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AUG 22 1946

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY GENERAL,  
FAR EASTERN COMMISSION

In reference to the question raised at the meeting of the Far Eastern Commission on June 25, 1946, concerning the method by which SCAP would inform appropriate officials of the Japanese Government of Far Eastern Commission policy decision on Basic Principles for a New Japanese Constitution, the Political Adviser to SCAP has assured the Department that where appropriate SCAP has communicated Far Eastern Commission policy with respect to the Constitution in the form of suggestions to appropriate Japanese officials, so that any necessary changes might be incorporated into the draft before its final passage by the Diet.

894.011/8-1046 CS/HH

894.011/8-1046

*sup*  
*mc*  
*for*  
Dis

*Ernest A. Gross*

J. H. Hildring  
Assistant Secretary

A true copy of the signed original. *SB*

AUG 21 1946

JA:ALD *ALD* /pm  
8/19/46 *HTB*

FE  
*J.C.V.*



126

*Draft*

SGNED & RECEIVED  
*file*  
*IN SWANCC 8/14*  
*A. W. Mosley*

August 13, 1946.

**MEMORANDUM FROM THE STATE DEPARTMENT**  
**MEMBER, STATE-WAR-NAVY COORDINATING**  
**COMMITTEE**

**Subject: Consultation by the Far Eastern Commission with SCAP on the Text of the Constitution**

It is requested that the Committee consider, as a matter of urgency, the enclosed draft paper on the above subject.

Confidential File

894.011/8-1346

**J. H. Hilldring**  
**State Department Member**  
**State-War-Navy Coordinating Committee**

OCF NE Unit  
*mg*  
Dit

*HB*  
JA:HBorton:hst

894.011/8-1346



127

**ENCLOSURE****CONSULTATION BY THE FAR EASTERN COMMISSION  
WITH THE SUPREME COMMANDER FOR THE ALLIED  
POWERS ON THE TEXT OF THE CONSTITUTION****THE PROBLEM**

1. The problem is to determine the policy of the United States with respect to General MacArthur's request that the Far Eastern Commission amend its policy requiring that the Prime Minister and a majority of Cabinet members belong to the Diet.

**FACTS BEARING ON THE PROBLEM**

2. See Appendix "A".

**CONCLUSIONS**

3. It is concluded that:

a. The United States member of the Far Eastern Commission should request the Commission to amend its policy in reference to qualifications for Cabinet members.

b. If the Commission votes formally to refuse to reconsider its policy, the United States member should refrain from voting and should not veto the motion.

c. If a formal statement is presented to the Commission to the effect that the Commission adheres to its previous policy decision that the Constitution should contain a provision requiring the Prime Minister and a majority of the Cabinet to be members of the Diet, the United States member of the Far Eastern Commission should agree to such a statement.

**RECOMMENDATIONS**

4. It is recommended that, after their approval by the State-War-Navy Coordinating Committee, the State Department transmit the conclusions in paragraph 3 to the United States member of the Far Eastern Commission for his guidance.



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## APPENDIX "A"

## FACTS BEARING ON THE PROBLEM

1. On June 28, 1946 the Far Eastern Commission unanimously approved a policy decision on "Basic Principles for a New Japanese Constitution" which included the following:

"...the Constitution...shall also provide that the prime minister and the ministers of state, all of whom shall be civilians and of whom a majority, including the prime minister, shall be selected from the Diet, shall form a Cabinet collectively responsible to the legislature."

2. On July 25, 1946, after a preliminary study of the draft of the new Japanese Constitution, the Far Eastern Commission requested its chairman to communicate with the Supreme Commander for the Allied Powers. This communication contained the following:

"The Far Eastern Commission is making a preliminary study of the draft of the new Japanese constitution, which is now before the Diet..."

"In the course of this preliminary study doubts have arisen as to whether in certain respects the draft constitution satisfies the criteria established by the Commission in its statement of policy on basic principles (FEC-031/19). The following examples may be cited:

"(a) Cabinet. FEC-031/19 provides that a majority of the ministers of state, including the prime minister, shall be selected from the Diet. The draft constitution does not now provide for this principle of selection."

3. A reply from General MacArthur, transmitted to the Commission on 30 July 1946 stated:

"For information and such use as you may desire, hereunder are my comments on the items enumerated for consultation:

"2.(a) Cabinet. I believe the limitation that the Prime Minister and a majority of Ministers of State must be selected from membership of the Diet is unwise as such requirement would deprive the Japanese Government  
of the



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-2-

of the services, in ministerial capacities, of many men of possibly higher qualification than might be found in the legislative body. It is an unusual and arbitrary restriction upon government which certainly is not to be found within our own governmental system and I doubt if it can be found in any governmental system in the world. The existing requirement in the draft constitution that the Prime Minister must be designated by the Diet and approval of the Diet must be obtained to the appointment of all Ministers of State would satisfy every reasonable requirement of democratic process in such matter."

4. On August 2, 1946, General MacArthur made the following further comments on this point:

"It was considered here that the existing requirement in the Draft Constitution that the Prime Minister must be designated by the Diet and approval of the Diet must be obtained to the appointment of all Ministers of State satisfied the underlying intent of Far Eastern Commission policy in point. Should this not be so regarded by the Far Eastern Commission, I strongly urge the amendment of its policy."

5. At its 27th meeting on August 8, 1946, Committee No. 3: Constitutional and Legal Reform, the United States member brought General MacArthur's request to the attention of the Committee but the Committee refused to reconsider this point and approved, with the United States member reserving his position, the following statement for inclusion in a consultative message (SC-012/15):

"(a) Cabinet.



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-3-

"(a) Cabinet. In reference to the policy decision of the Commission that "the prime minister and ministers of state, all of whom shall be civilians and of whom a majority, including the prime minister, shall be selected from the Diet, shall form a Cabinet collectively responsible to the legislature" (FEC-031/19), the Commission desired to strengthen the dependence of the executive upon the Diet and to ensure that the executive would not be composed entirely of persons without direct obligations to the electors.

