

FEC MH9.

26-33

FAR EASTERN COMMISSION

Transcript of Twenty-Sixth Meeting of the Far Eastern Commission,
Held in Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, September 19, 1946

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REPRESENTATIVES PRESENT

Maj. Gen. Frank R. McCoy, USA (Ret.), Chairman	(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)
Sir Carl Berendsen	(New Zealand)
His Excellency Carlos P. Romulo	(Philippines)
Sir George Sansom	(United Kingdom)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)

SECRETARY

Mr. Nelson T. Johnson

Reporter: R. Holtz, Department of State

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(The meeting convened at 10:45 a.m.)

GEN. McCOY: Gentlemen, our session is open and we will ask your approval of the minutes of the 25th meeting.

ADM. RAMISHVILI: I have a slight correction, Mr. Chairman.

GEN. McCOY: The Soviet representative has a slight correction.

ADM. RAMISHVILI: On page 4, instead of the words "the position of his government" insert "his opinion" and after the words "that no" insert the word "final". On page 5 at the end of the statement after the words "its views on the constitution" insert the words "and, therefore, he reserved the position of his Government on the draft". If it is agreeable, Mr. Chairman, I ask your permission to make these corrections.

GEN. McCOY: If there is no objection, the corrections asked by the Soviet representative will be made.

SIR GIRJA BAJPAI: I have a correction, Mr. Chairman. On page 3 relative to Mr. Vesugar's remarks, "Mr. Vesugar said 'he thought' that, although his Government 'might' not consider the present draft constitution a perfect document, it

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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."

GEN. McCOY: If there is no objection, that correction will be made.

SIR CARL BERENDSEN: Mr. Chairman, could I ask, sir, for a correction on page 6, paragraph 4, which interprets rather more narrower than I think my words did the point I was making at the time. Could I ask the elimination of the present paragraph 4 on page 6 and the substitution of the following: "4. The draft is obscure as to the effect of a failure by the emperor to exercise his powers, in particular in respect of the promulgation of laws".

GEN. McCOY: If there is no objection, that correction will be made.

MR. LACOSTE: Since we amending the minutes, Mr. Chairman, I have two amendments. In the first instance, on page 2 I have been quoted as saying on the fifth line from the top of the page "if some evidence were later found to substantiate the claim." That is in relation with that International Red Cross allocation. I didn't use the word "later". That would really almost postpone it almost indefinitely and I don't think that would meet with the views of

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this Commission. It must be given a chance but that chance cannot be left open indefinitely. So I would delete the word "later". Then, on page 7, the third line from the end of the page, I did not refer myself to the Potsdam Declaration. I just said "which was not inconsistent with the Commission policy".

GEN. McCOY: Those corrections will be made if there are no objections.

DR. KOO: While we are amending the minutes, reading carefully the last sentence on page 5, it could be possibly more accurately said "specifically must specify the two things--that it did not specify such important matters of constitutional character". That is just to eliminate any misunderstanding of it.

GEN. McCOY: Are there any other corrections to be noted? There seem to be none. The minutes will be adopted as corrected.

I have the pleasure of announcing that General Romulo has formally presented his credentials as the representative of the free and independent State of the Philippines and with the rank of Ambassador. I believe the General will also have the duty of sitting in as representing his Government in like manner with the United Nations. So, I hope it won't conflict too much, and that we will have the pleasure of his

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representing his Government here.

SIR GIRJA BAJPAI: I think, Mr. Chairman, that we all would like to felicitate him on his assumption of the rank of Ambassador and also the ^{representative} ~~persons~~ of the Philippines as an independent State.

GEN. McCOY: That will be made a matter of record as the consensus of the Commission.

I might state at this moment that I had the pleasure of a short talk with the Ambassador and found that he has just come to us from Japan where he spent some time. How long, General?

GEN. ROMULO: Two weeks.

GEN. McCOY: Two weeks in Tokyo, so that here we have one fresh from the scene of the Far East, and I hope that he will give us the benefit of that visit, not only in the sense of a member to the Commission or a report that we can circulate, ^{but} ~~and~~ also I would like to have him talk to us about it around the table at a convenient time. If that meets with your approval, I will arrange at a suitable time, and not delaying it much because we like to have our things fresh from the scene.

ITEM 2 - RESTITUTION OF LOOTED PROPERTY
(FEC-011/18)

GEN. McCOY: This paper contains amendments of

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paragraphs 2 and 3 of FEC-011/12, prepared by Committee No. 1: Reparations, in response to a request by the Supreme Commander (FEC-011/17) for clarification of these paragraphs with respect to the applicability of the date of 31 December 1946. The paper was approved unanimously by the Steering Committee at its meeting on Tuesday.

Is there any comment on that paper?

ADM. RAMISHVILI: Mr. Chairman, in paragraph 2 of the cover page it is stated that the Soviet member reserved his position on the enclosure. I have not yet received instructions, and I would ask permission of the Commission that this paper be postponed.

GEN. McCOY: Is there any objection to the request of the Soviet ^{representative} ~~ambassador~~? There seems to be none. The paper will be postponed until he has received instructions from his Government.

ITEM 3 - DRAFT CONSTITUTION (FEC-087/1)

GEN. McCOY: We have the draft constitution once more before us, FEC-087/1. I would like to make a statement at this time in substance as follows: "Last week I stated that the United States Government is satisfied with the Japanese Consti-

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tution." That is the present form as a draft and the latest one we have. That, "In view...", by the way, we have received the Japanese draft of that. That is, the draft in Japanese that we have been promised for some time.

MR. JOHNSON: Mr. Chairman, we have received four copies of the Japanese text of the constitution and additional copies are being prepared in order to make one available for each delegation. We also have some extra copies in handy form of the English text which can be distributed.

GEN. McCOY: I might add also that, following our talk--my aside to Sir George last week--I have noticed in the communications, that is the public communications to the press and radio, that the discussion in the Japanese House of Peers up to date has been largely on just the question of drafting and the meaning of words. So that I would impress upon you, in your rather critical attitude on the draft as we have it in English, that that criticism might be taken in the sense that this is an English version we are considering and we don't know how close that is to the Japanese draft. I think that there we are in a position of difficulty always in dealing with the Japanese language, and the meaning

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of it is being very thoroughly thrashed out--has been in the Deputies and is now being considered in the House of Peers. So that, in any democratic approach to a document of this overall character, there is always going to be a difference in opinion in the meaning of words and the construction and interpretation and that will follow for a long time to come in the implementing laws, in courts, etc., so that I think that ought to be considered by all of those who feel critical of the draft itself or the meaning of words. It can only be thoroughly reviewed from time to time as laws and actions develop during this period when we have jurisdiction. I must pursue my statement.

"In view of the comments made at the last meeting of the Commission I might make a fuller statement", than I made at that time.

"It has been suggested by some of the members of the Commission that the present draft Japanese Constitution is not a perfect document. Probably it is not. It is possible that the United States Constitution is not perfect. As is well known, Americans in general regard the United States Constitution with almost reverential respect, yet one of the Supreme Court Justices has stated ~~once~~ stated

in a judicial opinion that probably no one not carried away by nationalistic sentiment would claim that the United States Constitution could not be improved."

Dr. Blakeslee once quoted to me Gladstone's remark on that. Do you remember it, Dr. Blakeslee?

DR. BLAKESLEE: Mr. Chairman, it is in substance this: "Gladstone said that the United States Constitution was the greatest document ever struck off at any one time by the hands of man."

GEN. McCOY: Well, you see why we some times reverence it. Sometimes we amend it and we criticize it at all times but, at the same time, it has worked for a long time to our satisfaction and I am hoping this will be the case in the Japanese Constitution.

"The United States Government believes that the pending Japanese Constitution, whether or not it could be improved in drafting, in detail, and in certain specific provisions, achieves the objectives of the Potsdam Declaration and the Far Eastern Commission.

"Most of the members of the Far Eastern Commission after long weeks of study and discussion, have reached the conclusion that the pending draft is consistent with both the Potsdam Declaration and with the basic principles adopted by the Far Eastern

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Commission, to which the Japanese Constitution must conform.

"In the opinion of the United States, this draft Constitution will establish the kind of government which the United States and the Far Eastern Commission, as a whole, desire: a democratic, peaceful, responsible government. Since the Japanese people overwhelmingly desire to retain their Emperor, the new Constitution, in full accord with the advice of General MacArthur and his Headquarters, will establish a constitutional monarchy, similar in general outline to the typical British parliamentary system, with the Emperor serving only as the symbol of the State, but without political authority.

"The new Japanese Constitution will lay the foundation and erect the framework of a democratic government in place of the old autocratic military governmental structure of the past. For this reason, the United States Government is generally satisfied with the pending Japanese Constitution."

While I was talking about that and thinking about it, I remember sitting in a dinner some years ago with Professor A. L. Goodhart of Oxford and discussing the British Constitution, and as a result of that talk he sent me a paper that he had written,

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and it was published in the Outpost, and I just happened, in rearranging my library, to come across it. I think it is pertinent to our consideration of the Emperor's position under this constitutional draft to compare it for the moment with the British conception as interpreted by Professor Goodhart. I quote from quite a long discussion on the King: "From the practical standpoint the King has only one important constitutional function. When a Prime Minister resigns or dies, the King designates his successor. As a general rule, the choice has been almost automatic because as long as the two party system functions, the leader of the opposition becomes the Prime Minister when the party in power has been defeated. If the Prime Minister dies, the King may have to exercise his independent judgment in choosing a successor because there may be no obvious candidate. Thus, when Mr. Bonner~~law~~ died in 1923, it was not certain whether he would call on Mr. ~~Willis~~^{Baldwin} or Lord Curzon to become Prime Minister. He chose Mr. Baldwin because he was in the House of Commons which is far more important than is the House of Lords. If the two party system ever breaks down, then the King will have a difficult part to play in deciding who shall be Prime Minister.

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But, such a change in the English political system is not likely at the present."

Last week we had a very full and free discussion on the ~~following expressing the~~ opinions of the members here present and there were certain countries that had not yet received instructions as to their attitude. Therefore, I will ask those countries that have since received instructions to give us the benefit of them. The Soviet representative-- are you prepared--

ADM. RAMISHVILI: Yes, General. After exhaustive and careful study of the draft of the Japanese Constitution from the angle of its conformity to the Potsdam Declaration and FEC-031/19, the Soviet Government considers that the below mentioned amendments should be included in the Constitution: First, the sovereign power of the people should be defined in the Constitution more precisely and clearly. The provision to the effect that "sovereign power resides with the people" should constitute a separate article and with no connection with the definition of the role of the Emperor. Second, the Diet should have the right to appoint not only the Prime Minister but also the remaining ministers of the Cabinet. All the ministers should be civilians. Third, members

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of the Supreme Court should be elected by the Diet for five years service. Fourth, the article concerning regency should be worded in the sense that regency is established on the principle of a free expression of the will of the people with whom the sovereign power resides. Such principle of establishing the regency is in compliance with the spirit of the Potsdam Declaration and also with the decision of the Far Eastern Commission on basic principles of the new Japanese Constitution in which it is stated that: "The Japanese people should be encouraged to abolish the Emperor institution or to reform it along more democratic lines". And finally, Mr. Chairman, the Soviet delegation does not insist on the unicameral system, provided the House of Councillors has no predominance over the House of Representatives. I propose, Mr. Chairman, these amendments for consideration and discussion of the Commission. Thank you.

