLDRING referred to the remaining paragraphs in FEC-031/34 and said that, although the document was entitled, "Consultation with the Supreme Commander," these paragraphs contained proposed views and decisions of the Commission. He said that the Supreme Commander had already been informed of the ideas and opinions of the Commission and it was perhaps repetitive to labor these opinions further in an additional document on consultation. His Government would be ready within a few days to discuss the additional paragraphs in FEC-031/34 with a view to incorporating them into a policy decision which would be forwarded to the Supreme Commander as a directive. He said that his Government desired that the substantive questions contained in the document be finalized and incorporated in a Commission policy decision.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-031/34.

ITEM 9 - CIVILIAN SUPPLY OF FOOD AND CIVILIAN RELIEF (FEC-026/7)

GENERAL HILLDRING said that his Government was wholly in agreement with the statement of the objectives of relief policy expressed in paragraph 1 of FEC-026/7. However, he said, his Government felt that if any departure from the principles there enunciated had occurred, such departure should be attributed to the United States Government, and not to the Supreme Commander. The Supreme Commander could only submit recommendations to his Government with respect to quantities of food that should go to Japan; the final decisions were made by the Congress and executive departments of the United States Government, in consultation with various advisory bodies, both national and international. Consequently, he said, his Government could not approve FEC-026/7, which, in its view, contained implied criticisms of the Supreme Commander's administration with respect to the distribution of food. However, he said, his Government would have no objection to sending to the Supreme Commander a directive on food policy based on a properly framed policy decision by the Commission.

Continuing, GENERAL HILLDRING explained that the Supreme Commander had rigorously enforced the basic directive which his Government had given him immediately after V-J Day. He had, indeed, turned back shipping resources which the United States Government had allocated for the supply of food to Japan. The United States Government had considered that the Japanese should receive a daily average of 1250 calories per person to insure the safety of the occupation forces and the furtherance of the objectives of the occupation. Only when this average figure had sagged to about 950 calories had the Supreme Commander asked for additional food for Japan. Even then, he added, the United States Government, in considering the request of the Supreme Commander, had given greater priority to the maintenance of daily averages of 2500 calories in friendly and liberated areas than to the maintenance of 950 in Japan.

GENERAL HILLDRING said that his Government also objected to FEC-026/7 on the ground that it dealt with an administrative matter. He referred to paragraphs 4(a) and 5(c) of the document as an example of this contention. The first of these paragraphs, he said, dealt superficially with but one phase (the degree of polishing of rice to be permitted) of an extremely complex administrative problem. The second of the paragraphs, he said, was subject to misinterpretation.

COLONEL POWLES said that the matter of food supply for Japan had been before the Steering Committee in May, at which time the United States member had presented what purported to be the views of his Government in SC-013/3. That document had been referred to Committee No. 2 and had there been considered exhaustively. The present document, FEC-026/7, he pointed out, was almost an exact reproduction of the original statement of the United States views, with the exception of paragraph 4, which had been proposed by the United Kingdom member. Notwithstanding this preponderance of agreement, he said, the United States member of the Steering Committee had presented a new alternative document (SC-013/7) when Committee No. 2 had reported on 6 August to the Steering Committee.

With respect to an implied criticism of the Supreme Commander being contained in FEC-026/7, COLONEL POWLES said that his Government had no intention of associating itself with such implied criticism, and did not consider that the document contained such implied criticism. The document had been directed to the Supreme Commander for the reason that the implementation of the policies enunciated therein hinged on decisions by the Supreme Commander with respect to needs in Japan. No further responsibilities had been attributed to him.

With respect to General Hilldring's criticism of paragraph 4(a), COLONEL POWLES said he had no objection to revision of the paragraph.

GENERAL HILLDRING said that his Government felt that the objectives desired by the Commission with respect to food supply had been attained under the original directive to the Supreme Commander from the United States Government. Adoption by the Commission of FEC-026/7, he said, would not alter the present and former procedures of the Supreme Commander, and would only signify to him that the Commission felt some dissatisfaction with these procedures.

GENERAL HILLDRING requested that FEC-026/7 and other relevant documents be referred to Committee No. 2 for reconsideration in the light of the foregoing discussion.

THE COMMISSION unanimously agreed to refer FEC-026/7 and other relevant documents to Committee No. 2 for reconsideration.

ITEM 10 - DIPLMATIC STATUS OF THE FAR EASTERN COMMISSION (FEC-073/3)

THE COMMISSION took note of FEC-073/3.

ITEM 11 - OTHER BUSINESS

a. TIME OF NEXT MEETING

THE COMMISSION unanimously agreed to schedule a meeting for Thursday, 22 August 1946.

ITEM 12 - PRESS RELEASE

THE COMMISSION unanimously approved the following press release:

I. In the absence of the Chairman, Major General Frank R. McCoy, Major General J.H. Hilldring, Assistant Secretary of State and alternate to General McCoy attended as United States representative and was elected chairman pro tem of the meeting.

II. The Commission unanimously adopted a policy statement on the Exercise of Criminal and Civil Jurisdiction over Nationals of Members of the United Nations, the text of which will be released at a later date.

III. The Commission unanimously approved the election of Mr. Roswell H. Whitman, Associate Chief of the Division of Japanese and Korean Economic Affairs of the Department of State, as Deputy Chairman of Committee No. 2: Economic and Financial Affairs, in the place of Mr. J.K. Galbraith, of the United States, who has been relieved of duty with the Commission.

IV. The Commission welcomed back the Representative of India, Sir Girja Bajpai, Agent General of India, who had returned from a trip to his home country."