"The Commission has considered this point very carefully, and during the course of its discussions took note of the fact that most countries, where parliamentary systems are in operation similar to that envisaged for Japan, have adopted either in practice or in their Constitutions the principle that all of the ministers of state should be members of the legislature.

"The following is a brief summary of the principal reasons why the Commission inserted in it the provision referred to:

"(i) In the parliamentary system of government. the direct responsibility of the Cabinet to the legislature is fundamental. This is best secured if the ministers of state are members of the legislature.

"(ii) It is essential to provide, within the limits of possible action under the Potsdam Declaration and other controlling documents, safeguards against the regaining of power by bureaucrats and reactionary elements. This situation would be much less likely to occur if a  
majority



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-4-

majority of the cabinet ministers were themselves answerable to their electors.

"(iii) Furthermore, in the particular case of Japan, where the Diet has been traditionally subordinate to the executive, it is essential to provide a framework which enhances the influence of the Diet and ensures its control over the executive.

"Some members of the Commission were strongly of the opinion that all cabinet ministers should be members of the Diet, but the Commission realized the particular relevance to Japan of the point made by the Supreme Commander, namely, that such a limitation "would deprive the Japanese Government of the services, in ministerial capacities, of many men of possibly higher qualifications than might be found in the legislative body." Hence the Commission decided as a matter of policy that only a majority of the ministers of state need be members of the Diet and considers that this requirement gives sufficient freedom of choice and at the same time enhances the essentially democratic structure of the Constitution. In view of the fact that Japan has not followed this practice in the past, it is impossible to rely upon established procedure to ensure that it will be followed in the future, and the Commission adheres to its previous policy decision that the Constitution should contain a provision on this point."



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August 13, 1946.

MEMORANDUM FROM THE STATE DEPARTMENT  
MEMBER, STATE-WAR-NAVY COORDINATING  
COMMITTEE

Subject: Consultation by the Far  
Eastern Commission with  
SCAP on the Text of the  
Constitution

It is requested that the Committee consider, as a  
matter of urgency, the enclosed draft paper on the  
above subject.

J. H. Hilldring  
State Department Member  
State-War-Navy Coordinating Committee

JA:HBorton:het



**ENCLOSURE**

**CONSULTATION BY THE FAR EASTERN COMMISSION  
WITH THE SUPREME COMMANDER FOR THE ALLIED  
POWERS ON THE TEXT OF THE CONSTITUTION**

**THE PROBLEM**

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majority



-4-

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ACTION COPY

DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

DEPARTMENT OF STATE INCOMING TELEGRAM

Action-~~FE~~ Info:

S A-B PL
U A-H EUR-X
LE SPA DC/R
EUR OCD
DC/L SPD
ITP FC
ESP CY
OFD OIC
PLAIN OPI

File.
AUG 28 1946
DEPARTMENT OF STATE

London

Dated August 27, 1946

Rec'd 3:16 p.m., 27th

Table with columns for Action and Information, containing codes like JA, CA, JA, SEA, RA.

Control 8809

PWA4 VIAPREW

PW5 LONDON 3

PRESS SECSTATE WASHINGTON

DEPARTMENT OF STATE
SEP 3 1946
LIAISON OFFICE

Office of FAR EASTERN AFFAIRS
AUG 28 1946
8:05 AM
Director
Department of State

894.011/8-2746

7793 TWENTYSEVENTH TIMES EDITORIAL ON ACTION OF JAPANESE HOUSE OF REPRESENTATIVES IN ATTEMPTING NEW CONSTITUTION EXPRESSED GENERAL SATISFACTION WITH TREND OF DEVELOPMENTS IN JAPAN PERIOD IT SAYS STEP IS IN HARMONY WITH RECENT REPORT OF GENERAL MACARTHUR ON CONDITION OF OCCUPIED JAPAN COMMA WHERE INSTEAD OF SUBVERSIVE ACTIVITIES WHICH MANY EXPERTS HAD FEARED THE PEOPLE SEEM ENGRESSSED IN NOVEL POLITICAL DEVELOPMENTS ON DEMOCRATIC LINES COMMA AND WHERE TRIALS OF WAR CRIMINALS HAVE COMPLETED POPULAR DISCREDIT OF OLD LEADERS PERIOD TIMES CONSIDERS IT PLAIN THAT JAPANESE PEOPLE WANT NEITHER REVOLUTION NOR REACTION BUT ORDERLY DEVELOPMENT PERIOD IT BELIEVES THAT PREMIER YOSHIDA REPRESENTS COMBINATION OF CAUTIOUS ACTION AND ADVANCED IDEAS CURRENTLY IN VOGUE PERIOD EDITORIAL SAYS COMPLAINT IS STILL MADE AGAINST GOVERNMENT THAT PROCEEDS OF TAXATION ARE TOO LOW AND THAT CONTRAST BETWEEN LOT OF FEW RICH AND MANY POOR IS AS STRIKING AS EVER PERIOD IT IS ALSO COMPLAINED THAT GOVT HAS NOT REGULARIZED NEW RIGHTS OF LABOR PERIOD TURNING TO ALLIED CONTROL COMMA TIMES

PERMANENT RECORD COPY THIS COPY MUST BE RETURNED TO DC/R CENTRAL FILES WITH REASONABLE WELL THOUGH NOT WITHOUT SOME PLAIN