GEN. McCOY: Before we proceed to the discussion, I will poll the other countries concerned, if there is no objection on your part. Then we will come back to your particular points you bring up. The Philippine Ambassador?

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GEN. ROMULO: Mr. Chairman, my Government considers that the draft constitution meets the main requirements of the Potsdam Declaration and other controlling documents and is therefore acceptable to it. However, should there be any substantive changes when it is taken up by the House of Peers, or when implementing legislation is introduced, my Government assumes that it will be given an opportunity to express its views on them.

It is well to refresh our minds regarding the terms of the Potsdam Declaration that have a direct bearing on the draft constitution. These are:

(6) There must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(10) We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation ...The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.

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(12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.

Bearing in mind at all times not only the old Japanese Constitution but the psychology and tradition of the Japanese people, the present draft Constitution, judged in the light of the above-quoted terms of the Potsdam Declaration, registers important and revolutionary advances, to wit: sovereignty is placed in the hands of the people; the people's fundamental human liberties are provided for and guaranteed; an elected legislature is established as the predominant power in governmental authority; the Emperor is divested of all governmental authority and state property and remains only as a symbol; and we are assured by the Supreme Commander that feudalism is completely destroyed and "a new order of peace, security and justice" is safeguarded.

In limiting itself therefore to stating as its considered opinion that the draft Constitution is consistent with the Potsdam Declaration and other

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controlling documents, my Government desires to emphasize that it is not now assessing the constitution on its merits as an instrument for the democratization of the Japanese people. The promulgation of a constitution is but one of the many steps in the process of democratizing a nation. The removal of "all obstacles to the revival and strengthening of democratic tendencies among the Japanese people" and the establishment in Japan of the "freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights" as demanded by the Potsdam Declaration cannot be accomplished merely by the drawing up of a constitution.

How effectively democratic a constitution is can be evaluated as much from its letter as from its enforcement. We are now called upon to judge its letter. The perspective of time is necessary to appraise its effect on the people once it is in force. Therefore, if it is the considered view of the Far Eastern Commission and of the Supreme Commander of the Allied Powers that a statement by this body at this time that the draft constitution before us is acceptable will help materially in further encouraging the Japanese people in their

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democratization, my Government subscribes to such a view, and I have the honor hereby to make it of record.

In this connection, I wish to inform the Commission that I visited Japan the latter part of July of this year. At a later date I will report to this body my personal impressions of this visit. I consider it most appropriate to say now that it is not easy to judge from this distance the difficult work that has been assigned to the Supreme Commander of the Allied Powers and how adequately he is meeting his responsibilities. I conferred with him and the members of his staff as well as with present outstanding leaders of the Japanese people. I can say for my Government that in the face of the many obstacles confronting him, the Supreme Commander of the Allied Powers is carrying out the duties entrusted to him with credit to himself, his country, and to the powers whose forces in that area are under his supreme command. I thank you.

GEN. McCOY: The representative of the United Kingdom will follow.

SIR GEORGE SANSOM: I am under instructions to say that the United Kingdom Government finds no inconsistency between the draft constitution as it

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is now before us and the controlling documents, subject to one proviso. The proviso is that my Government would like assurances, specific assurances, with regard to Article LXXXVIII so as to ensure full control by the Diet of all Imperial property including all hereditary estates and possessions. This is, of course, subject to amendments of consequence which may be made in the House of Peers.

GEN. McCOY: Sir Girja, have you received instructions or do you care to make any statements from the point of view of your Government?

SIR GIRJA BAJPAI: It so happens, Mr. Chairman, that I sent a telegram marked urgent to my Government Saturday before last, but up to the time of coming here I have received no reply. We have a new government in office and they haven't yet the background of all the discussions that have proceeded in the Commission so far, and, therefore, I think it is excusable that they are taking a little time with this document. But at the same time I think that I would not be abusing my instructions, such as they are, if I say that I wouldn't like, in the absence of instructions from my Government, to hold up decision by the Commission this morning on this particular question, subject to the understanding

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that I would be at liberty when I do receive instructions to communicate the substance of them to the Secretary General.

GEN. McCOY: Thank you. The Chinese Ambassador-- have you yet received instructions? Have you freedom of speech in this affair?

DR. KOO: Mr. Chairman, I have not yet received instructions. I sent a telegram asking them to expedite their reply and I expect it to arrive in the next few days.

GEN. McCOY: I take it that ~~at~~ the statements of the Commissioners who have expressed their views in former meetings have expressed the views of their Governments and they still continue that way before us. In the case of the Soviet Ambassador, in presenting his Government's views, I believe he has the floor to make any statement as to what he wishes done in reference to his Government's views.

ADM. RAMISHVILI: Mr. Chairman, as I said, I would greatly appreciate the willingness of the Far Eastern Commission to discuss these proposals in the Commission itself or in the Committee. I present it for that reason.

GEN. McCOY: Do I understand that these points that you have mentioned this morning have been pre-

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sented by you heretofore to the Constitutional Committee? I want to get a clear understanding. Have these views that you have presented been taken up heretofore by you with the Constitutional Committee?

ADM. RAMISHVILI: Yes. They have been discussed before.

GEN. McCOY: Let me see. Is the Chairman of the Constitutional Committee with us? Mr. Collins, have you any comments to make on the points brought before us by the Soviet Ambassador?

MR. COLLINS: I think the majority of these points have been discussed in one way or another in the Committee. I don't know whether they have been considered to have received full treatment there. But, I leave that to the discretion of the Soviet delegate--whether he thinks that they have been given adequate consideration.

GEN. McCOY: Mr. Collins asked whether you feel that these points have been given adequate consideration before the Committee.

ADM. RAMISHVILI: Mr. Chairman, since the Soviet Government cannot agree, we don't feel that they have received proper consideration. Anyway, we would like to discuss it either here or in the Committee itself and have an exhaustive discussion

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of this question.

GEN. McCOY: I would be very glad to have you discuss it now and make any points that you care to to the Commission.

ADM. RAMISHVILI: Maybe I could hear the opinion of other governments--their instructions. I would like to hear the opinion of other representatives who have not yet received their instructions.

GEN. McCOY: Would you take them in seriatim and present point by point to the Commission?

ADM. RAMISHVILI: Do you think that all the members of the Commission have their instructions in?

GEN. McCOY: Not the Chinese.

ADM. RAMISHVILI: Maybe some others ~~of~~ have some questions which they would like to be discussed today.

GEN. McCOY: The Chinese and the Indian Government have not yet received their instructions.

MAJOR PLIMSOLL: Mr. Chairman, I have my instructions. Yes, I ^{presented our position} ~~got my instructions~~ last week.

GEN. McCOY: They were presented in the last meeting and discussed, and nearly all the points that I believe were brought up by Major Plimsoll had already been acted upon by the Committee and

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fully considered by that Committee. I have no objections to your calling on Major Plimsoll for any information he wishes to give.

SIR GIRJA BAJPAI: I think, Mr. Chairman, when you look at page 7 of the minutes, we have been in the position of having the Australian' delegation's position very clearly stated. I beg your pardon, I see Sir Carl Berendsen's. Australia and New Zealand seem to think alike, so--

GEN. McCOY: You also remember, in connection with the Australian statements which you referred to, that I also asked to have put in the record Dr. Evatt's opinion of "what is democracy", which I checked with this Constitution and found them consistent.

MAJOR PLIMSOLL: I should not like this statement to be taken necessarily as our views on this Constitution.

GEN. McCOY: He being a member and, I think, he is still the principal member, isn't he?

MAJOR PLIMSOLL: No, not at the present. He is our Minister of External Affairs.

GEN. McCOY: Yes, but he comes in here as the principal whenever he is in Washington. We have

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never been informed that he is not the principal, so I take it that that is a formal statement from the principal member of Australia in giving in public at the Peace Conference in Paris, and I would suspect that that would be his position here if he were here. I am not trying to press the point. I just wanted it to be sure that it was known that the principal of the Australian delegation has made that statement and, taken with what he did say here, as of a certain importance and interest for us.

MAJOR PLIMSOLL: The Australian Government's views are as I said last week. Dr. Evatt's views as stated in Paris should not be taken as representing the Australian Government's views on this Constitution.

GEN. MCCOY: I am not taking it. I wouldn't take it as the formal position of your Government. But, I am taking it as an expression of a man who sat in with us from the beginning and is still officially, I believe, representing the Government as Foreign Minister. I will correct my statement on the better information of the Secretary General that Major Plimsoll is the representative of the Australian Government in this Commission. I thought that Dr. Evatt was still formally the representative and I correct myself now.

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MAJOR PLIMSOLL: That is correct, Mr. Chairman.

SIR GIRJA BAJPAI: I have already made our position with regard to this constitution as clear as I can in the absence of instructions. However, may I draw your attention to page 10 of the minutes, where a motion was made and seconded 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. Now I would like to take account of the views of the Australian and New Zealand delegates in their opposition that they are not consistent. It seems to me that it is rather difficult to consider the two things apart and it is quite possible my Government will want them considered together. We don't at this stage consider the document perfect in several respects. We don't want at this stage to hold up the proceedings by insisting on the amendments, provided we are satisfied that at some appropriate stage later on there would be an adequate opportunity for reviewing the constitution. You suggested yourself that even a virtually perfect document, that even the American Constitution, was not considered perfect. There is no guarantee

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that this constitution would be worked in the spirit in which we have written up a constitution like this. Time alone can reveal whether this will work in the right spirit or not. I suggest that there be provision for a review of the constitution.

GEN. McCOY: Is there any further action or discussion that you wish, Admiral?