The meeting adjourned at 1:00 P.M.

Minutes of
23rd FEC Meeting

FAR EASTERN COMMISSION

Minutes of the Twenty-Third Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, 16 August 1946

REPRESENTATIVES PRESENT

The Honorable John H. Hilldring, Chairman Pro Tem (United States)

Major J. Plimsoll (Australia)

Dr. George S. Patterson (Canada)

His Excellency Dr. V. K. Wellington Koo (China)

Mr. Francis Lacoste (France)

The Honorable Sir Girja Shankar Bajpai (India)

Dr. A. D. A. de Kat Angelino (Netherlands)

Colonel G. R. Powles (New Zealand)

Mr. Leonides S. Virata (Philippines)

Rear Admiral S. S. Ramishvili (U.S.S.R.)

Mr. H. A. Craves (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

MR. JOHNSON opened the meeting in the absence of the Chairman, and asked for the nomination of a Chairman pro tem.

MAJOR PLIMSOLL moved and COLONEL POWLES seconded the motion that General Hilldring serve as Chairman pro tem. The motion was carried unanimously.

GENERAL HILLDRING welcomed Sir Girja Bajpai, who was attending a Commission meeting for the first time since his return from India.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 22nd MEETING

THE COMMISSION unanimously approved the minutes of its 22nd meeting.

ITEM 2 - DEPUTY CHAIRMAN OF COMMITTEE NO. 2 (FEC-004/21)

MAJOR PLIMSOLL moved and MR. GRAVES seconded the motion that the recommendation to appoint Mr. R. H. Whitman Deputy Chairman of Committee No. 2 to replace Mr. J. K. Galbraith be approved. The motion was carried unanimously.

ITEM 3 - EXERCISE OF CRIMINAL AND CIVIL JURISDICTION OVER NATIONALS OF MEMBERS OF THE UNITED NATIONS (FEC-038/1)

GENERAL HILLDRING referred to paragraph 2 of the cover page of FEC-038/1 and suggested that publication of the document be withheld until it had been received by the Supreme Commander.

MAJOR PLIMSOLL moved and ADMIRAL RAMISHVILI seconded the motion that FEC-038/1 be approved, with the understanding that publication be withheld until the document had been received by the Supreme Commander. The motion was carried unanimously.

ITEM 4 - REQUEST FOR CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS REGARDING SHIPBUILDING AND MERCHANT SHIPPING (FEC-085)

SIR GIRJA BAJPAI suggested that the subtitle, "Number of Yards," in paragraph c be amended to read, "Number of Shipbuilding Yards."

MAJOR PLIMSOLL moved and DR. PATTERSON seconded the motion that FEC-085 be approved, with the amendment suggested by Sir Girja Bajpai. The motion was carried unanimously.

23 August 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF TWENTY-THIRD MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the Soviet representative, of page 2 of the Minutes of the 23rd meeting of the Far Eastern Commission.

2. All representatives are requested to substitute the attached page for page 2 of the minutes of the 23rd meeting of the Far Eastern Commission.

NELSON T. JOHNSON
Secretary General

GENERAL McCOY opened the meeting at 10:30 A.M.

GENERAL McCOY presented Mr. Bonner Fellers, who had appeared before the Far Eastern Advisory Commission in December, 1945. Mr. Fellers had recently returned from Japan, where he had served with the rank of Brigadier General as military secretary to the Supreme Commander.

MR. FELLERS, in commenting on the progress and probable future of the occupation in Japan, emphasized the psychology of humiliation and bewilderment which had been the outstanding characteristic of the Japanese during the first year of the occupation. However, he added, all classes of Japanese had already demonstrated an amazing capacity for hard work, and it was his opinion that once a new constitution had been adopted, the land reform program carried out, and reparations agreements reached by the Allies, the bewilderment on the part of the Japanese would vanish and solutions to their problems would rapidly emerge.

GENERAL McCOY called the attention of the representatives to an article in the current issue of Life magazine which contained a striking photograph of Dr. H. V. Evatt, Australian Minister for External Affairs, and a report of his answer to the question, "What is democracy?" GENERAL McCOY said that he had been stimulated by reading the definition of democracy propounded by Dr. Evatt, and that the draft Japanese Constitution seemed to satisfy the definition given by Dr. Evatt.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 24TH MEETING

THE COMMISSION unanimously approved the minutes of its 24th meeting.

ITEM 2 - BLOCKED ACCOUNTS OF THE JAPANESE GOVERNMENT REQUESTED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (FEC-086/2)

MR. LACOSTE, speaking as Chairman of Committee No. 6, said that no evidence has been presented to the Committee to substantiate the claim made by the International Committee of the Red Cross, or,

Indeed, to indicate how the International Committee had been made aware of the purported gift from the Empress of Japan. He suggested that the International Committee be informed that the Far Eastern Commission would perhaps reconsider its decision in this matter if some evidence were later found to substantiate the claim. GENERAL McCOY replied that the point raised by Mr. Lacoste might be covered in the letter of transmittal which would convey the Commission decision to the United States Department of State.

ADMIRAL RAMISHVILI suggested that the possibility of reconsideration of the decision of the Commission on the basis of new evidence be communicated informally to the International Committee of the Red Cross, rather than by means of any formal document.

THE COMMISSION unanimously approved FEC-086/2, with the understanding that the United States Government would informally advise the International Committee of the Red Cross that the United States Government would present to the Commission new evidence of the validity of the International Committee's claim, should there be such evidence.