LRC



PLAIN

-2- 7793, August 27, 1946 from London

FRICTION PERIOD AMERICAN REPRESENTATIVES SHOW SOME FEAR LEST  
RUSSIAN INFLUENCE BE USED TO PROMOTE COMMUNISM COMMA BUT WHILE  
VOCAL THIS SECTION OF OPINION IS VERY SMALL AND IS NOT LIKELY  
TO WIN MUCH SUPPORT PERIOD EDITORIAL SAYS COLON QUOTE THE MAIN  
BURDEN OF THE ALLIED OCCUPATION CONTINUES TO BE SHOULDERED  
BY THE US COMMA AND THE STEADY IF SLOW PROGRESS OF THE COUNTRY  
ALONG THE DIFFICULT PATH LEADING TO NORMAL NATIONAL LIFE TESTIFIES  
TO THE GENERAL SUCCESS OF THE POLICIES PURSUED PERIOD UNQUOTE  
EDITORIAL REFERS TO AMERICAN SUGGESTION OF TWENTYFIVE YEAR TR-  
EATY TO FOLLOW OCCUPATION OF JAPAN COMMA AND FAVORABLE BRITISH  
AND CHINESE REACTIONS AND RUSSIAN FAILURE TO REPLY COMMA AND  
CONCLUDES THAT COLON QUOTE SOME SUCH SCHEME SEEMS DESIRABLE IN THE  
INTERESTS NOT ONLY OF THE UNITED NATIONS BUT OF JAPAN HERSELF COMMA  
FOR IT WOULD ENSURE THAT THE PROGRESSIVE TENDENCIES OF WHICH THE  
NEW CONSTITUTION AFFORDS AN ILLUSTRAT ON WOULD BE GIVEN FULL TIME  
TO TRANSFORM THE OUTLOOK OF THE NATION UNQUOTE

GALLMAN

LG/320P

LONDON



~~TOP SECRET~~

WAR DEPARTMENT  
WASHINGTON

*HB*  
Office of  
FAR EASTERN AFFAIRS  
AUG 29 1946  
DIRECTOR  
Department of State

55D370

28 August 1946

*A-H/mrguo*  
*reg*

MEMORANDUM FOR Mr. Ernest Gross  
State Department

894.011

We have just received the following message  
from General MacArthur:

"Reurad WX 98569 August 27th. Concur in proposition  
that draft constitution passed by lower house be con-  
sidered as "final draft" for purposes of 20th March  
directive as there is little likelihood that any  
change in principle will be advocated by the House  
of Peers. Your assumption that present legislative  
process will continue at least through 13th September  
is a practical certainty."

*Dean Rusk*  
Dean Rusk  
Special Assistant to the  
Secretary of War

894.011/S-2846

DIVISION OF JAPANESE AFFAIRS  
*B* AUG 31 1946  
DEPARTMENT OF STATE

894.011/S-2846

TOP SECRET FILE

DECLASSIFIED  
E.O. 11652, Sec. 3(E) and 5(D) or (E)  
Authority 750131  
By DR/SH NARS, Date 3-7-75

~~TOP SECRET~~



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SEP 6 1946

**MEMORANDUM FOR THE CHAIRMAN,  
FAR EASTERN COMMISSION**

In reference to the question raised by the British representative of the Far Eastern Commission on whether or not deletion of the phrase "other than hereditary estates" in Article 88 of the present draft of the Constitution means that "hereditary estates" of the Imperial family become Imperial Household Property and therefore revert to the State, there is enclosed a message dated September 1, 1946, from the Supreme Commander for the Allied Powers which is in reply to the question raised by the British representative.

It is requested that the Chairman of the Far Eastern Commission make this message available to the members of the Far Eastern Commission.

**J. H. Hilldring  
Assistant Secretary**

894.011/9-146 CS/HH

**Enclosure:**

**Message from SCAP,  
September 1, 1946**

JA:HLory/pm  
9/5/46

HB

Unit	206
FE	206
...	...

SEP 6 1946 P.M.

894.011/9-146



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ENCLOSURE

1 September, 1946

Language of Article 88 incorporated in constitution  
at my suggestion to conform to requirements of Para 4D  
Far Eastern Commission policy decision of July 2nd.  
Property of Emperor subject to taxation same as that of  
any other Japanese citizen.



135 136

DEPARTMENT OF STATE  
ASSISTANT SECRETARY

COMMISSION  
S AVENUE, N. W.  
N 8, D. C.

Sept. 26, 1946

September 24, 1946

JA  
Mr. Borton

Will you draft reply? I think we should clarify point that FEC will not pass upon implementing legislation in draft stages. Perhaps we should discuss this with Dean Rusk.

*E.A.*  
E.A.A.  
DIVISION OF FAR EASTERN AFFAIRS  
SEP 27 1946  
DEPARTMENT OF STATE

astern Commission has been consideration officially during the past several various representatives on the Commissions of their respective governments out that important matters which Constitution, such as the composition determined by subsequent legislation.

*HR 740, 0119 FEB 46*

It has been the general opinion that such implementing laws should be made available to the Commission for review since they would be an essential part of the new constitutional structure which is being erected in Japan. The Commission believes that it is competent to pass upon both the new Constitution and the implementing laws to ascertain whether they are inconsistent in any respect with the Potsdam Declaration and the policy decisions of the Far Eastern Commission.

I have agreed with the other members of the Commission in their point of view, and accordingly stated at the 24th Meeting of the Commission on August 28, 1946, and again at the 26th Meeting on September 19, 1946, that subsequent implementing legislation would be filed with

the

DCR - NE Unit  
*[Handwritten signature]*  
1131

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*894.011/9-2446*

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CS/A

*894.011/9-2446*

RECEIVED  
SEP 19 1946



136

FAR EASTERN COMMISSION  
2516 MASSACHUSETTS AVENUE, N. W.  
WASHINGTON 8, D. C.

September 24, 1946

*file*

The Honorable William L. Clayton  
Acting Secretary of State  
Washington, D.C.

My dear Mr. Secretary:

As you are aware, the Far Eastern Commission has been considering the Japanese Draft Constitution officially during the past several weeks. During this period the various representatives on the Commission have been stating the positions of their respective governments. They have frequently pointed out that important matters which normally would be included in a Constitution, such as the composition of the House of Peers, are to be determined by subsequent legislation. It has been the general opinion that such implementing laws should be made available to the Commission for review since they would be an essential part of the new constitutional structure which is being erected in Japan. The Commission believes that it is competent to pass upon both the new Constitution and the implementing laws to ascertain whether they are inconsistent in any respect with the Potsdam Declaration and the policy decisions of the Far Eastern Commission.