ADM. RAMISHVILI: Shall I repeat my proposals, Mr. Chairman, slightly explaining the meaning? I presume that there were many, I should not say amendments, but questions in the draft constitution with which the Soviet Government disagreed. Finally there are only five points which we think must be corrected. Now it is obvious that we couldn't here propose the exact wording of the different articles of the constitution. We shall give only the principles of these articles. In connection with this, the corrections or amendments which I state here consist of the problems, say the principles which should be applied during the final drafting of the new Japanese constitution. The first question which we want to be clarified is the question that the constitution must more precisely and clearly define the sovereign power of the people. In this connection, while not opposing the words "the sovereign

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power resides with the people", in order to emphasize this more clearly we think this must be stated in different articles--not in connection with the power of the Emperor. In the draft constitution, we have in ^{the} first paragraph, "The Emperor shall be the symbol of the State and the unity of the people, deriving his position from the will of the people with whom resides sovereign power". In other words, I think it can be drafted so that the first paragraph would say that the sovereignty must reside with the people and the Emperor could have a different article. The second amendment, the Diet should have the right to appoint not only the Prime Minister but also the remaining ministers of the Cabinet. Third, members of the Supreme Court should be elected by the Diet for five years. These amendments, I think, after discussions which took place in Committee No. 3, are self-explanatory. The purpose of these amendments is to make the constitution--the formation of the Cabinet more democratic--to give the Diet more power to form the democratic government and Supreme Court which has the great power in the government itself. The fourth amendment is the article concerning regency which should be worded in the sense that regency is established in the principle of the

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free expression of the will of the people with whom the sovereign power resides. This is paragraph 5 saying, "When, in accordance with the Imperial House Law, a Regency is established, the Regent shall perform his acts in matters of state in the Emperor's name. In this case, paragraph one of the preceding article will be applicable." According to the supplementary laws supposed to be issued on this matter, the regent is nominated by party which includes the Prime Minister and other members of the Government. I think that it would be more appropriate and more democratic if the Diet be given more power in this nomination and the Diet appoint the regent. So far as the question of the unicameral system is concerned, the Soviet Government thinks that the bicameral system can be approved provided that the House of Councillors has not predominance over the House of Representatives. That is all I have.

GEN. McCOY: Most of these points, Admiral, from my point of view, most of these points have been considered by your Committee throughout the months of our consideration, and not accepted. I don't care to enter into the particulars myself except in that the one important point that I raised

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that has concerned all of us is the relative power of the two Houses. There I have an opinion.

The query has been raised whether the pending Japanese constitution does not give the House of Councillors undue power in obstructing legislation passed by the lower House. The Japanese constitution does give the House of Representatives a superior position and after possible and reasonable delays a controlling voice. The House of Councillors will not in any case be a House of Lords and will have much less authority than does our United States Senate in relation to our House of Representatives. The United States Government believes that the proposed Japanese House of Councillors does not have too much power in relation to the Japanese House of Representatives. That will be brought out. It is now being studied in the House itself, which is most concerned and provisions for the composition of the House of Councillors will be embodied in implementing laws which will be made available for the Commission and which we will review from time to time, and are every one of them subject to policy papers here.

ADM. RAMISHVILI: In that case, Mr. Chairman, we are quite satisfied with the bicameral system. To me, personally, I think that most of the members

of the Commission think that the House of Representatives have more power, at least not less power, than the House of Peers.

Mr. Chairman, in connection with the discussions in Committee No. 3, I think that these are new points. For instance, the first and fourth points--they were presented today in somewhat a different way than we have presented it before. The first question is mostly the question of the character of it. We didn't discuss the question. We think that the words "sovereign power resides with the people" is quite agreeable. The only thing is we want to clear this up and explain it in a different paragraph. We did not discuss this, Mr. Chairman, in Committee No. 3--not in this connection. So far as questions No. 2 and 3 are concerned, these proposals we are discussing in Committee No. 3. We would be glad to have a discussion again if the Commission permits.

GEN. McCOY: General Romulo, did you in your visit to Japan discuss any of these particular points?

GEN. ROMULO: No, not these particular points.

GEN. McCOY: Could I take it from your point of view when you made your statement that we're a long way from the seat of discussion there--

GEN. ROMULO: Well, there are certain diffi-

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culties that are facing the occupation forces and the Supreme Commander there daily that are hard to evaluate from here and that you can only see from there, and which I will try to discuss when I report to this body at a later date.

GEN. MCCOY: What is the pleasure of the Commission on these points brought up by the Soviet representative?

SIR GIRJA BAJPAI: I ought to know better, Mr. Chairman, since I am the theoretical Chairman of Committee No. 3, but I have been more Chairman in absentia. In the past, Mr. Collins, have we in that Committee discussed the question of the election of judges and greater power to the Diet in regard to regency?

MR. COLLINS: We discussed the question of the period of tenure of the judges as a five year rather than a ten year tenure originally, and during the course of the discussion it was pointed out that these judges are subject to review after the first election subsequent to their appointment, which in effect would mean that they would be subject to review initially in a period presumably less than four years. As a result of that discussion, we understood that the Soviet member, while he reserved

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his position, was more or less convinced that that was sufficient to meet the requirement. I don't think that we went completely into the question of election of judges. On the question of sovereign power of the people, there was in our original discussions an expression of opinion--I would interpret the Committee's feeling to be that they would have preferred to have had a separate article on that subject. But when the actual provision was put into the constitution in the second form of the draft, most of the Committee members didn't feel that there was sufficient ground for going any further on it. The provision had been written in and could be said to be in accordance with the basic principle. A question of Cabinet members was raised. In view of the fact that the original form of the constitution provided that all Cabinet members should be approved by the Diet and the fact that that was withdrawn from the second version of the article when the Commission's principle that the majority of the Cabinet members should be selected from the Diet, there are certain grounds or significance, I suppose, good reason for deleting it. On the other hand, there was no provision in your basic principles that it should be in and it

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is not necessarily in accordance with parliamentary practice. Consequently, the Committee couldn't find any--didn't feel that there was any solid ground for insisting on the question any further. It has not been in our basic principles in any case. Finally, on the regency, there was a good deal of discussion of the regency in one way or another, but nothing has been very conclusive. I would feel, and that again is a matter which in the constitution is left for implementing legislation.

GEN. McCOY: Is it your wish to have this paper referred to the Committee for further consideration?

ADM. RAMISHVILI: Yes, Mr. Chairman.

GEN. McCOY: Is there any objection? That will be done.

ITEM 4 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/36)

GEN. McCOY: At the meeting of the Commission three weeks ago it was agreed to consider the draft constitution urgently, without prejudice to the question of the review procedures. It was also agreed to continue this paper on the Commission agenda.

I will declare a recess of five minutes while I consult my wise advisers.

(The meeting recessed at 11:45 a.m.)

(The meeting reconvened at 12:00 Noon)

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GEN. McCOY: Gentlemen, we will reopen the session.

I have had time to consider the points brought forward so clearly and understandably by the Soviet representative and I feel that there are some new points there that haven't been considered either by the Commission or the Committee. I would suggest that the points in question be referred to the Committee on the Constitution with whom I have consulted, with the hope that by considering them at once, as soon as the Committee can be got together, and with due consideration of these points, with the hope that they can report back to the Commission at a special meeting on Saturday morning. I hope that will be agreeable to the members of the Commission. Sir Girja, in view of the pressure, I have consulted with Mr. Collins as your alternate, and he has asked that the Committee be called to meet at 3:30 this afternoon.

MR. COLLINS: I understand from the Secretary that there is a meeting of the Disarmament Committee at 3:00 p.m., which is likely to be finished in very short order, and I would like for the Committee to meet then.

GEN. McCOY: If that is agreeable, we will have

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due consideration given by the proper Committee and if it is agreeable I will ask the Commission to meet on Saturday morning at 10:30 a.m. for the consideration of the Committee's report.

I once more announce that we will proceed to Item 4, and make a statement that at the meeting of the Commission three weeks ago it was agreed to consider the draft constitution urgently, without prejudice to the question of the review procedures. It was also agreed to continue this paper on the Commission agenda.

What is your pleasure, gentlemen?

SIR CARL BERENDSEN: There is a motion before the Commission on Item No. 4.

GEN. McCOY: I don't remember it as a motion.

SIR GIRJA BAJPAI: Page 10, Mr. Chairman, of the minutes, where a motion was made and seconded 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.

GEN. McCOY: While you are considering that, I would like to answer certain questions that have arisen about the implementing legislation. I think both Sir Girja and General Romulo mentioned that

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and I can make this statement covering that point. The draft constitution states that many of the provisions are to be implemented by subsequent legislation. The United States Government is not opposed to this procedure in principle. The United States Constitution consists in the largest part of general principles many of which are to be carried out in accordance with subsequent laws. Our Constitution states that some fourteen different provisions are to be implemented by federal or state legislation. As to the United States Senate with which the House of Councillors might be compared, our Constitution provides for its composition somewhat more fully than does the Japanese Constitution in regard to the House of Councillors, but this provision was necessary in order to meet a particular political situation in the United States at that time. The United States Constitution provides that the times, places, and manner of holding elections for senators and representatives shall be prescribed by state laws. As to the age of voters, ~~the~~ of the United States House of Representatives, ~~the~~ the United States Constitution provides that the several states shall settle that matter by legislation and in a consti-

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tutional amendment providing for the popular election of the United States Senate, it is stipulated that the age of voters shall be determined by the laws of the several states. Laws implementing provisions of the Japanese Constitution will be available for the Far Eastern Commission and, if the Commission should come to the conclusion that the implementing legislation is clearly in violation of the Potsdam Declaration, it would have the right to pass a policy decision regarding the matter. In other words, we will continue our jurisdiction over the laws that are passed implementing the Constitution.

GEN. ROMULO: That is, Mr. Chairman, precisely our view, that we should have a continuing authority to see to it that the implementing legislation introduced conforms and is consistent with the Potsdam Declaration.

SIR CARL BERENDSEN: Mr. Chairman, is there not an omission in the statement that you have just read that the Commission is given rather the right-- the Commission is obliged to consider implementing legislation insofar as it conforms to the Potsdam Declaration? What is the provision with reference to implementing legislation which in the opinion of the Commission fails to comply with the Commission's

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policy decision? What is the position with any breach of the Commission's policy decisions in respect to the Constitution? I presume that that also is intended to be within the purview of the Commission?

GEN. McCOY: Well, I think so, but the majority here have already stated that they haven't found anything inconsistent with the Potsdam Declaration or the controlling papers, which includes our action.

GEN. ROMULO: Well, sir, all of us understand that has reference to implementing legislation that may be introduced.

SIR CARL BERENDSEN: I am referring particularly to your statement, sir, which was in reference to implementing legislation.

GEN. McCOY: Yes. Well, I thought I was very clear in that we do have jurisdiction in general and in principle to the extent of policy papers, but not sitting here drafting or redrafting legislation. I take it that our work is on the broad question of policy as to whether the implementing legislation is consistent with their own Constitution and with our controlling policies. I think that is important. I agree with you on that particular.

GEN. ROMULO: What is in order, Mr. Chairman?

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GEN. McCOY: We have the paper before us. This paper on the review of the new Japanese Constitution as continued on the Commission's agenda is now before you for any further discussion or action.

SIR CARL BERENDSEN: May I repeat, sir, there is a motion before the Commission.