ITEM 3 - INTERIM REPARATIONS REMOVALS: SYNTHETIC OIL AND SYNTHETIC RUBBER INDUSTRIES (FEC-059/21)

MAJOR PLIMSOLL moved and SIR GEORGE SANSOM seconded the motion that the Commission adopt FEC-059/21. The motion was carried unanimously.

ITEM 4 - DRAFT CONSTITUTION (FEC-087/1)

GENERAL McCOY remarked that the Netherlands representative at a previous Commissiory meeting had been the first to voice approval of the draft constitution in its present form. He said that the United States Government and the Supreme Commander, after careful consideration of the draft, were also satisfied with its present form.

MR. PEARSON said that his Government considered that the draft constitution met the main requirements of the Potsdam Declaration and of Commission policy and was therefore satisfactory in general.

MR. LACOSTE said that the French Government had no objection to the draft in its present form. Any subsequent change in the form of the draft, he added, would necessitate further study and he reserved his Government's position in this respect.

GENERAL McCOY said that the War Department had sent a cable to the Supreme Commander notifying him that the United Kingdom representative was having difficulty in obtaining final word from his Government and would possibly not receive such word before several days after 13 September. The Supreme Commander had been asked to advise immediately whether he estimated that the constitution would remain in the House of Peers at least until 20 September. The Supreme Commander had been informed that if the Peers were expected to act prior to 21 September, the War Department desired information as to whether further consideration in the Diet or in the Privy Council would be held. GENERAL McCOY said that no reply had yet been received to this cable.

MR. VESUGAR said that, although his Government did not consider the present draft constitution a perfect document, it would, nevertheless, approve the draft, in view of the difficulty of effecting substantial change and in view of a desire to avoid the appearance of forcing a constitution on the Japanese.

MAJOR PLIMSOLL said that the general position of his Government was that the present draft constitution was not unacceptable. However, although he would not vote against the draft, he was not prepared to vote for the constitution in its present form. He called attention to some examples of the many weaknesses in the document:

1. The drafting was at many points, vague, ambiguous, inept, and even meaningless.
2. The position of the Emperor was obscure in several respects, notably the subordination of the Emperor to legal sanctions, and the question of *lese majeste*.
3. The provision for the renunciation of war was objectionable. Many Japanese, including some members of the Cabinet, had shown that they did not take it too seriously and intended to alter it later. Moreover, it precluded the possibility of including the provisions desired by the Far Eastern Commission for stripping the Emperor of military power and for specifying that all cabinet members be civilians.

4. The relationship between the two Houses was not clearly set forth, and there was grave danger that the Upper House would have far too much power.
5. Universal adult suffrage had not been specified. It should be laid down that all Japanese above a certain age were entitled to vote; if there were an age differentiation for the two Houses, it should be set out in the Constitution.
6. The selection of the Prime Minister had not been made a matter for the lower House exclusively.
7. The position of the judiciary was not clear. Grounds of impeachment and recall were not set out. Sir Frederic Eggleston had described the clauses on the judiciary as "the chief blot on the constitution".

For these reasons, MAJOR PLIMSOLL said, his Government felt that it was essential to provide for a later review of the constitution by the Far Eastern Commission, and he urged the early adoption of such a provision. He said that, moreover, he was not satisfied that the present draft constitution represented an exercise of the free will of the Japanese people, and pointed out as some evidence that the only changes of real substance that were made during the draft's passage through the House of Representatives had been those required to bring the draft in accord with the Far Eastern Commission's statement of basic principles.

MAJOR PLIMSOLL reserved the position of his Government in the event that any changes were made in the constitution while it was before the House of Peers or in the event that later examination of the Japanese text of the draft constitution showed that its substance was not clearly reflected in the present English translation.

ADMIRAL RAMISHVILI said that it was the position of his Government that no decision could be made on the constitution until the upper House had approved the document and the resultant final form of the constitution was available. He enumerated the following specific reservations on which, in the opinion of his Government, the constitution was not clear or was unsatisfactory:

1. The bi-cameral system was not described in sufficient detail.
2. There was no provision for the confirmation of judges by the Diet.
3. A provision should be included for approval by the Diet of nominations of all ministers.

4. The question of a regency was not clear.
5. The age of electors had not been clearly specified.
6. No clear provisions existed for the expulsion of Diet members.

ADMIRAL RAMISHVILI said that he had not received final instructions from his Government with respect to its views on the constitution.

SIR GEORGE SANSOM said that he was awaiting instructions from his Government with respect to its position on the constitution. He said that the attitude of his Government would probably be that while it could not unreservedly endorse the document in its present form, it might agree that the document was not inconsistent with the Potsdam Declaration and Commission policy. He said that on the following specific points his Government felt that the constitution was ambiguous:

1. Adult suffrage
2. Independence of the judiciary
3. The relative powers of the two Houses
4. Guarantee of civil rights to aliens

He said that although his Government hoped for greater clarification of these points as well as others, it was his personal opinion that his Government would, with some reluctance, agree that the draft constitution was not inconsistent with the controlling documents.

SIR GEORGE SANSOM asked whether information had been obtained as to the disposition of the Emperor's hereditary estates. GENERAL McCOY answered that a query to the Supreme Commander on this subject had apparently been misinterpreted and that the resultant reply had not contained an answer in point. A second query had therefore been forwarded to the Supreme Commander, and the answer was expected shortly.