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*HR  
740.00119 FEAC*

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CS/A

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EB 19 47



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-2-

the Commission by the United States Government and that the Commission might pass a policy decision in regard to any aspect of implementing legislation which the Commission agreed was inconsistent with the principles of the Potsdam Declaration or relevant Commission policy decisions.

Your attention is invited to this commitment on behalf of the United States Government. It would be my understanding that the following procedure is in order. Draft implementing legislation on important subjects would be filed with the Commission as it is submitted to the Diet. The Commission may review such legislation if it involves policies within the jurisdiction of the Commission, and may pass a policy decision in regard to it if the Commission should deem such decision necessary to make the legislation consistent with the Potsdam Declaration and the policy decisions of the Far Eastern Commission. Such a policy decision would be sent to the Supreme Commander for the Allied Powers through the usual means of a directive issued by the United States Government.

A list is enclosed of the titles of bills reported in the Japanese press as constituting the principal items of implementing legislation for the Constitution. I understand that these bills are to be introduced at an extraordinary session of the Diet this fall. These might be requested from the Supreme Commander for file with the Commission as the first step in honoring our commitment.

Sincerely yours,

*Frank R. McCoy*

Frank R. McCoy  
Chairman

Enclosure:



List of Bills on Implementing Legislation

1. Cabinet Law (NAIKAKU HO)
2. National Diet Law (KOKKAI HO)
3. House of Councillors Law
4. Imperial Household Law
5. Partial Amendment Bill on the Civil Code
6. Partial Amendment Bill on the Criminal Procedure Law
7. Partial Amendment Bill on the Court of Justice  
Organization Law
8. Public Procurator's Office Law
9. Plebiscite Law for Discharging Judges
10. Judges Impeachment Law
11. Finance Law
12. Partial Amendment Bill on the Criminal Code
13. Court Law
14. Special Regulations Concerning Administrative Suit
15. Law for Protection of Fundamental Human Rights



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STANDARD FORM NO. 64

*Office Memorandum* · UNITED STATES GOVERNMENT

DATE: 10-9-46

TO : A-H: Mr. Gross  
 FROM : JA: Mr. Borton  
 SUBJECT :

There is attached a draft reply to General McCoy's letter of September 24 as a possible basis for discussion with Mr. Rusk of the War Department.

HB

JA:HBorton:mle

the Commission that implementing legislation would be filed

with the

Major General Frank R. McCoy,  
 Chairman, Far Eastern Commission,  
 Washington 25, D.C.

r 24, 1946 to  
 discussions in  
 ution and related  
 you have stated  
 that subsequent  
 would be filed  
 ernment and that  
 in regard to any  
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riate procedure  
 nting legislation  
 the Diet, that  
 if it involves  
 mission and might  
 Commission deems

ave made before



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## DRAFT LETTER

My dear General McCoy:

In reference to your letter of September 24, 1946 to the Acting Secretary of State concerning the discussions in the Commission on the Japanese draft Constitution and related subjects, I note with interest the fact that you have stated to the Commission on two separate occasions that subsequent implementing legislation of the Constitution would be filed with the Commission by the United States Government and that the Commission might pass a policy decision in regard to any aspects of implementing legislation which the Commission agreed was inconsistent with the Potsdam Declaration or relevant Commission policy decisions.

I also note that you believe the appropriate procedure is to file with the Commission draft implementing legislation on important subjects as it is submitted to the Diet, that the Commission might review such legislation if it involves policies within the jurisdiction of the Commission and might pass policy decisions in regard to it if the Commission deems such action necessary.

While I agree with the statements you have made before the Commission that implementing legislation would be filed  
with the

Major General Frank R. McCoy,  
Chairman, Far Eastern Commission,  
Washington 25, D.C.



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-2-

with the Commission and that the Commission has the right to pass a policy decision within its competence in regard to such legislation, I question the advisability of encouraging action by the Commission on drafts of such legislation. While it would be advantageous for the Commission to receive draft legislation for its information, it would be unfortunate, if the Commission were to assume that it had the right to make policy decisions on implementing legislation prior to its enactment by the Diet. Any such right of review of draft legislation, as opposed to legislation which has been enacted, would inevitably place the Commission in the position of interfering with the normal legislative processes in Japan. It would be consistent with the statements you have made before the Commission and with the authority of the Commission under its Terms of Reference, for the Commission to review such legislation after it had been enacted providing, of course, that such a policy decision was within the Commission's competence. Naturally, such policy decisions would be transmitted to SCAP through the established channels.

I have noted your enclosed titles of bills constituting the principle items of implementing legislation for the Constitution and suggest that a request from SCAP for such legislation might best be made through a consultative

message



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message to SCAP from you as Chairman of the Commission. If you agree with the interpretation stated above I would suggest that such a message might include a statement or understanding of the jurisdiction of the Commission in reference to implementing legislation.

Sincerely yours,

For the Acting Secretary of State:

J. H. Hilldring  
Assistant Secretary

JA:HBorton:mle



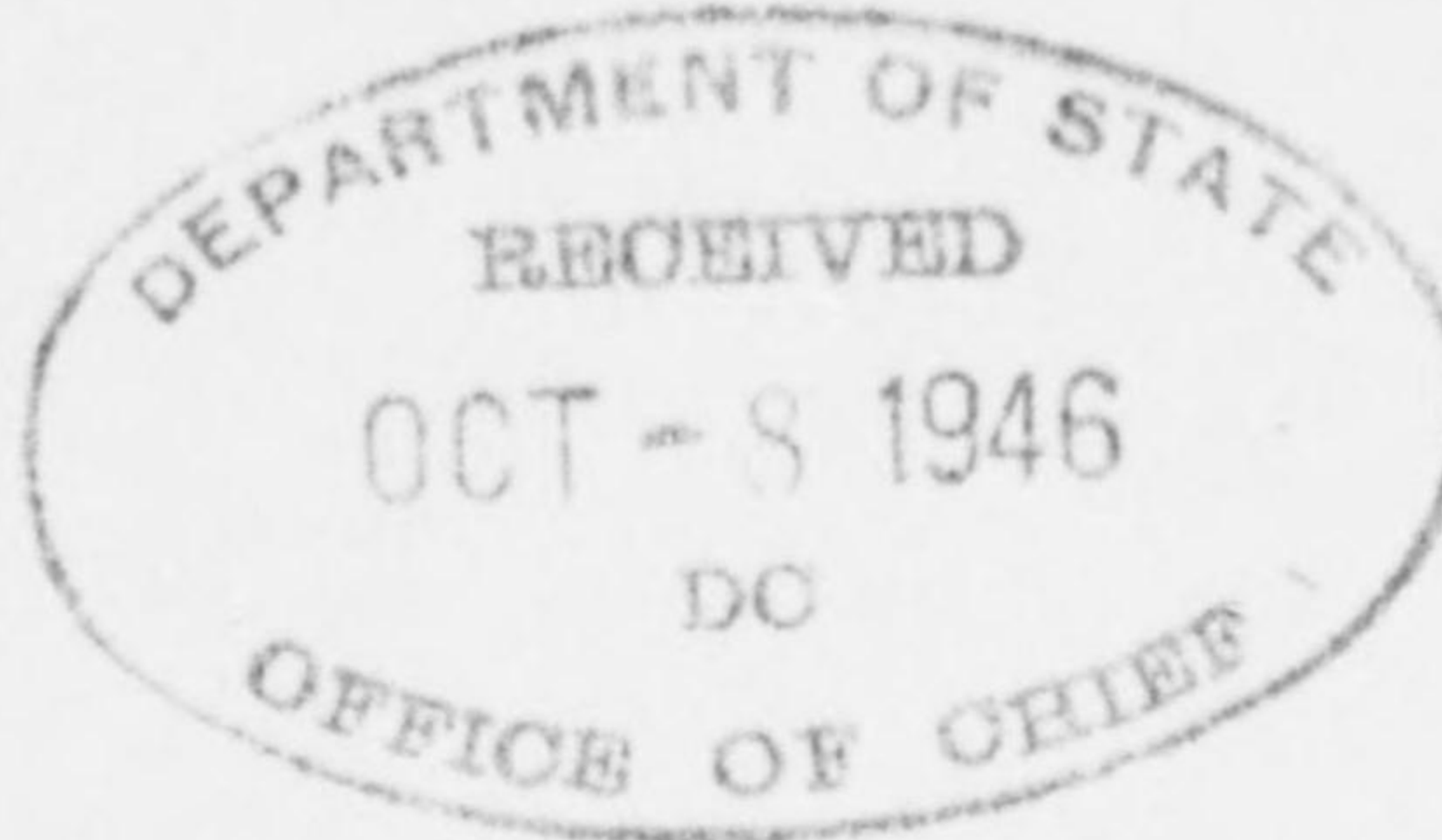
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FAR EASTERN COMMISSION  
2516 MASSACHUSETTS AVENUE, N. W.  
WASHINGTON 8, D. C.

CONFIDENTIAL

1 October 1946

The Honorable William I. Clayton  
Acting Secretary of State  
Washington, D. C.



My dear Mr. Secretary:

The Terms of Reference of the Far Eastern Commission provide that one of the functions of the Commission should be to "formulate the policies, principles and standards in conformity with which the fulfillment by Japan of its obligations under the Terms of Surrender may be accomplished."

XK  
740.00119 PW

It is further provided that when such decisions are made by the Far Eastern Commission, "The United States Government shall prepare directives in accordance with the policy decisions of the Commission and shall transmit them to the Supreme Commander through the appropriate United States Government agency."

At the twenty-eighth meeting of the Far Eastern Commission held at 2516 Massachusetts Avenue, Northwest, Washington, D. C., on 25 September 1946, the enclosed policy decision relative to Further Policies Relating to a New Japanese Constitution was unanimously approved.