GEN. McCOY: Only to keep it on the agenda.

SIR CARL BERENDSEN: No sir. No, indeed. If you will turn to page ~~10~~⁹ of the minutes, you will see the motion.

GEN. McCOY: But there is no motion in particular. There must be some motion that we will take some action on it.

SIR CARL BERENDSEN: No sir. There is the information--page 9.

GEN. McCOY: You mean your suggestion that the first two sentences of the second paragraph be amended as follows?

SIR CARL BERENDSEN: Yes.

GEN. McCOY: I would like to make a statement expressing the views of my Government on this review paper including an amendment proposed by Sir Carl.

It is the opinion of the United States Government that it would be desirable if the FEC did not act upon the Review Paper (FEC-031/36) until after

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the new Japanese Constitution had been promulgated. Deferment of action upon FEC-031/36 is entirely without prejudice to the right of the Commission to review the Constitution at an appropriate time and to require that the situation with respect to the Constitution should be reviewed by the Diet.

GEN. ROMULO: Mr. Chairman, will you read the first part of the statement again, please?

GEN. McCOY: It is the opinion of the United States Government that it would be desirable if the Far Eastern Commission did not act upon the Review Paper until after the new Japanese Constitution had been promulgated. Deferment of action upon FEC-031/36 is entirely without prejudice to the right of the Commission to review the Constitution at an appropriate time and to require that the situation with respect to the Constitution should be reviewed by the Diet.

MAJOR PLIMBOLL: Have you given the reasons for the motion, Mr. Chairman?

GEN. ROMULO: May we hear the supporting reasons for the American attitude?

GEN. McCOY: Well, I gave them. In fact, I have given them several times. The last time in particular. I made this statement at the last meeting of

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the Commission on this paper.

"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 Provisions for the Review of the New Japanese Constitution at this time during the 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."

Now I have supplemented that in more responsible form as the position of my Government. I will read it again.

"It is the opinion of the United States Government that it would be desirable if the Far Eastern Commission did not act upon the Review Paper until after the new Japanese Constitution had been promulgated. Deferment of action upon FEC-031/36 is entirely without prejudice to the right of the Commission to review the Constitution at an appropriate time and to require that the situation with respect to the Constitution should be reviewed by the Diet."

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I believe that is more or less in consistency with your amendment only I put it at this time that it would not be acceptable to my Government.

SIR CARL BERENDSEN: No sir, it is not. I regret to say I regard these two items, three and four, as completely unacceptable and I am bound to say I understood that was the view of the Commission when last reconsidered. I have two difficulties, as I have tried to explain and I don't wish to repeat myself. In the first place, my Government does not believe that the present Diet is competent or should be authorized to pass finally on this constitution. In the second place, my Government believes and I believe ^{that because of} ~~big~~ ^{and} inadequacies, to say nothing of inelagancies, ⁱⁿ ~~to~~ the draft of this constitution, that we should here and now, in passing on the constitution, decide that it must be subject to a review after a certain period has elapsed in order to enable those of us who are responsible to observe how the constitution is being operated. I am bound to say, sir, with ^{all} ~~every~~ respect, ~~on the assumption~~, that I have not yet seen why the United States Government does not approve of this very reasonable provision at this time. As far as I am concerned, I am just about to say this, that I shall

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probably feel compelled to perhaps even to vote against the approval of this constitution unless it is accompanied at the time the Commission passes upon it by this or a similar provision for a review. Now, I am not going to repeat the many things I have said before. These are my instructions, sir, and that is my conviction also. I would like to repeat this, that I still don't know why there is any objection to passing this at this moment.

GEN. McCOY: Well, you have no responsibility and are perfectly free and have been right from the start ~~of~~ throwing monkey wrenches into everything that has come along.

SIR CARL BERENDSEN: Are you accusing me of throwing monkey wrenches into the proceedings of this Commission? I hope that is being recorded into the minutes.

GEN. McCOY: Well, you tried to say what day they should hold an election, and you have been trying to implement ^{for} General MacArthur and give MacArthur orders consistently as to how he shall govern, in particular, the occupation of Japan.

SIR CARL BERENDSEN: I hope all these words are being recorded, sir.

GEN. McCOY: They are.

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SIR CARL BERENDSEN: Thank you.

MAJOR PLIMSOLL: I would like to associate myself with Sir Carl Berendsen, on this matter. The Australian Government has throughout tried to cooperate on the matter. The Australian and New Zealand Governments have contributed and tried to share with the United States Government the responsibilities and the costs. The United States Government is bearing the burden and we know that, but we have never on any occasion attempted in any way at all to embarrass General MacArthur. We have on many occasions suppressed our own views in order to get things to General MacArthur. General MacArthur personally in Australia is held in ~~the~~ the very highest esteem by everybody.

ADM. RAMISHVILI: Mr. Chairman, I would like to let the Far Eastern Commission know my final instructions to settling this paper. As you know, Mr. Chairman, the Soviet Government reserved its position on this paper. Now I am under instructions to agree with this paper as it is. At the same time, about the amendments made by the New Zealand representative, I personally think that this amendment can be discussed and reconciled and I don't see in that amendment anything inconsistent with the view

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of the Soviet Government, provided that the last sentence in the second paragraph starting with the words, "The Far Eastern Commission, 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 procedures.." The last sentence--as I gathered the opinion, this sentence comes here with that amendment. Now, about the time of adopting this paper--I have heard your opinion, Mr. Chairman--I only would like to say that my Government does not have any particular opinion in timing of this paper, but I, personally, think there are no ideas included in this paper that would be--certainly I am not convinced so far--certainly it will not destroy or hurt the Supreme Commander's authority which we definitely don't want to do. But I think there would be no harm adopting this paper at any time before or after the constitution. There are some members of the Commission who want to adopt this before because this paper will somehow affect their opinions on the constitution, and I would respect their opinion and I think that my Government would approve their opinion, but we are ready to approve of this paper right now, particularly, Mr. Chairman, the first paragraph which, I think, almost

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everybody wants next to the announcement of the adoption of the Constitution because it relates on how to adopt it. Therefore, I wouldn't think this first paragraph will much bother him--but not after the promulgation of this constitution because it says how it will be ^{ed} adopt/and promulgated. So, repeating, Mr. Chairman, I would not say that we have any particular opinion on this question and I think that I shall agree with the majority of the Commission in timing.

Now, Mr. Chairman, not in connection with this paper, in order to make it clear, one very delicate situation, I would like to remind the Far Eastern Commission, in connection with your remarks to Sir Carl's statement, that the New Zealand Government does not have any responsibility in Japan, I unfortunately remember your remarks toward me which I, respecting your person, and I think that the whole Commission did not pay much attention because I think that it is certainly obvious that the United States Government's responsibility is somewhat particular--that is all right. But, since these remarks were repeated today, I would like to make it clear for me--whether I am right or not--it does not mean that, for instance, I am now talking about the U.S.S.R. Government, your remarks do not necessarily

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mean that my Government has no responsibility in the Japanese affairs? I think that you did not mean that. But, since you emphasized it today, as I understand, it is very true and clear, in my opinion, that the United States Government has, I should say, more particular responsibility, but I think it does not mean necessarily that we express our opinions or take any steps without feeling maximum responsibility.

GEN. McCOY: I am very glad to have your reply to be considered with mine, which was just a particular incident where you said I--

ADM. RAMISHVILI: I did not pay attention, but if it applies, I should say, with the policy--I mean, it was to me.

GEN. McCOY: It is my remembrance that you stated I did not give a very clear position of the United States, and I said, well, it was very easy for you to be clear and make--

ADM. RAMISHVILI: Yes, Mr. Chairman, in this particular case. In general, I think that you did not mean that any government, and not particularly the Soviet Government, does everything possible to demonstrate its responsibility.

GEN. McCOY: That had particular reference to one remark of yours where you criticized my not being

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clear in stating the position of my Government, and I said it was very easy for you not being responsible, that is, having in mind that you are not in command out there as you are in Eastern Europe and in Manchuria and Korea where we have no intervention whatsoever. That was the point and was not invidious at all other than to state the reason why I couldn't be clear. But, in connection with Sir Carl, it is a little bit different there because he has stated very consistently from the start that the whole basic-- I consider this a basic policy matter for the Far Eastern Commission to pass on the constitution. We have done it very wisely and after long months of very considerable interest and effort, and I remarked to Sir Carl that his representative on the Committee had been very valuable and I welcomed his work there.

SIR CARL BERENDSEN: How can you reconcile that with the statement about the monkey wrenches? I think you probably had better drop it here, now.

GEN. McCOY: Perhaps I could change my--

SIR CARL BERENDSEN: No sir, you will not change it. No sir. I would suggest that we drop it and take it up at a more appropriate time.

GEN. McCOY: I will first ask you two or three

questions.

SIR CARL BERENDSEN: I reserve the right to answer them or not.

GEN. McCOY: Yes, of course. But isn't it a matter of record that you have been consistently against all of these policy papers on the constitution?

SIR CARL BERENDSEN: Certainly not.

GEN. McCOY: Didn't you say the whole basis of this constitution you were against? That is, that you didn't feel that the last election represented the Japanese people in this affair? That is, you questioned the right of this whole procedure on the constitution, going back to the election?

SIR CARL BERENDSEN: I did not. I questioned the right, and my Government questioned it, to have this Diet ~~to~~ pass finally on the constitution as an affirmative expression of the will of the Japanese people. I am fully entitled to express my views at this table.

GEN. McCOY: And we invited you to do that and we welcomed them, but the fact remains that you have been consistently in opposition of the basic problems of this Commission.

SIR CARL BERENDSEN: Not at all.

GEN. McCOY: Well, the record will show that on

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every policy paper that has come up here with reference to basic matters, election, the Diet, the action on the procedure that is going on in Japan. Now, I ask you, what would you have us do at this stage--throw the whole thing out and start it all again?

SIR CARL BERENDSEN: I ask you to have your remarks recorded in the minutes.

GEN. McCOY: They are being recorded, but I would ask you, is that not a fact--that you feel the whole basis of this constitution and procedure that we have been going through for months is beside the mark, going back to the fact that the election was not in accord with your wishes as to time?

SIR CARL BERENDSEN: Certainly not.

GEN. McCOY: Well I misunderstood you all these months.