DR. KOO said that he was not yet prepared to state his Government's position on the draft constitution. He added that there had been no indication from his Government of any serious objection to the draft in its present form. He pointed out that the constitution in its present form did not specify the method of election of members of the Diet or the qualifications of electors of Diet members.

SIR CARL BERENDSEN said that the position of his Government, with which he personally was in complete accord, was that approval of the constitution by the present Diet did not constitute compliance with the Commission's policy that the new constitution should represent a free expression of the will of the Japanese people. In view of this fundamental difficulty, he said, he might be compelled to vote against the constitution unless a provision for subsequent review of the constitution were agreed upon. If the review provision were passed, with the consequent effect that the present Diet would not have final authority to pass upon the constitution, his Government would still consider the constitution unacceptable but would not vote against it. He enumerated specific objections on the part of his Government to the constitution:

1. The drafting of the document was unsatisfactory.
2. Provisions with respect to the House of Councillors were vague.
3. There was ambiguity with respect to the freedom of Japanese to criticize the Tenno system.
4. No provision was included for the situation which might result from failure of the Emperor to use his power to promulgate laws.
5. Universal adult suffrage was not provided for.

SIR GEORGE SANSOM said that since it was apparent that many of the vague provisions in the constitution would be clarified only by subsequent implementing legislation, he desired to inquire as to the authority of the Commission to deal with such implementing legislation. GENERAL McCOY said that the Commission had the power to pass a policy decision on any subject with which such implementing legislation might deal. DR. BLAKESLEE added that if implementing legislation were passed which, in the opinion of the Commission, did not fulfill the provisions of the Potsdam Declaration, the Commission was authorized to act.

SIR GEORGE SANSOM inquired further whether delays in the passage of the necessary implementing legislation might not be anticipated and whether, therefore, the Commission should not specify a period of time within which such legislation should be passed. GENERAL McCOY said that he feared that too meticulous consideration of all details raised by a consideration of the draft constitution would result in

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an indefinite postponement of the effective date of the constitution, with the undesirable result that Japan would continue under the old constitution.

SIR GEORGE SANSOM said that he agreed with this conception of the dangers inherent in the dictation of constitutional measures to the Japanese, but he pointed out that there was a possibility that the Japanese Government in future might pass legislation that either would fail to reflect the spirit of the constitution or would be directly contrary to the constitution. He asked whether precautions could be taken to avoid such eventualities. GENERAL McCOY replied that in his opinion the course of the occupation up to the present time under the direction of the Supreme Commander constituted in itself a major precaution against such an eventuality.

MR. VIRATA said that he was not prepared to state the position of his Government on the draft constitution.

ADMIRAL RAMISHVILI urged that Commission members exhaust every possibility of obtaining clarification and agreement on as many as possible of the aspects of the constitution on which doubts had just been expressed. He said that he hoped that an agreement to review the constitution within two years would not deflect attention from what he considered to be the present major task of clarification and improvement in the present draft. With respect to the solicitude which had been expressed for the principle that the constitution should be an expression of the free will of the Japanese people without alien interference, he said that in his opinion the Commission had agreed that if the constitution needed to be changed the Commission would not hesitate to intervene.

MR. LACOSTE said that, in view of the opinions expressed, he desired to make it clear that the position of his Government was not one of unqualified endorsement of the present draft constitution, but rather that his Government felt the draft to be a compromise which was on the whole not inconsistent with the Potsdam Declaration and Commission policy. He said that his Government attached great importance to the provision for subsequent review of the constitution by the Commission.

ADMIRAL RAMISHVILI inquired as to the present procedural status with respect to the constitution. He referred to the decision taken at the last meeting (Page 7, Minutes 24th FEC Meeting) to continue consideration of the draft constitution without prejudicing the question of review procedures. He asked whether the Commission was now awaiting the decision of the Japanese House of Peers or whether, if any member Government proposed substantial changes to the constitution, the Commission would discuss them. GENERAL McCOY replied that discussion of the constitution was continuing with the recognition on the part of all the members that the present form of constitution was not its final form.

ADMIRAL RAMISHVILI said that he hoped that the Commission would have an opportunity to exchange views on the constitution during the interval between approval by the House of Peers and the promulgation of the constitution. GENERAL McCOY said that he too hoped that there would be an interval adequate for such further consideration at that stage. MR. VESUGAR asked how soon after approval by the House of Peers the constitution would be promulgated and whether such promulgation would be automatic immediately after passage by Japanese authorities. GENERAL McCOY said that the reply by the Supreme Commander to the cable sent him by the War Department would probably throw light on this question.

ADMIRAL RAMISHVILI asked whether the Commission would continue consideration of the draft constitution. GENERAL McCOY replied that the constitution would remain on the agenda until the final views of all Governments had been received.

ITEM 5 - REPORT BY COMMITTEE NO. 3 ON ITS STUDY OF THE DRAFT CONSTITUTION (FEC-087/3)

THE COMMISSION unanimously agreed to postpone further consideration of FEC-087/3.

ITEM 6 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/36)

ADMIRAL RAMISHVILI referred to paragraph 4 of the cover page of FEC-031/36 to the effect that the United States and Soviet positions on the document were reserved. He asked concerning the United States reservation. GENERAL McCOY replied that the United States Government had expressed agreement on the principle of review, but could not at this time agree to the first paragraph of FEC-031/36. He said that his Government considered that passage of the document at this time, during consideration of the draft constitution by the Diet, would be harmful to the situation in Japan. He said that his Government would be ready to discuss this paper after the Commission had given its final decision on the constitution.

ADMIRAL RAMISHVILI urged that the document be discussed at once.