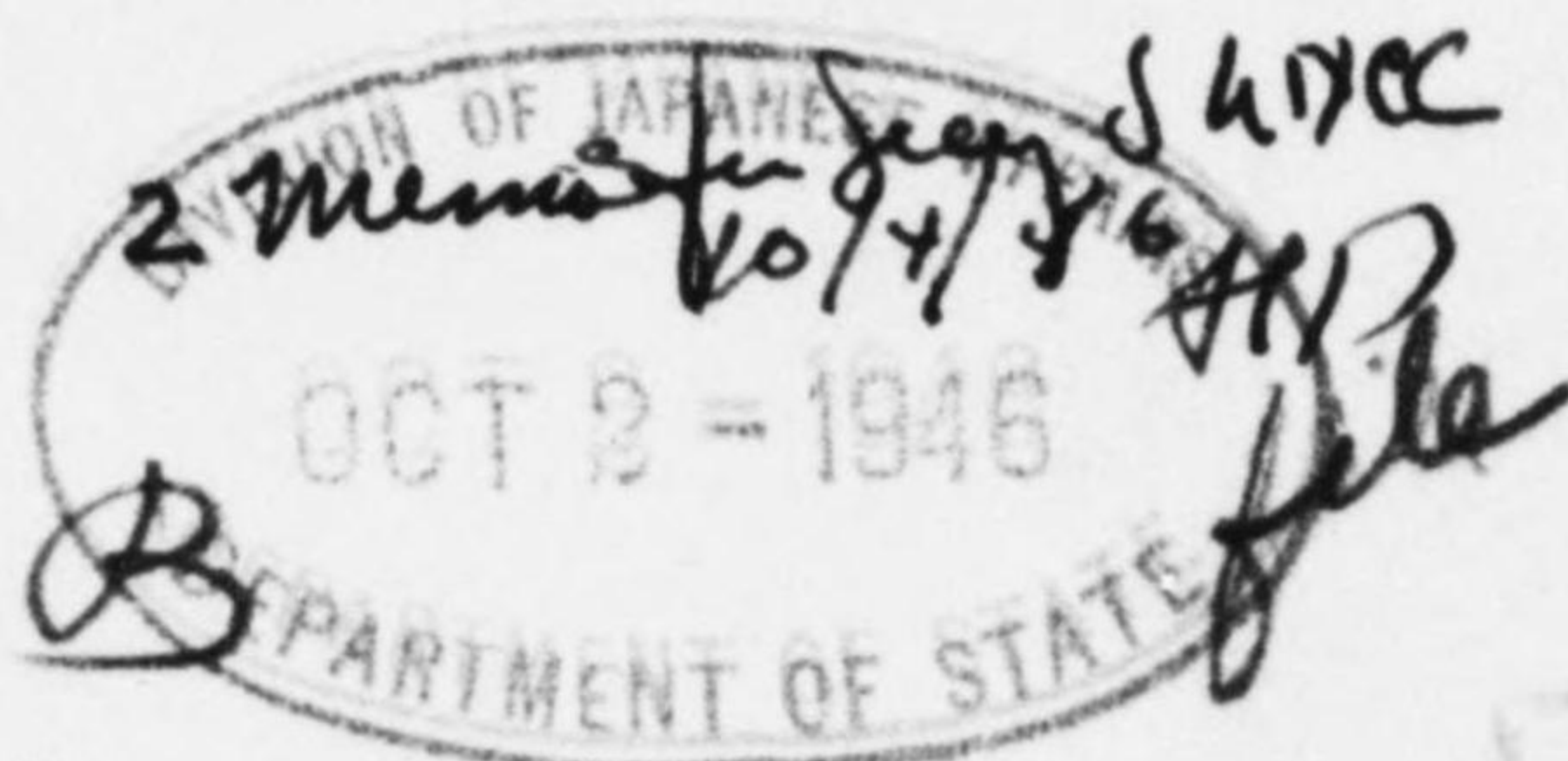
As Secretary General of the Far Eastern Commission, I have been instructed to forward this decision to you on behalf of the Commission, in order that the appropriate directives may be prepared and transmitted to the Supreme Commander in accordance with the Terms of Reference.

Your attention is invited to a second enclosure, an excerpt from the minutes of the twenty-eighth meeting of the Far Eastern Commission on 25 September 1946, as indicating the circumstances under which the enclosed policy decision was approved.

Sincerely yours,

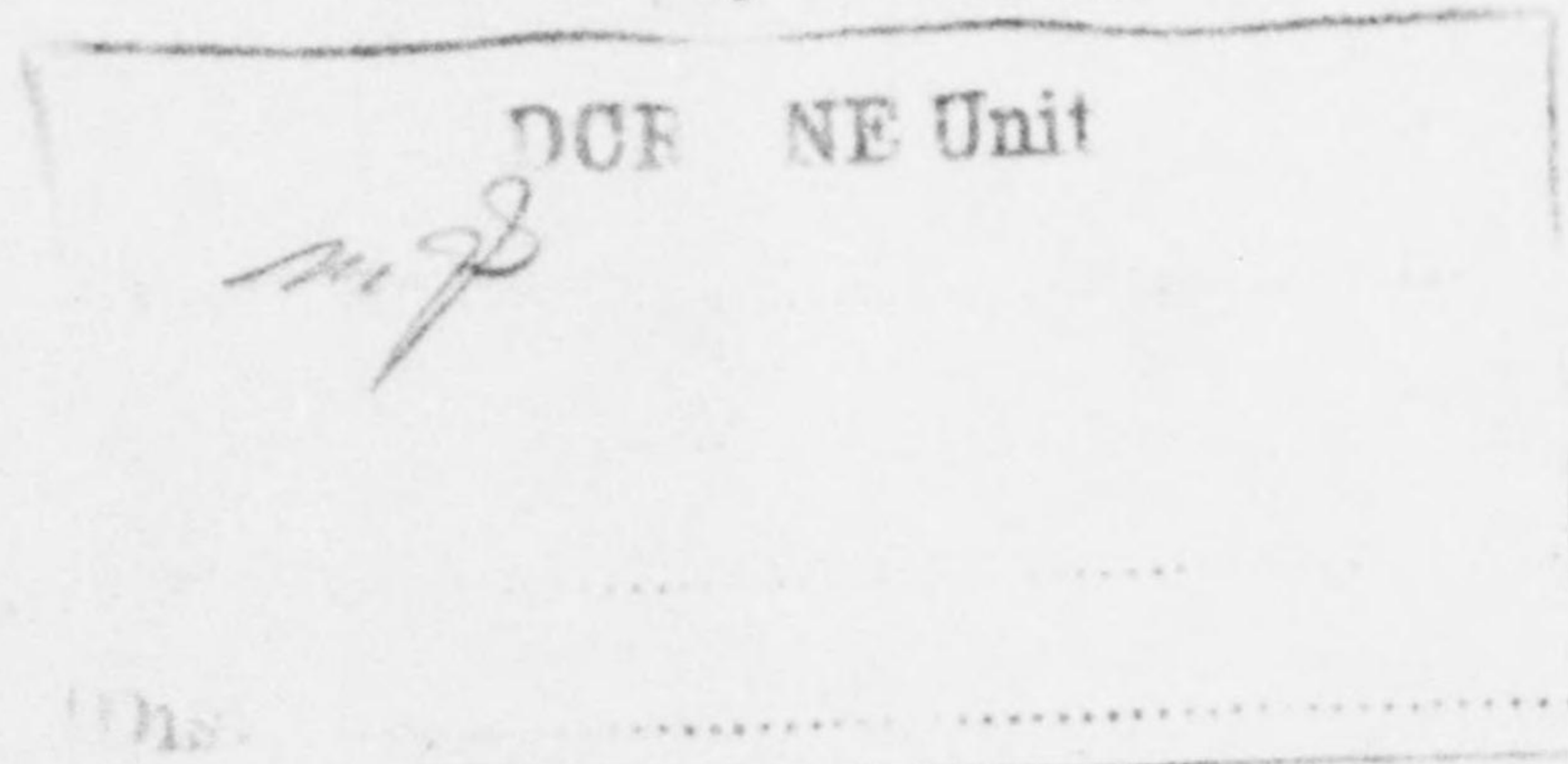
*Nelson T. Johnson*

Nelson T. Johnson  
Secretary General



Enclosures:

- (a) Policy Decision.
- (b) Excerpt from Minutes.