SIR GIRJA BAJPAI: Mr. Chairman, we from India are known for our docileness. Perhaps we have ^{been} too docile, and certainly now that we have a Constituent Assembly about to sit in India which will consider whether we should remain with the British Commonwealth or go out, I don't think anybody can accuse us of undue obsequiousness to members of the Commonwealth here. But I must, with respect, protest most strongly

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against the language that you used this morning toward our colleague from New Zealand. None of us here has lacked ~~of~~ appreciation of what the Supreme Commander is doing or of the difficulties of his task, and, speaking principally for myself, Mr. Chairman, I have nothing but respect always ^{for} ~~from~~ any occupant of the Chair, whether in this Commission or anywhere else. But, because we happen to express views which are not altogether agreeable to the Supreme Commander or the Government of the United States, which is one of the governments represented around this table, because we differ from those views, is no reason if I may say so with respect and with all emphasis, no justification to say that any of us "is throwing a monkey wrench into a government". And if that is the spirit in which a difference of views in this Commission is going to be received, speaking for myself, I certainly would have to consider very carefully as to whether I shall save my self respect by not coming to this meeting.

GEN. McCOY: Have you been given full opportunity and shown great respect?

SIR GIRJA BAJPAI: It is not that question. We have the right to differ--

GEN. McCOY: Have you not been given full opportunity?

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SIR GIRJA BAJPAI: I am not disputing that. I am saying that we have a right to differ this morning.

GEN. McCOY: I don't question that. I don't question Sir Carl's right.

SIR GIRJA BAJPAI: Nobody at the meeting here thinks that because we are here and we take part in the discussions here we can't claim as a member the right of freedom to express our views.

GEN. McCOY: I don't question his freedom or right. I only state as a matter of record that he has been consistently against the policy of the Supreme Commander in Japan.

SIR GIRJA BAJPAI: That may be, sir. I am not questioning that. I submit in all respect that, because he has been in opposition to a particular view is not by itself justification, ^{to say that he} ~~for him to~~ interferes with the Supreme Commander in the discharge of his duty, and for it to be said that any of us here is trying to throw a monkey wrench. I don't profess to be fluent in the English or the American tongue, but still the expression of throwing a monkey wrench has a certain suggestion of obstructing something.

GEN. McCOY: I accept your reproof.

SIR GIRJA BAJPAI: No reproof. I never presume

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to reprove the Chairman. After all for you in particular I have high regard. All I wish to say is that in these discussions there are certain limitations in which all of us have to observe.

GEN. McCOY: I accept that in terms of protest, and a proper one from you. It seems that my American use of the term "monkey wrench" is unfortunate and I will withdraw that. But as Sir Carl said, that is to go on the record. But in view of your expressed opinion, I will withdraw that term and will not use it again. However, I would like to call to Sir Carl's attention the consistency of his opposition on the basic problems.

SIR SIRJA BAJPAI: He has a perfect right to do it.

GEN. McCOY: I have never questioned that once. I have always welcomed his opinion and in the long months of discussion, etc., I've considered it a valuable and so stated to the Commission that your representative, who has acted most of the time both on the Commission and in the Committees, the value of his work in the sense of differences of opinion, etc., which have been good. I have never once tried to say by indication or implication that there should be any "rubber stamping" of the occupation in Japan.

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We have given full and free discussion from the beginning both in the committees and in this Commission, and it is just^a/sorrowful thought for me that throughout the months that Sir Carl has been consistently in opposition on the basic and, especially, on this constitution. I am informed and I think it was stated here by you or your representative, your complete disapproval of the procedure and the action of the Supreme Commander in Japan in providing a democratic constitution.

SIR CARL BERENDSEN: I will not have words put into my mouth in that way. That is completely contrary to fact. I think this is most unsuitable to have this kind of conversation on this sort of an occasion. I wish to refute your suggestion that I have been consistently opposed or disapproved of the work of the Supreme Commander with all the emphasis at my control. There is no greater admirer of the work he has done than I. As I have said, if on one or two occasions, if you wish, I have shown my ignorance and taken a different view and expressed it, I have been doing nothing more or less than my duty. And with those words I propose to say, *No more*.

GEN. McCOY: Well, I have definitely misunderstood you. But I wish to look back on the record

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as to the recent statement about the basis for this constitutional procedure that follows the election which you disapproved and said did not represent the expressed will of the Japanese people, and the last session where you very logically and properly, I took no exception to it at that time, showed once more your disapproval of the procedure in Japan but offered no alternative.

GEN. ROMULO: Mr. Chairman, may I, in the spirit of good will, say a few words? It would seem that there is some misunderstanding here. Sir Carl, I would like to call to his attention, our Chairman has just recently come from a sick bed and has been in a very bad seige for more than a month. He has, in his subsequent statement, withdrawn his reference to the unfortunate ^{term} reference to "monkey wrench", which I wholly subscribe to your views, Sir Carl, and to yours, was somewhat misplaced and quite unfortunate. We have during the war banded ourselves together, victory has been achieved, peace has not yet been achieved. Our combined efforts are far more essential now than during the war. And if our Chairman would be good enough to withdraw his words, I would ask that everything said here today be expunged from the record.

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GEN. McCOY: Well, that is very easy for me to do in view of your statement and Sir Girja's and I would be very glad to withdraw the remarks and the reproof, which I accept of both Sir Girja and General Romulo, and not for the reason, however, that I have been sick. But, in view of the greater problem of cooperating, which I one other time stated that I didn't want to do anything at any time that would interfere with our cooperative effort and I still feel that very decidedly. So that I will accept your suggestion as a motion or in what form?

GEN. ROMULO: Would you have objection to that, Sir Carl?

SIR CARL BERENDSEN: Well, Mr. Chairman, General, it would be ~~childish~~^{childish} on my part to raise any objection and I raise none. But I cannot expunge from my memory and I shall not be able to expunge from my memory the belief, the knowledge that anybody could hold the belief that you have described me as holding, or that I have taken any action which might conceivably have an ominous effect. I have done in this Commission what I have conceived to be my duty. I am not conscious of having exceeded it on any single occasion. If I may say so, I have from time to time felt hurt that one's honest attempts to fulfill one's bounded duty

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here would meet with resentment from some of my colleagues. In my judgment, those who did resent such efforts were wrong and not I. But, as I said, it would be ~~childish~~^{un-}ish on my part, and would be contrary to the high regard I have always held for you personally, sir, if I were to raise any objection.

GEN. ROMULO: Thank you. I so move, Mr. Chairman.

SIR GIRJA BAJPAI: I second the motion, Mr. Chairman.

GEN. McCOY: It is so directed that the unfortunate expression I used and the incident which has caused the lack of decorum around this table be expunged from the record.

There is now a motion before the house in the shape of an amendment upon which I have given the position of the United States, and now leave before the Commission for action.

SIR GIRJA BAJPAI: May I suggest, Mr. Chairman, that we adjourn consideration of this paper now and take it up on Saturday when we reconvene? We can take this up after the report of the Committee on the Constitution. One thing we haven't enough time before lunch to pass judgment on this. For another, I say wait--the tempers are rather frayed. I don't think that this is quite the atmosphere for a calm

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consideration of this matter.

GEN. McCOY: The motion to adjourn this meeting is in order.

GEN. ROMULO: I second the motion.

GEN. McCOY: We stand adjourned.

(Whereupon the meeting adjourned at 12:45 p.m.)

FAR EASTERN COMMISSION

Transcript of Twenty-Seventh Meeting of the Far Eastern Commission

Held in Main Conference Room, 2516 Massachusetts Avenue, N.W.

Saturday, September 21, 1946

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Transcript of Twenty-Seventh Meeting of the Far Eastern Commission,
Held in Main Conference Room, 2516 Massachusetts Avenue, N.W.
Saturday, September 21, 1946

REPRESENTATIVES PRESENT

Maj. Gen. Frank R. McCoy, USA (Ret.), Chairman	(United States)
Major J. Plimsoll	(Australia)
Dr. George S. Patterson	(Canada)
Dr. S. H. Tan	(China)
Mr. Paul Guerin	(France)
Mr. J. Vesugar	(India)
Dr. A. D. A. de Kat Angelino	(Netherlands)
Sir Carl Berendsen	(New Zealand)
Mr. Leonides S. Virata	(Philippines)
Sir George Sansom	(United Kingdom)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)

SECRETARY

Mr. Nelson T. Johnson

Reporter: R. Holtz, Department of State

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(The meeting convened at 10:50 a.m.)

GEN. McCOY: The session is now open for our consideration of some important matters.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 26th MEETING

GEN. McCOY: What is your pleasure, gentlemen, with regard to the approval of the minutes of the 26th meeting?

While you are considering that in the large, I would call your attention to a revision embodying changes requested by the Australian representative of page 5 of the minutes of the 26th meeting of the Commission. All representatives are requested to substitute the attached page for page 5 of the minutes of the 26th meeting of the Commission. Will you examine that please? I will accept that correction subject to your action.

Are there any other corrections to the minutes? There seem to be none. If there is no objection, the correction of the Australian representative will be made a matter of record and the minutes will stand approved as usual.

ITEM 2 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/36)

GEN. McCOY: I am going to ask permission to

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take up Item No. 4 first because I think our action on that will have proper relation to what follows in the other items connected with the constitution-- consideration of the Draft Constitution, Item 4, I will take up first if there is no objection, Provisions for the Review of a New Japanese Constitution ~~that has been before us and~~ the paper is still on the agenda with a proposed amendment by the representative of New Zealand.

Before the consideration of this important and necessary paper--this has been held up so long--I would like to make a statement of the position of the American Government as follows. This has been after very heart-searching efforts to meet the conditions of the Australian and New Zealand Governments.

"The United States Government considers that the first paragraph of FEC-031/36 shall be amended to read as follows." I am still having in mind that you have an amendment already before the house, but I am just making this statement first. The amendment reads as follows: "The new constitution as the legal successor of the present constitution, and embodying changes made as a result of consideration and policy decisions of the Far Eastern Commission, shall be

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subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph." That is, the remaining paragraph as it originally was without the amendment proposed by Sir Carl, because that amendment would not be acceptable to my Government. So that this would be the original paper without change, that is, the main paragraph, but with a new preamble, as it were, or opening paragraph. I am sorry that I haven't a copy of it distributed because we have just finally reached agreement on this and I shall have to have a copy made now and distributed, ~~possibly in two to five minutes~~, and for that reason, ~~I think~~, since it is important for you to study it carefully, I will now declare a recess while copies of this are made by the Secretary.

(The meeting recessed at 11:00 a.m.)

GEN. McCOY: I should also add, as so amended, my Government is prepared to accept the paper provided that the Commission will subsequently consider the time and manner of issuance of the policy decisions embodied in the paper.

(The meeting reconvened at 11:15 a.m.)

GEN. McCOY: We now come into session and the position of the Government of the United States is

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before you.

Gentlemen, the paper has been before you sufficiently for you to have had a certain amount of consideration. There is also before the Commission the amendment of the representative from New Zealand. Do you wish to make any statement on that for the moment? I don't believe it has been seconded.

SIR CARL BERENDSEN: It has been seconded.

MAJOR PLIMSOLL: I seconded it, Mr. Chairman.