MAJOR PLIMSOLL said that he was prepared to discuss the document and to vote favorably on it at the present meeting. He said

that his Government regarded as of fundamental importance the review of the constitution after it had been in effect long enough to make apparent its good and bad features. Review by the present Diet, or preferably by a newly-elected Diet, should also be provided, he added, because the present constitution was not necessarily an expression of the free will of the Japanese people.

SIR CARL BERENDSEN agreed that review of the constitution should take place after it had been in effect long enough to demonstrate clearly how the various obscure provisions of the document would function. Furthermore, he said, the review provision would go far towards committing the Japanese people to the constitution, since, without such affirmative expression of approval of the document by the people, reactionary forces in Japan could, in the post-occupation period, plausibly argue that the constitution had been foisted upon the Japanese by the occupation and should therefore be scrapped. He suggested that the first two sentences of the second paragraph of FEC-031/36 be amended as follows:

"In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, ~~not sooner than one year and not later than two years after it goes into effect~~, the situation with respect to the new constitution should be reviewed by the Diet following the next general election. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution ~~within this same period~~ at that time."

MAJOR PLIMSOLL seconded this amendment.

GENERAL McCOY said that he was agreeable to further consideration of the amendment proposed by Sir Carl Berendsen. He repeated, however, that he did not believe the document should be passed at this time either in its present form or with the amendment proposed by Sir Carl.

MAJOR PLIMSOLL said that even though the timing were bad he felt that the document should be approved immediately by the Commission if unanimity could be secured now. He suggested that an

agreement to defer announcement of this resolution might meet the United States objection.

ADMIRAL RAMISHVILI asked what wording the United States Government would propose as a substitution for paragraph 1 of the document.

GENERAL McCOY said that he was not prepared to discuss paragraph 1 at the present time.

SIR CARL BERENDSEN moved and SIR GEORGE SANSOM seconded the motion that the Commission consider the questions of approval of the draft constitution and provision for the review of the constitution at its next meeting, with a view to reaching a decision on both subjects. The motion was carried unanimously.

ITEM 7 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE
(FEC-081, -081/1 and -081/2)

ADMIRAL RAMISHVILI said that he was not yet prepared to state the view of his Government on the proposal for a reparations conference.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-081, -081/1, and -081/2.

ITEM 8 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

THE COMMISSION unanimously agreed to postpone consideration of FEC-072.

ITEM 9 - OTHER BUSINESS

a. CONSULTATION WITH THE SUPREME COMMANDER ON EXTRAORDINARY TAX LAWS

MR. JOHNSON referred to the decision by the Commission (page 8, Minutes, 24th FEC Meeting) to release to the press SC-016/8, Consultation with the Supreme Commander for the Allied Powers Relative to Extraordinary Taxation in Japan, and FEC-055/7, Informal Communication from the Supreme Commander for the Allied Powers Relative to Extraordinary Taxation in Japan, following notification of the receipt of the former by the Supreme Commander. He said that the Secretariat, at the request of the United States representative, had not released these papers to the press. The reason for the request by the United States representative had been receipt of the

following message from the Supreme Commander:

"In view of the fact that the complete set of tax bills has not yet been passed by the Japanese Diet, publicity upon the subject of Treatment of Allied Foreign Nationals at this time is considered premature and no press releases in Tokyo are contemplated. A release on this subject now will greatly embarrass the administration of the comprehensive program now in process of legislative action and will greatly increase the difficulties which confront the execution of the basic policies involved. Until action has been taken by the Diet on the series of complex bills under contemplation, I recommend no press release be made. There can, of course, be no objection to such a release after the accomplishment of these administrative measures."

THE COMMISSION unanimously agreed that according to the recommendation of the Supreme Commander for the Allied Powers, release to the press of SC-016/8 and FEC-055/7 be postponed until action by the Japanese Diet on the tax bills had been completed.

ITEM 10 - PRESS RELEASE

THE COMMISSION unanimously agreed that FEC-059/21, Interim Reparations Removals: Synthetic Oil and Synthetic Rubber Industries, should be released to the press following notification of its receipt by the Supreme Commander.

The meeting adjourned at 12:50 P.M.

FAR EASTERN COMMISSIONEXCERPTMINUTES OF TWENTY-FIFTH MEETING
12 SEPTEMBER 1946

ITEM 4 - DRAFT CONSTITUTION (FEC 087/1)

GENERAL MCCOY remarked that the Netherlands representative at a previous Commission meeting had been the first to voice approval of the draft constitution in its present form. He said that the United States Government and the Supreme Commander, after careful consideration of the draft, were also satisfied with its present form.

MR. PEARSON said that his Government considered that the draft constitution met the main requirements of the Potsdam Declaration and of Commission policy and was therefore satisfactory in general.

MR. LACOSTE said that the French Government had no objection to the draft in its present form. Any subsequent change in the form of the draft, he added, would necessitate further study and he reserved his Government's position in this respect.

GENERAL MCCOY said that the War Department had sent a cable to the Supreme Commander notifying him that the United Kingdom representative was having difficulty in obtaining final word from his Government and would possibly not receive such word before several days after 13 September. The Supreme Commander had been asked to advise immediately whether he estimated that the constitution would remain in the House of Peers at least until 20 September. The Supreme Commander had been informed that if the Peers were expected to act prior to 21 September, the War Department desired information as to whether further consideration in the Diet or in the Privy Council would be held. GENERAL MCCOY said that no reply had yet been received to this cable.