Confidential File

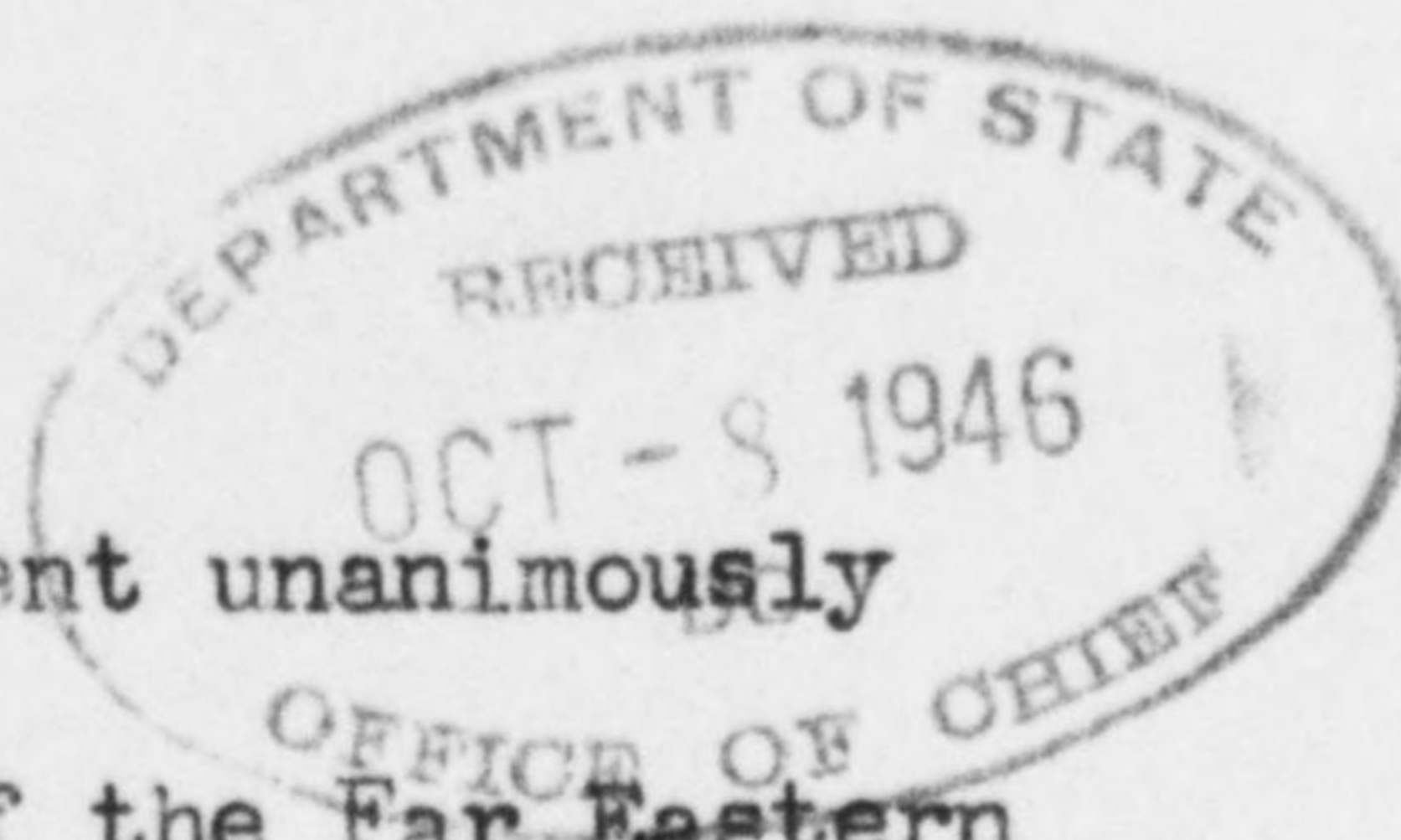
894.011/10-146

OCT 9 - 1946

8 FILED 1/10-146



FAR EASTERN COMMISSION  
2516 MASSACHUSETTS AVENUE, N. W.  
WASHINGTON 8. D. C.



The attached copy of a document unanimously adopted at the twenty-eighth meeting of the Far Eastern Commission, held at 2516 Massachusetts Avenue, Northwest, Washington, D. C., on 25 September 1946, has been compared with the original text and is certified to be a true copy.