SIR CARL BERENDSEN: I think we can remove the difficulty, if it is a difficulty. I understood you to say, sir, that if that motion were put to a vote the United States representative would vote against it.

GEN. McCOY: Yes. We would find it unacceptable.

SIR CARL BERENDSEN: Very well, then, in that case, I see nothing to be gained by going through the mechanical processes of putting it to a vote and having it defeated. As every ^{one on this Commission knows,} I am not guilty of throwing a monkey wrench and I don't propose to start now. If my seconder will allow me to do so, I will withdraw that motion solely because it will not be passed.

GEN. McCOY: That being the case, the United States representatives proposes a statement of policy

of the Commission as follows:

"The new constitution as the legal successor of the present constitution, and embodying changes made as a result of the consideration of policy decisions of the Far Eastern Commission, shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph. 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 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. The Far Eastern Commission, in determining whether the Japanese Constitution is an expression of the free will of the Japanese people, may require a referendum

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or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution."

The American member makes a motion to that effect.

MAJOR PLIMSOLL: I second it, Mr. Chairman.

ADM. RAMISHVILI: Mr. Chairman, shall we not discuss this? I would like to say something before voting.

GEN. McCOY: Yes. That will be agreeable. The motion has been proposed and seconded by the Australian representative and is now before you for consideration and discussion. The Soviet representative--

ADM. RAMISHVILI: I would like to say a few words because my statement in the last meeting did not appear in the minutes for understandable reasons, because it was a necessity. But, as I made the statement I would like to repeat it and maybe in the light of your today's statement add something more.

First, Mr. Chairman, I would like to say that the U.S.S.R. Government completely agrees to the document as it was drafted in the last document-- the previous draft as it was. Is that understandable to the members of the Commission--FEC-031/36 as it was?

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This is the first statement I would like to make. Second, I personally, now, Mr. Chairman, am not in ^athe position to agree with your amendment to paragraph No. 1 and we would like to ask instructions of our Government on this subject. In the meantime, ⁱⁿsaying my personal opinion, it seems to me that the United States amendment sounds now as if the constitution were already adopted. While our previous paragraph No. 1 was drafted in the expectation that some plan, previous plan--it was said that "as may be required"--it is something in the future. In this way it was worth while as a plan for our work. In the United States amendment it seems to me that it is concluded that the constitution is already discussed, I mean the discussion is finished, because it is said in ^{the}United States amendment, "as a legal successor...and embodying changes made as result of consideration". It is obvious that we could not accept this document, for instance, even for formal reasons because even today this question of considering the amendments, considering the draft of the constitution, comes as the next question, and how could we agree to this "as result of changes made...as result of consideration". I would like to emphasize that, to draw your attention, I think that very

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particular changes were made here. So repeating, Mr. Chairman, ~~I am sorry, I couldn't explain maybe, that~~ ^{the} previous paragraph No. 1 was made in the expectation of some plan. It was said in this paragraph that we, ~~or I better say,~~ understood that we will discuss this question, not saying how many times, and we have to finish it certainly some day, but it was at a previous day. The United States new amendment considers, it seems to me, maybe I am wrong, considers the constitution as adopted and approved by all members of the Commission. For these reasons I don't see any possibility ^{of} agreeing and adopt^{ing} this amendment right now before, even formally, completing the work on the constitution itself. For this reason, Mr. Chairman, as I said, I will ask instructions from my Government, but I am very doubtful, since we don't have much time, that it will be agreeable, and I am afraid that it will lose its main sense, this paragraph No. 1. ^{The} Third point of my statement, Mr. Chairman, I would like to say about paragraph No. 2-- as we know, paragraph No. 2 was amended by the New Zealand representative here and we are quite ready and willing to consider it, though we are not ready to accept this. It is ^a question of ^{the} slight change

which was made in your amendment, Sir Carl.

SIR CARL BERENDSEN: But that has now been withdrawn, in view of the United States--

ADM. RAMISHVILI: Let me say, we are and were ready to consider it but we can't agree with ^{the} United States wording of paragraph No. 2.

GEN. McCOY: Possibly your very good statement could be answered so that you will be satisfied, by first calling attention to the statement that this will come ^{up} before there is any action taken on it. It is simply a statement of policy which we propose, and I made a condition, ^{that} as so amended my Government is prepared to accept the paper provided the Commission will subsequently consider the time and manner of issuance of the policy decision embodied in the paper. Now, in addition to that, it might also be ^{that} your point might be met by my changing that first paragraph to meet your wise analysis by substituting, with the consent of the seconder, so that the first paragraph will read: "The new constitution as the legal successor of the present constitution, and embodying changes made or which may be made as a result of consideration and policy decision of the Far Eastern Commission, ~~it~~ shall be subject to further review by the Diet and Far Eastern Commission

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in terms of the following paragraph." Now you consider that. I will wait for your consideration, hoping that we might get this important paper through so that it would meet the conditions of the other governments concerned.

ADM. RAMISHVILI: By adding the words "may be made", the main objection in this question, ~~was not in the time~~. I personally think, ~~it~~ is removed. Nevertheless, I have to ask the final instructions of my Government.

GEN. McCOY: Well, in that case, with the consent of the Australian representative, I will make this change interpolating between "made" and "as" "or which may be made" to meet the Soviet statement.

ADM. RAMISHVILI: Mr. Chairman, may I ask one more question, because everything which we do now will possibly make my job easier to clarify this to my Government. Do you consider necessary that this whole paper must be adopted after we finish all discussion on the constitution or before because after finishing all the work on the constitution it will sound a bit silly because "which may be made"--after we adopt the constitution, I mean after we get in here all the opinions and after the constitution is out of our agenda, we could not say, we really could

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not say "may be made".

GEN. McCOY: Yes, because this next paragraph provides for continued review by the Far Eastern Commission.

ADM. RAMISHVILI: So this "may be made" is understood that maybe not right now but maybe later?

SIR CARL BERENDSEN: Yes, any time.

GEN. McCOY: Does that seem all right to you, Major Plimsoll?

SIR CARL BERENDSEN: Mr. Chairman, might I have a moment or two? I see no objection whatsoever and I am very glad to accept ~~but fully~~ the proposal that you have made, and I really wonder whether the Soviet representative has any substantial reasons for doubt as to the effect of this paragraph. This paragraph in effect really says that the new constitution will be the legal successor of the old constitution, on which I think we are all agreed, and that any changes that the Commission wishes to make may be made, and that the whole subject is within the continued^{ing} purview of the Commission and subject to the Commission's decision as to further reconsideration. I am prepared to accept it here now, and I hope that our Soviet colleague will also do so. I see no difficulty at all in this.

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ADM. RAMISHVILI: As I understood it, the United States Government is not willing to accept this paper right now.

GEN. McCOY: Yes. We are ready to accept it provided that the manner and time will be brought before us again for consideration after we hear from SCAP.

SIR CARL BERENDSEN: As to publication of it. I fully agree with that too.

DR. PATTERSON: It is not publication of it that is involved. It is the issuance of it.

SIR CARL BERENDSEN: It is not proposed that we should refrain from advising the Supreme Commander that we have come to that decision.

GEN. McCOY: No. It will be adopted if it is voted on by the Commission now.

SIR CARL BERENDSEN: But at the appropriate time, we will decide now is the time either to make it public or to take any action as may be necessary under it.

GEN. McCOY: And my Government is concerned too about that as well as consulting SCAP. But the policy paper embodied in the main paragraph we are agreeable to adopting now as the policy of the Commission which will be furnished to General MacArthur as the

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way the Commission will decide after we get once more--after consultation with my Government and SCAP.

SIR CARL BERENDSEN: I fully concur with that proposal.

GEN. McCOY: We are trying very hard to meet a number of different points of view by agreeing on this this morning, if it were possible. It is a matter that concerns--

ADM. RAMISHVILI: I think very much of Sir Carl's statement and I am very happy to hear his opinion on this matter, and it is greatly encouraging to me in the thought that this new amendment may be favorably ^{ed} to consider ~~it~~ by my Government. But I am very sorry to say that I am still not in ~~the~~ a position right now, and think that the members of the Commission will indulge ^{wive} me in this question, ~~that I could not really~~, I could not, without violating some definite instructions, agree to this. I am more and more convinced that this may be considered by my Government.

GEN. McCOY: I am going to declare another short recess in view of this statement of the Soviet representative.

ADM. RAMISHVILI: Just to finish--but since the publication of this document will be postponed, at

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the same time I am satisfied myself that maybe this delay will not be so harmful to the whole job, since even if we are agreed today it will be approved--it will be on the shelf. We will do our best to contact our Government and get our instructions.

GEN. McCOY: I will recess for ^{a few} ~~two~~ moments, please.

(Meeting recessed at 11:30 a.m.)

(Meeting reconvened at 11:40 a.m.)

GEN. McCOY: We will now come to order please.

Do you still feel that you have to consult your Government?

ADM. RAMISHVILI: Yes.

GEN. McCOY: I don't think the question of time as regards this policy paper is so important as getting it through, and I only hoped that I might find a way to do that to satisfy these governments that made that as a condition. Now, possibly they will be willing, in view of this present discussion and the general agreement on the main paragraph, to take a gamble that there will be some such policy paper passed by the Commission with the Soviet's concurrence. So that I will postpone this in view of the Soviet request.

ITEM 3 - DRAFT CONSTITUTION (FEC-087/1)

GEN. McCOY: We now proceed to Item No. 3 once more, the Draft Constitution, which is before us. I understand that the governments that had not received instructions at the prior meeting have, in a sense, received such instructions and I would be very glad to have an expression of their attitude. We call on the Indian representative to give their present status.

MR. VESUGAR: Mr. Chairman, the view of my Government is that the responsibility for definitely approving the new Japanese constitution or the draft constitution is nowhere laid on the Far Eastern Commission. I mean, it is nowhere defined that the Far Eastern Commission is responsible for this. On the contrary, the responsibility is laid on the Japanese Government that there shall be no obstacle to democratic tendencies. Article X of the Potsdam Declaration makes this incumbent on the Japanese Government and not on the Allies. Article III of the Moscow Agreement refers to the necessity for agreement within the Far Eastern Commission on any directive dealing with fundamental changes in the structure of the new Japanese constitution. If the intention at that time of either the Potsdam Declaration or the Moscow

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Agreement had been that the Far Eastern Commission was to be responsible for this, it is reasonable to assume that they would have said so, that they would not have left such an important point to inference, and, therefore, the view of my Government is that it is not for the Far Eastern Commission to approve the new draft constitution, but to insure that there is nothing in it which is contrary to the principles already laid down.

GEN. McCOY: And the representative from China-- I understand that you have also received instructions.