MR. VESUGAR said that, although his Government did not consider the present draft constitution a perfect document, it would, nevertheless, approve the draft, in view of the difficulty of effecting substantial change and in view of a desire to avoid the appearance of forcing a constitution on the Japanese.

MAJOR PLIMSOLL said that the general position of his Government was that the present draft constitution was not unacceptable, and that although his Government would not vote against the draft in its present form, it was questionable whether his Government would vote for the constitution. He called attention to what, in the view of his Government, were specific weaknesses in the document:

1. The drafting was at many points, particularly with respect to the position of the Emperor, vague or ambiguous.
2. The provision for the renunciation of war was objectionable, in that it precluded the possibility of including provisions for stripping the Emperor of military power or for specifying that all cabinet members be civilians.
3. The relationship between the two Houses was not clearly set forth.
4. Universal adult suffrage had not been specified.
5. The selection of the Prime Minister had not been made a matter for the Lower House exclusively.
6. The position of the judiciary was not clear.

For these reasons, MAJOR PLIMSOLL said, his Government felt that it was necessary to provide for a review of the constitution by the Far Eastern Commission and he urged the early adoption of such a provision. He said that his Government was not satisfied that the present draft constitution represented an exercise of the free will of the Japanese people and that consequently review should be provided for.

MAJOR PLIMSOLL reserved the position of his Government in the event that any changes were made in the constitution while it was before the House of Peers or in the event that later examination of the Japanese text of the draft constitution showed that its substance was not clearly reflected in the present English translation.

ADMIRAL RAMISHVILI said that it was the position of his Government that no decision could be made on the constitution until the upper House had approved the document and the resultant final form of the constitution was available. He enumerated the following specific reservations on which, in the opinion of his Government, the constitution was not clear or was unsatisfactory:

1. The bi-cameral system was not described in sufficient detail.
2. There was no provision for the election of judges by the Diet.
3. A provision should be included for approval by the Diet of nominations of all ministers.
4. The question of a regency was not clear.
5. The age of electors had not been clearly specified.
6. No clear provisions existed for the expulsion of Diet members.

ADMIRAL RAMISHVILI said that he had not received final instructions from his Government with respect to its views on the constitution.

SIR GEORGE SANSOM said that he was awaiting instructions from his Government with respect to its position on the constitution. He said that the attitude of his Government would probably be that while it could not unreservedly endorse the document in its present form, it might agree that the document was not inconsistent with the Potsdam Declaration and Commission policy. He said that on the following specific points his Government felt that the constitution was ambiguous:

1. Adult suffrage.
2. Independence of the judiciary.
3. The relative powers of the two Houses.
4. Guarantee of civil rights to aliens.

He said that although his Government hoped for greater clarification of these points as well as others, it was his personal opinion that his Government would, with some reluctance, agree that the draft constitution was not inconsistent with the controlling documents.

SIR GEORGE SANSOM asked whether information had been obtained as to the disposition of the Emperor's hereditary estates. GENERAL MCCOY answered that a query to the Supreme Commander on this subject had apparently been misinterpreted and that the resultant reply had not contained an answer in point. A second query had therefore been forwarded to the Supreme Commander, and the answer was expected shortly.

DR. KOO said that he was not yet prepared to state his Government's position on the draft constitution. He added that there had been no indication from his Government of any serious objection to the draft in its present form. He pointed out that the constitution in its present form did not specify the method of election of members of the Diet or the qualifications of electors of Diet members.

SIR CARL BERENDSEN said that the position of his Government, with which he personally was in complete accord, was that approval of the constitution by the present Diet did not constitute compliance with the Commission's policy that the new constitution should represent a free expression of the will of the Japanese people.

In view of this fundamental difficulty, he said, he might be compelled to vote against the constitution unless a provision for subsequent review of the constitution were agreed upon. If the review provision were passed, with the consequent effect that the present Diet would not have final authority to pass upon the constitution, his Government would still consider the constitution unacceptable but would not vote against it. He enumerated specific objections on the part of his Government to the constitution

1. The drafting of the document was unsatisfactory.
2. Provisions with respect to the House of Councillors were vague.
3. There was ambiguity with respect to the freedom of Japanese to criticize the Tenno system.
4. No provision was included for the situation which might result from failure of the Emperor to use his power to promulgate laws.
5. Universal adult suffrage was not provided for.

SIR GEORGE SANSOM said that since it was apparent that many of the vague provisions in the constitution would be clarified only by subsequent implementing legislation, he desired to inquire as to the authority of the Commission to deal with such implementing legislation. GENERAL MCCOY said that the Commission had the power to pass a policy decision on any subject with which such implementing legislation might deal. DR. BLAKESLEE added that if implementing legislation were passed which, in the opinion of the Commission, did not fulfill the provisions of the Potsdam Declaration, the Commission was authorized to act.

SIR GEORGE SANSOM inquired further whether delays in the passage of the necessary implementing legislation might not be anticipated and whether, therefore, the Commission should not specify a period of time within which such legislation should be passed. GENERAL MCCOY said that he feared that too meticulous consideration of all details raised by a consideration of the draft constitution would result in an indefinite postponement of the effective date of the constitution, with the undesirable result that Japan would continue under the old constitution.

SIR GEORGE SANSOM said that he agreed with this conception of the dangers inherent in the dictation of constitutional measures to the Japanese, but he pointed out that there was a possibility

that the Japanese Government in the future might pass legislation that either would fail to reflect the spirit of the constitution or would be directly contrary to the constitution. He asked whether precautions could be taken to avoid such eventualities. GENERAL MCCOY replied that in his opinion the course of the occupation up to the present time under the direction of the Supreme Commander constituted in itself a major precaution against such an eventuality.

MR. VIRATA said that he was not prepared to state the position of his Government on the draft constitution.

ADMIRAL RAMISHVILI urged that Commission members exhaust every possibility of obtaining clarification and agreement on as many as possible of the aspects of the constitution on which doubts had just been expressed. He said that he hoped that an agreement to review the constitution within two years would not deflect attention from what he considered to be the present major task of clarification and improvement in the present draft. With respect to the solicitude which had been expressed for the principle that the constitution should be an expression of the free will of the Japanese people without alien interference, he said that in his opinion the Commission had agreed that if the constitution needed to be changed the Commission would not hesitate to intervene.

MR. LACOSTE said that, in view of the opinions expressed, he desired to explain that the position of his Government was not one of unqualified endorsement of the present draft constitution, but rather that his Government felt the draft to be a compromise which was on the whole not inconsistent with the Potsdam Declaration and Commission policy. He said that his Government favored the provision for subsequent review of the constitution by the Commission.

ADMIRAL RAMISHVILI inquired as to the present procedural status with respect to the constitution. He referred to the decision taken at the last meeting (Page 7, Minuted 24th FEC Meeting) to continue consideration of the draft constitution without prejudicing the question of review procedures. He asked whether the Commission was now awaiting the decision of the Japanese House of Peers or whether, if any member Government proposed substantial changes to the constitution, the Commission would discuss them. GENERAL MCCOY

replied that discussion of the constitution was continuing with the recognition on the part of all the members that the present form of constitution was not its final form.

ADMIRAL RAMISHVILE said that he hoped that the Commission would have an opportunity to exchange views on the constitution during the interval between approval by the House of Peers and the promulgation of the constitution. GENERAL MCCOY said that he too hoped that there would be an interval adequate for such further consideration at that stage. MR. VESUGAR asked how soon after approval by the House of Peers the constitution would be promulgated and whether such promulgation would be automatic immediately after passage by Japanese authorities. GENERAL MCCOY said that the reply by the Supreme Commander to the cable sent him by the War Department would probably throw light on this question.

ADMIRAL RAMISHVILI asked whether the Commission would continue consideration of the draft constitution. GENERAL MCCOY replied that the constitution would remain on the agenda until the final views of all Governments had been received.

ITEM 5 - REPORT BY COMMITTEE NO. 3 ON ITS STUDY OF THE DRAFT CONSTITUTION (FEC 087/3)

THE COMMISSION unanimously agreed to postpone further consideration of FEC 087/3.

ITEM 6 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION
FEC 031/36

ADMIRAL RAMISHVILI referred to paragraph 4 of the cover page of FEC 031/36 to the effect that the U. S. and Soviet positions on the document were reserved. He asked concerning the U. S. reservation. GENERAL MCCOY replied that the U. S. Government had expressed agreement on the principle of review, but could not at this time agree to the first paragraph of FEC 031/36. He said that his Government considered that passage of the document at this time, during consideration of the draft constitution by the Diet, would be harmful to the situation in Japan. He said that his Government would be ready to discuss this paper after the Commission had given its final decision on the constitution.

ADMIRAL RAMISHVILI urged that the document be discussed at once.

MAJOR FLIMSOLL said that he was prepared to discuss the document and to vote favorably on it. He said that his Government regarded as of fundamental importance the review of the constitution after it had been in effect long enough to make apparent its good and bad features. Review should also be provided, he added, because the present constitution was not an expression of the free will of the Japanese people.

SIR CARL BERENDSEN agreed that review of the constitution should take place after it had been in effect long enough to demonstrate clearly how the various obscure provisions of the document would function. Furthermore, he said, the review provision would go far towards committing the Japanese people to the constitution, since, without such affirmative expression of approval of the document by the people, reactionary forces in Japan could, in the post-occupation period, plausibly argue that the constitution had been foisted upon the Japanese by the occupation and should therefore be scrapped. He suggested that the first two sentences of the second paragraph of FEC 031/36 be amended as follows:

"In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, ~~not sooner than one year and not later than two years after it goes into effect,~~ the situation with respect to the new constitution should be reviewed by the Diet, following the next general election. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution ~~within this same period,~~ at that time."

GENERAL MCCOY said that he was agreeable to further consideration of the amendment proposed by Sir Carl Berendsen. He repeated, however, that he did not believe the document should be passed at this time either in its present form or with the amendment proposed by Sir Carl.

MAJOR FLIMSOLL said that even though the timing were bad he felt that the document should be approved by the Commission. He suggested that an agreement to defer announcement of this agreement might meet the United States objection.

ADMIRAL RAMISAVILI asked what wording the U. S. Government would propose as a substitution for paragraph 1 of the document.

GENERAL MCCOY said that he was not prepared to discuss paragraph 1 at the present time.

SIR CARL BERENDSEN moved and SIR GEORGE SANSOM seconded the motion that the Commission consider the questions of approval of the draft constitution and provision for the review of the constitution at its next meeting, with a view to reaching a decision on both subjects. The motion was carried unanimously.