DR. TAN: Yes, Mr. Chairman. The position of my Government is that the draft constitution as a whole is acceptable. Also it contains ^Nmay provisions which warrant improvement. We are cognizant of the fact of the time element in giving our views regarding this problem and also of the fact that it is rather difficult to find a constitution in the world which may be considered perfect, and that any fundamental law or fundamental law of any nation may require years of development and actual application to practical situations before its effects and inadequacies can be viewed. For this reason, my Government is inclined to accept this draft constitution subject, however, to certain reservations. In the

first place, we know that there are in that document certain important questions left to subsequent implementing legislation. It is generally recognized by the members of the Commission that the present draft constitution leaves many vital matters to be determined later by subsequent legislation. These include such matters as, for instance, the qualification of electors and of members of both Houses, that is Article XLIV, matters pertaining to the election of members of both Houses, electoral districts, and method of voting, that is Article XLVII, the Joint Committee of the two Houses of the Diet, that is Article LXIV, and the Imperial House Law, that is Article II. Our delegation has had occasion to bring this matter to the attention of Committee No. 3 and to propose that such implementing legislation should be passed upon by the Commission before it is adopted by the Diet. This proposal was adopted by Committee No. 3 and further amended by the Steering Committee as contained in paragraph b, Implementing Legislation of FEC-087/3, which paragraph now in part reads as follows: "The Committee considers, therefore, that if such matters are to be left for determination in subsequent legislation, drafts of such legislation should be made available for the Far Eastern Commission as soon as these drafts are submitted to the

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Diet." This paper is still awaiting approval of the Commission. The Chinese delegation is pleased to note that it appears that there is a consensus of opinion of the Commission that the Commission is in favor of the adoption of this paragraph. Now, regarding this, there is a second point which I would like to make reservation or to ask for elucidation or explanation. It has to do with Article IX of the Draft Constitution. The Chinese delegation notes that that Article has been so revised by the House of Representatives of Japan as to permit of an interpretation which might in effect permit the maintenance by Japan of land, sea and air forces for purposes other than those specified in the first paragraph of Article IX of the Draft Constitution. Now, we know that according to that article Japan has renounced the privilege to make war and threats to employ armed forces as a means of settling international disputes. But, according to Article IX as it stands, there may be a chance for Japan to maintain armed forces for other purposes than those enumerated there, and we know that, of course, it is necessary for any government to have a police force. But, generally speaking, we don't call a police force an armed force. That is to say, there is a danger, if Japan will be

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allowed to maintain armed forces for other purposes than those enumerated there, that means there is possibility for Japan to employ such armed forces under certain pretexts, such as, for instance, self-defense. We know that that term is a legal one and a certain legal meaning is attached to it in international law. But in the past such terms have been abused so much that we have decided whether the Chairman or some of my colleagues here can elucidate on that point. At any rate, our delegation wants to go into the question of the intent. What is the purpose? Why ^{has} the Japanese House of Representatives ~~has~~ introduced a modification? Summing up, Mr. Chairman, that is to say, as a whole, my Government considers the document acceptable except we wish to reserve our position on these two questions. The last one, of course, requires some information. We desire to have your^{self} or some of the colleagues to explain that.

GEN. McCOY: The Soviet representative--we won't discuss that for the moment because it comes up in the Report from the Steering Committee.

DR. TAN: Allow me to make one more statement. I understand this question about armed forces--this matter is being referred to the appropriate committee,

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the Committee on Armament. We should like to reserve our position and will express our views in due course when that has ~~had a chance to~~ be discussed.

GEN. McCOY: The only other government that hasn't--I am not sure whether you have had instructions about the constitution yet?

ADM. RAMISHVILI: Yes, we have, Mr. Chairman. I submitted amendments and they were discussed at a Committee No. 3 meeting and will be discussed today.

GEN. McCOY: You have a written constitution yourself, I believe, Admiral. In your consideration of this constitution, have you been comparing it with your own?

ADM. RAMISHVILI: Mr. Chairman, I could answer your question after our amendments have been discussed in the Commission today.

GEN. McCOY: In the meantime I have some information that has been passed around this morning. I don't know whether it has fallen under your eyes yet. I call your attention to the following information from the Supreme Commander for the Allied Powers that has been received, relative to the disposition of hereditary estates of the Imperial Household, and is circulated herewith by the United States member for the information of the Commission.

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The original draft of Article LXXXIV of the proposed constitution reads: "All property of the Imperial Household other than the hereditary estates shall belong to the State. The income from all Imperial property shall be paid into the national treasury and allowances and expenses of the Imperial Household as defined by law shall be appropriated by the Diet in the annual budget." In order to conform to the requirements of subparagraph d of paragraph 4 of the statement of policy adopted by the Far Eastern Commission on the second of July, the provision now reads as Article LXXXVIII - "All property of the Imperial Household shall belong to the State. All expenses of the Imperial Household shall be appropriated by the Diet in the budget." Thus the, ^{provision} ~~prohibition of accepting~~ ^{excepting} the hereditary estates of the Emperor from transfer to the State has been removed. The automatic transfer of the property of the Imperial Household to the State is to be effected when the new constitution becomes effective.

In view of that additional information, I would ask Sir George to comment on the position of the United Kingdom.

SIR GEORGE SANSON: Well, Mr. Chairman, there are two points. First, that the translation is

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rather ambiguous. We don't know what is meant by the Imperial Household. I would have said the Japanese version means the Imperial family or the Imperial house which is rather a different thing from a household. A household is a sort of house-keeping unit, but even, assuming that this means what we expect it to mean, I am still not quite satisfied that the new clause is all we require. It does, of course, remove the objection that there was special treatment for hereditary estates and in that respect it is a great advance on the original argument. But it doesn't give us a specific assurance that the use of both the capital and the revenue of former Imperial property will be under control of the Diet. It doesn't say so specifically in the new clause. It merely says that the property of the Imperial Household will be transferred to the State. What I would like to ask is, does this mean that when the transfer is made of former Imperial property it will be treated like all other State property such as State-owned lands or buildings and that it will come under the control of the Diet and its administration will be subject to the usual scrutiny of the parliament? It doesn't say specifically what is going to happen to it. It merely says that

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it becomes State property. What we are afraid of, and perhaps this fear is unfounded, is that there might be a very large sum which could be used without the knowledge or approval of the Diet to support this, that or the other plan or project which the Diet would never know of. Now this may be an unnecessary misgiving, but perhaps we could, in view of the later possibility of review, suspend consideration of this.

GEN. McCOY: I should think that could be so. There is certainly an implication here. It says, "All property of the Imperial Household shall belong to the State", and then we go back to the fact that, "Allowances and expenses of the Imperial Household as defined by law shall be appropriated by the Diet in the annual budget". So that, taken together, the all-embracing term "all property" and then the fact that it is specifically stated in it following our own Far Eastern Commission criticism at the time, I think that the two paragraphs read together do, to a non-lawyer, cover the thing very explicitly.

SIR GEORGE SANSOM: I don't pretend to know. But it is a curious thing that from the original paragraph the statement that the revenue would be paid into the national treasury is omitted and we

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don't know what happens either to property or to revenue except that the property becomes State property. There are one or two clauses in it which do refer to audit by the Diet of the submission of the--it says that, "Final audit of all the expenditures and revenues of the State shall be made annually by a board of audit and submitted to the Diet." That might cover this because it says, "All expenditures and revenues of the State", and, therefore, revenues from this property might be regarded as coming within that provision. I would like to know whether any other members of the Commission have the same doubts as I have.

MAJOR PLIMSOLL: Mr. Chairman, I have forwarded to my Government the question raised by Sir George Sansom. They have concurred in his doubts.

SIR GEORGE SANSOM: It is curious that it says nothing about the revenue of this property. That clause, "The income from all Imperial properties shall be paid into the national treasury" is omitted in the second draft. It may be that they merely wanted to simplify the whole paragraph, the whole Article.

GEN. McCOY: Well, in any case, it will be under review and under the jurisdiction and under

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the keen eyes of our Supreme Commander there, so that I don't think that it is a point that is dangerous as long as we are in such absolute control and this Commission has such continuing jurisdiction.

SIR GEORGE SANSOM: However, Mr. Chairman, if most members of the Commission do not share my Government's views, in the light of the fact that there is going to be ample opportunity for review, I am willing to get this thing going.

DR. PATTERSON: Mr. Chairman, the doubts of the United Kingdom representative have been transmitted to my Government and we have not had any reply. But, personally, I should like to say that I am impressed by the arguments advanced by Sir George. I should think ^{the} matter should be cleared up before we take any steps.

GEN. McCOY: Are there any other comments in connection with these statements that have been made by my associates? There seem to be none.

ITEM 4 - STATEMENT BY COMMITTEE NO. 3 ON
FEC-087/5, SOVIET PROPOSALS FOR
THE DRAFT CONSTITUTION (FEC-087/6)

GEN. McCOY: We will now proceed to Item 4. At the meeting of the Commission on Thursday, the Soviet representative proposed certain amendments to the Japanese draft constitution. These proposals

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were referred to Committee No. 3: Constitutional and Legal Reform, and the present document is the report of the committee.

Has the Chairman of that Committee any comments?

MR. COLLINS: I don't think there is very much that can be added to the document. As it stands I think it is very self-explanatory. You will note that there are all together six items that are dealt with, paragraph 2 of the Soviet proposal having been split into two parts. On three of these items, Sovereign Power, the Method of Appointment of the Cabinet Ministers, and the Method of Selection and Period of Tenure of Supreme Court Judges, the Committee considered that there were not sufficient grounds for requesting any change in the present draft of the constitution. On two of the points, namely, the Regency and the question of the Relationship between the House of Commons and the House of Representatives, it is felt that, while these matters were a definite concern of the Commission, nevertheless, they more appropriately come under the heading of Implementing Legislation and the continuing jurisdiction of the Commission in its future review of it. Finally, you will note that the second part of paragraph 2 on the Cabinet Ministers the Committee did

take a very serious view of the omission in the draft constitution of any provision that all ministers will be civilians as had been provided in our previous policy statement. The reason for our never having acted on that before is obvious. In Chapter 2, Article IX, on the maintenance of armed forces, it appears to preclude the appropriateness or possibility of any such provision in the draft as it stands. However, from the Japanese text which now is available, it did appear that there might be a loophole and there were definite ambiguities, and that it would be advisable to have this provision inserted in the constitution in the opinion of the Committee.

GEN. McCOY: As proposed by the Soviet?

MR. COLLINS: Yes, which is in complete accordance with our original policy statement from the Commission.

GEN. McCOY: I would like to have Mr. Borton, who represents the United States on that Committee, to comment on that please.