Revised Minutes of
25th FEC Meeting

FAR EASTERN COMMISSION

Revised Minutes of the Twenty-Fifth Meeting of the Far Eastern
Commission Held in the Main Conference Room, 2516 Massachusetts
Avenue, N.W. Thursday, 12 September 1946

(Revised in Accordance with the Instruction of the Commission
at its 26th Meeting, 19 September 1946)

REPRESENTATIVES PRESENT

Major General Frank R. McCoy (United States) (Chairman)

Major J. Plinsoll (Australia)

His Excellency Lester B. Pearson (Canada)

His Excellency Dr. V. K. Wellington Koo (China)

Mr. Francis Lacoste (France)

Mr. Janshod Vesugar (India)

Dr. A. D. A. de Kat Angelino (Netherlands)

His Excellency Sir Carl Berendsen (New Zealand)

Mr. Leonides S. Virata (Philippines)

Rear Admiral S. S. Ramishvili (U.S.S.R.)

Sir George Sanson (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

GENERAL McCOY opened the meeting at 10:30 A.M.

GENERAL McCOY presented Mr. Bonner Fellers, who had appeared before the Far Eastern Advisory Commission in December, 1945. Mr. Fellers had recently returned from Japan, where he had served with the rank of Brigadier General as military secretary to the Supreme Commander.

MR. FELLERS, in commenting on the progress and probable future of the occupation in Japan, emphasized the psychology of humiliation and bewilderment which had been the outstanding characteristic of the Japanese during the first year of the occupation. However, he added, all classes of Japanese had already demonstrated an amazing capacity for hard work, and it was his opinion that once a new constitution had been adopted, the land reform program carried out, and reparations agreements reached by the Allies, the bewilderment on the part of the Japanese would vanish and solutions to their problems would rapidly emerge.

GENERAL McCOY called the attention of the representatives to an article in the current issue of Life magazine which contained a striking photograph of Dr. H. V. Evatt, Australian Minister for External Affairs, and a report of his answer to the question, "What is democracy?" GENERAL McCOY said that he had been stimulated by reading the definition of democracy propounded by Dr. Evatt, and that the draft Japanese Constitution seemed to satisfy the definition given by Dr. Evatt.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 24TH MEETING

THE COMMISSION unanimously approved the minutes of its 24th meeting.

ITEM 2 - BLOCKED ACCOUNTS OF THE JAPANESE GOVERNMENT REQUESTED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (FEC-086/2)

MR. LACOSTE, speaking as Chairman of Committee No. 6, said that no evidence has been presented to the Committee to substantiate the claim made by the International Committee of the Red Cross, or,

indeed, to indicate how the International Committee had been made aware of the purported gift from the Empress of Japan. He suggested that the International Committee be informed that the Far Eastern Commission would perhaps reconsider its decision in this matter if some evidence were found to substantiate the claim. GENERAL McCOY replied that the point raised by Mr. Lacoste might be covered in the letter of transmittal which would convey the Commission decision to the United States Department of State.

ADMIRAL RAMISHVILI suggested that the possibility of reconsideration of the decision of the Commission on the basis of new evidence be communicated informally to the International Committee of the Red Cross, rather than by means of any formal document.

THE COMMISSION unanimously approved FEC-086/2, with the understanding that the United States Government would informally advise the International Committee of the Red Cross that the United States Government would present to the Commission new evidence of the validity of the International Committee's claim, should there be such evidence.

ITEM 3 - INTERIM REPARATIONS REMOVALS: SYNTHETIC OIL AND SYNTHETIC RUBBER INDUSTRIES (FEC-059/21)

MAJOR PLIMSOLL moved and SIR GEORGE SANSOM seconded the motion that the Commission adopt FEC-059/21. The motion was carried un-animously.

ITEM 4 - DRAFT CONSTITUTION (FEC-087/1)

GENERAL McCOY remarked that the Netherlands representative at a previous Commissiory meeting had been the first to voice approval of the draft constitution in its present form. He said that the United States Government and the Supreme Commander, after careful consideration of the draft, were also satisfied with its present form.

MR. PEARSON said that his Government considered that the draft constitution met the main requirements of the Potsdam Declaration and of Commission policy and was therefore satisfactory in general.

MR. LACOSTE said that the French Government had no objection to the draft in its present form. Any subsequent change in the form of the draft, he added, would necessitate further study and he reserved his Government's position in this respect.

GENERAL McCOY said that the War Department had sent a cable to the Supreme Commander notifying him that the United Kingdom representative was having difficulty in obtaining final word from his Government and would possibly not receive such word before several days after 13 September. The Supreme Commander had been asked to advise immediately whether he estimated that the constitution would remain in the House of Peers at least until 20 September. The Supreme Commander had been informed that if the Peers were expected to act prior to 21 September, the War Department desired information as to whether further consideration in the Diet or in the Privy Council would be held. GENERAL McCOY said that no reply had yet been received to this cable.

MR. VESUGAR said he thought that, although his Government might not consider the present draft constitution a perfect document, it would, probably approve the draft, in view of the difficulty of effecting substantial change and in view of a desire to avoid the appearance of forcing a constitution on the Japanese.

MAJOR PLIMSOLL said that the general position of his Government was that the present draft constitution was not unacceptable. However, although he would not vote against the draft, he was not prepared to vote for the constitution in its present form. He called attention to some examples of the many weaknesses in the document:

1. The drafting was at many points, vague, ambiguous, inept, and even meaningless.
2. The position of the Emperor was obscure in several respects, notably the subordination of the Emperor to legal sanctions, and the question of *lese majeste*.
3. The provision for the renunciation of war was objectionable. Many Japanese, including some members of the Cabinet, had shown that they did not take it too seriously and intended to alter it later. Moreover, it precluded the possibility of including the provisions desired by the Far Eastern Commission for stripping the Emperor of military power and for specifying that all cabinet members be civilians.