MR. BORTON: Mr. Chairman, I should say that you will note from the covering sheet that the United States member of Committee No. 3 reserved his position in reference to the second part of

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of paragraph 2 of FEC-087/6. The United States Government has again considered this point and still reserves its position, ^{for} the reasons, ^{which} I will try to give to you very briefly. In the first place, it will be remembered that the provision in FEC-031/19, the basic principle paper, that all cabinet members should be civilians, which was agreed to by all members of the Commission, that provision obviously was an attempt to put a further check on the possibility of the military again gaining control in Japan. That provision was absolutely essential in terms of the present operation of the Japanese Government and in terms of the constitution which is still in effect in Japan. However, under the new constitution, regardless of whether it seems to my Government, regardless of whether or not present Article IX of Chapter 2 could be interpreted in such a way as to allow, as the Chinese representative suggested earlier, for limited military forces of some sort to maintain internal order or for some other reason, regardless of whether that Article can be interpreted in that way, and, consequently, regardless of whether you might have military persons available who might become a Minister of Internal Order, or call him

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whatever you ^{like} might, as the draft constitution which we have before us so clearly fixes cabinet responsibility and so clearly makes every cabinet member responsible to the Prime Minister and to the Diet, my Government doesn't see an adequate reason for the inclusion of a specification that all members of the cabinet should be civilians. However, as long as there does seem to be some question of the interpretation of Article IX and as far as I am aware and as anyone that I have talked to in Washington is aware, we do not know the reasons for the changing of the wording of Article IX, as the Chinese representative, I believe, asked, ~~what the reason for that was.~~ It would seem to my Government advisable to inquire of the Supreme Commander as to whether Article IX as now written can be interpreted to mean that the Japanese armed forces--Japanese will ever be allowed to have armed forces, and in the second place, to inquire as to what the reasons for the change in that Article were.

DR. TAN: Mr. Chairman, I think ^{the} ~~it is a~~ question of whether all the members of the cabinet should be civilians or not is closely related to this Article IX. In the first place, I raise the question about the purpose for which Article IX was modified. Now, to

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look back to the international situation in the last decade or two, we feel that armed actions may not necessarily constitute war. The word "war" has a legal definition. War in the legal sense is one thing; war in the material sense is another. Yet a number of military actions, armed actions--even the word "action" has been legal in the past as action short of war. If we are to interpret just that Article alone, common sense will tell us that, according to strict interpretation of that Article, Japan would be allowed to maintain an armed force for all other purposes than those enumerated there, that is to say, the renouncement to use armed force for war purposes and as a threat to use force for the settlement of international disputes. Nevertheless, Japan could use it for other purposes. By the time they are ready to use it I imagine it would not be an act of war but as an act short of war and, therefore, not a violation of the constitution. And there have really been too many instances of that type. I think we all can remember a number of them. Therefore, Mr. Chairman, may I suggest that you might be good enough to inquire of General MacArthur and see if he can give us some information that would help us to understand better about this Article?

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GEN. McCOY: Yes. It is a new and interesting point. It hasn't been considered before as far as I know, has it?

SIR GEORGE SANSOM: May I make a short comment on that ~~thing~~? It is this, that even, regardless of the reality or the scope of the dangers which the Chinese representative has outlined, it seems to me that it is a very clear case of a passage in a document which can be interpreted in very different ways. It is a very bad case of ambiguity. What the causes are I don't know. But we have the right to ask just what that really means, and I think also at the same time, as the Chinese representative suggests, we should know why the change is made which has certainly made the clause obscure.

GEN. McCOY: Now is there a question there of translation? Have you by chance looked at--

SIR GEORGE SANSOM: Oh yes. I have studied it very carefully and I think Mr. Martin will agree with me that there is no way of really knowing what it means. It can be interpreted to mean that armed forces shall be forbidden and the sovereign right to make war shall be rejected or it can be interpreted in a very much narrower sense. I don't know. It is very bad drafting and not very good translation.

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DR. PATTERSON: Mr. Chairman, I should think we are all agreed as to the importance of making the purport of this provision clear, the importance of safeguarding the fact that all ministers should be civilians. I don't think there would be any difference of opinion among the members of the Commission on that point. The history of the discussion of this point reveals that consideration on this was given before, included in the discussion of the Commission, the inclusion of this phrase that all ministers should be made civilians. It was deemed an awkward way of meeting the situation, in view of the inclusion in the Japanese constitution of Article IX, in view of the renunciation of war. It seemed in some way inconsistent, therefore, to have the provision that all ministers be civilians. It might even call attention to the question of the seriousness which Article IX should be taken if this additional provision were made that all ministers shall be civilians. But, in spite of that, I would like to call the attention of the Commission to the fact that, in drawing up its basic principles, the Commission did include that provision that all ministers should be civilians. And also, I wonder if the United States representative might give consideration now

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to arguments like these. It was indicated the other day that in this interim period for certain purposes, general and admirals should be retained and they should be allowed to occupy official governmental positions and, therefore, it is conceivable, quite conceivable, that after this constitution is passed there will be generals and admirals officially recognized and other military officials, and if this provision were included that all ministers should be civilians there would be no question whatever as to the possibility of their being appointed to a cabinet position. There is a second possibility that I can foresee. It is possible that at some time in the future through appropriate measures, the Japanese will eliminate Article IX from their constitution, and if at that time there is no other provision in the constitution that all ministers shall be civilians, the issue would go by default. But if at that time there is also this additional provision in the constitution, the Japanese people would be fully aware of the issue and in a position to face the issue as to whether they wish to continue the provision that all ministers shall be civilians. Therefore, my argument is that purely in the interest of the neatest way of dealing with the issue at this

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time, we should consider seriously having this specific provision inserted in the constitution. The argument might still be raised that it is not necessary, but I would contend that it is certainly desirable.

MAJOR PLIMSOLL: Mr. Chairman, I think on the principle of making a statement of insuring that in Japan all cabinet ministers should be civilians, I think that principle is accepted by every government around this table. The United States Government has put very great emphasis on that in its statement of policy in the directions of the Secretary of State given the Supreme Commander in Japan as early as October 17. It was laid down that any ministers of the armed forces that may be permitted in the future shall be civilians. It also laid down that ministers of state and members of the cabinet should in all cases be civilians. That was repeated later in the basic principles which were adopted by this Commission. When we presented the Australian Government's views at this Commission a fortnight ago, I didn't press the inclusion in this constitution of Article IX because we felt that the Japanese would not take too seriously in the future any clause in the constitution that made them renounce war and felt even at

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that stage that the Japanese, as soon as the Allied occupation forces were gone, and possibly before that, might make some amendment in the constitution which would allow them in the future to maintain armed forces. Once that occurred you would naturally have a Minister for the Army and for the Navy and it would be fully in accordance with the Japanese tradition for them to appoint a military or naval officer to that position in the cabinet. And one of the reasons why we did not like Article IX, as I stated on that occasion, was that it prevented us from putting anything in the constitution at present which would take cognizance of such an amendment in the future. Since that date, on Thursday morning, we have had the Japanese text of the constitution sent to us and it shows that the bogey we previously saw in the constitution making such a provision apparently does not exist and the interpretation can be so ambiguous as to permit armed forces. Therefore, the arguments specifically stating in the constitution that members of the cabinet should be civilians are very much stronger. That is the principle and the next point arises as to what our action should be. It is very late. The constitution has almost gone through the Diet

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now and we have to consider what the position of General MacArthur would be. I don't think any of us wants to put General MacArthur in a position where he has a crisis on his hands. For that reason, although I don't think the proposal advanced by Mr. Borton goes quite far enough, I don't think it is sufficient just to ask the Supreme Commander what he thinks of this position. I think we should go further and say that we would welcome an amendment to the constitution providing that all ministers should be civilians. At the same time, I don't think at this stage perhaps we ought to go so far as to lay down another Article. We ought to tell him our views and ask him to put in the changes and say we will back him up. I think perhaps we could pass a resolution to that effect--we would welcome an amendment to the constitution in view of the ambiguity that has been disclosed by the examination of the Japanese text--we will welcome an amendment to the constitution which will state that all ministers should be civilians.

ADM. RAMISHVILI: Mr. Chairman, I feel it necessary to renounce attempt of the United States representative in Committee No. 3 to discredit our decision about the constitution. He stated that

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this provision that all members of the cabinet must be civilians was made having in mind only the existing constitution and not, ^{the} future constitution. I must strongly emphasize that these provisions were made having in mind only the new constitution and this is the obvious fact. Secondly, Mr. Chairman, concerning the possibility of Japanese Government or some imperialistic-minded people to revive the Japanese army, the main question, I think, the main danger is not that the Japanese Government or this group of which I mentioned right now can deceive the Allied Powers or can do this without willingness of ^{the} Allied Powers or SCAP itself. I am sure that the United Nations, Allied Powers will carefully watch. But the question is that this paragraph IX gives--this is more important, I think--gives to the same group the possibility to deceive the Japanese people, saying that they are creating some kind of army and say to the Japanese people that this is perfectly all right within the Japanese constitution. This is, I think, the main danger. I don't see, Mr. Chairman, I cannot understand any physical and spiritual meaning why, since this question is doubtful for many members of this Commission and Committee No. 3, why shall not we simply

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include in this constitution some words, some clause, which definitely says that the members of the Diet must be all civilians? I don't see any harm in this connection in order to eliminate any misinterpretation, misunderstanding of Article IX. In this connection, Mr. Chairman, I think that the decision of Committee No. 3, particularly on this subject, is very reasonable and must be admitted by the Far Eastern Commission.

DR. DE KAT: I am inclined to agree with the United States Government that for the time being it is sufficient for this Commission to inquire as to the reason and meaning of this.

SIR CARL BERENDSEN: Mr. Chairman, I wonder if I may think aloud for a moment or two on this. This seems to me to be another one of the very large number of cases--I am not trying to be critical and I hope my remarks won't be accepted as such--on which the Commission or certainly members of the Commission are in doubt as to the meaning of certain provisions of the constitution or apprehensive as to their effect--If I felt that any good purpose would be served by in my small way urging a more careful and meticulous consideration of the constitution, I would certainly do so, but I have no such

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expectation--on this particular point, nobody can doubt the ambiguity or the gravity of the possible effects of the ambiguity, and I wonder, I am entirely in favor of asking the Supreme Commander what the intended effect was, but I wonder whether that really takes us any distance at all. Certainly we ought to do so but it doesn't resolve the matter. It is not a question of what the Supreme Commander thinks now is the meaning or what the highest legal experts here or in Japan think, it is whether a possible meaning can be taken at a later date when the situation is entirely changed. What then should we do? I have asked myself that question many times. It doesn't seem to worry other members of the Commission and then, in that case, I don't propose any action at all. But I think this is a case in which we are entitled to ask ourselves not whether it is a wise provision or not but whether it is something much more fundamental. I think we are entitled to ask ourselves whether the constitution does in fact comply with the requirements laid down by the Commission. Does it in fact provide that all members of the government must be civilians? I think that is a question we can answer here and I think it might be useful to address it to ourselves. We laid down