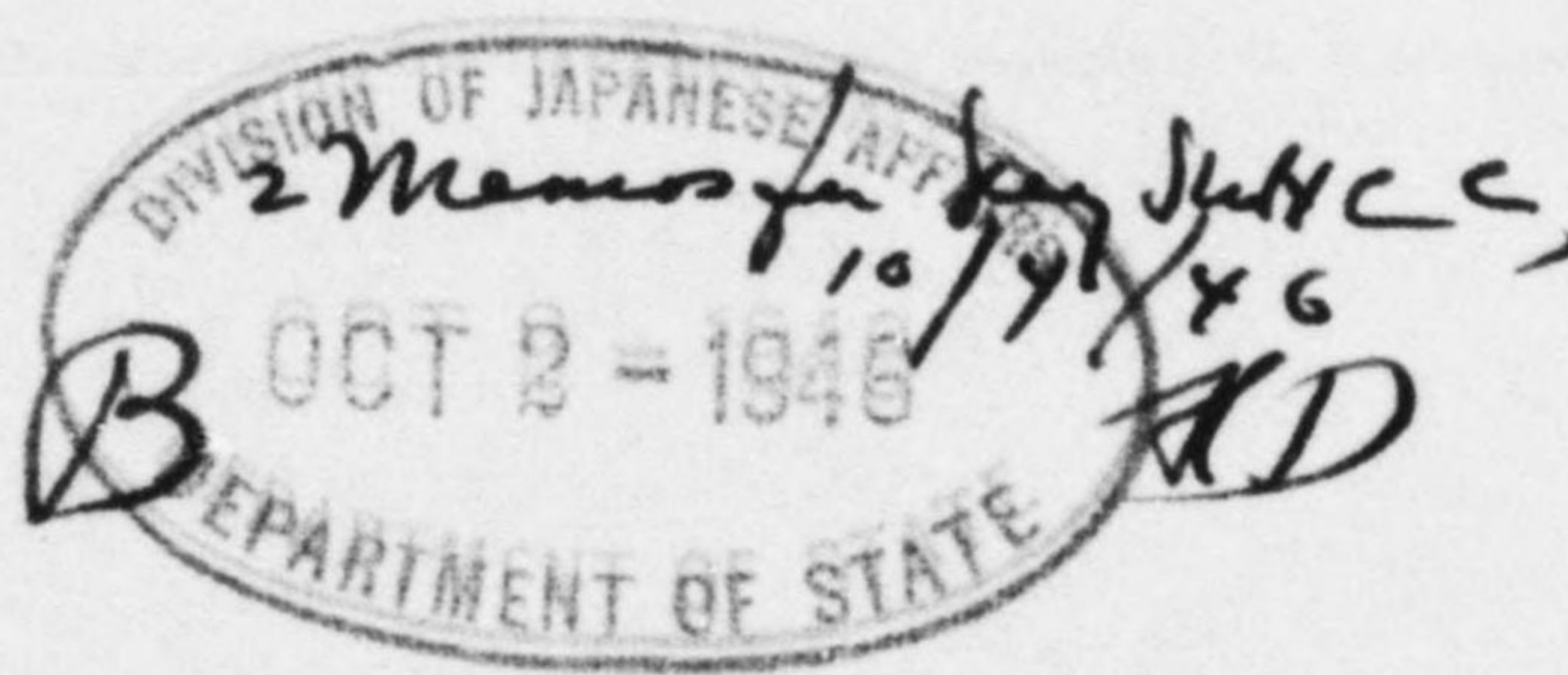
*Nelson T. Johnson*

Nelson T. Johnson  
Secretary General

Washington, D. C.  
1 October 1946

Confidential File

*EW 894.011 / 10-146*





CONFIDENTIAL

ENCLOSURE "A"

FURTHER POLICIES RELATING TO A NEW JAPANESE CONSTITUTION

The Far Eastern Commission reaffirms its previous decision, taken in FEC-031/19, Basic Principles for a New Japanese Constitution, that all cabinet ministers should be civilians, and further decides as a matter of policy that the House of Councillors should not have any predominance over the House of Representatives. The Commission considers essential its continuing right to scrutinize the implementing legislation very carefully to insure that such predominance is not established.

FEC-087/9



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ENCLOSURE "B"EXCERPT FROM THE MINUTES OF THE TWENTY-EIGHTH MEETING  
OF THE FAR EASTERN COMMISSION ON 25 SEPTEMBER 1946ITEM 5 - STATEMENT BY COMMITTEE NO. 3: CONSTITUTIONAL AND LEGAL REFORM,  
ON FEC-087/5, SOVIET PROPOSALS CONCERNING THE DRAFT CONSTITU-  
TION (FEC-087/6)

SIR CARL BERENDSEN moved pro forma and MR. VESUGAR seconded the motion that the report of Committee No. 3 on the amendments to the draft constitution proposed by the Soviet representative in FEC-087/5 be adopted. In the light of the discussion and action recorded below, SIR CARL BERENDSEN, with the consent of Mr. Vesugar, later withdrew his pro forma motion.

THE COMMISSION considered seriatim the statement of Soviet views (FEC-087/5) in regard to the draft constitution, together with the report by Committee No. 3 on these views (FEC-087/6).

ADMIRAL RAMISHVILI moved the adoption of paragraph 1 of FEC-087/5 as follows:

"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 have no connection with the definition of the role of the Emperor."

The motion lapsed for lack of a second.

ADMIRAL RAMISHVILI moved the adoption of the first sentence of paragraph 2 of FEC-087/5 as follows:

"The Diet should have the right to appoint not only the prime minister, but also the remaining ministers of the Cabinet."

The motion lapsed for lack of a second.

DR. KOO moved and MAJOR PLIMSOLL seconded the motion that the principle in paragraph 2 of FEC-087/5 that "All the ministers should be  
civilians

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civilians" be adopted, in the light of the favorable report on this point by Committee No. 3.

SIR CARL BERENDSEN said that unanimous agreement on this principle already existed. He pointed out that the Commission had already laid down this principle in its statement of basic principles for a new Japanese constitution (FEC-031/19) and that the Supreme Commander, according to the communication from him (FEC-087/8) considered earlier on the agenda, had obtained the agreement of the Japanese Government to this principle. SIR CARL said that he realized that the Soviet representative entertained doubt as to whether the Diet would include the desired provision in the constitution. He thought it not likely that the Diet would challenge the authority of the Supreme Commander in this manner, and he suggested that steps to meet such a contingency need not be taken now.

GENERAL MCCOY said that, although the principle had been included in the statement of basic constitutional principles, there was no harm in reaffirming it.

The motion by Dr. Koo was carried unanimously.

ADMIRAL RAMISHVILI moved the adoption of paragraph 3 of FEC-087/5 as follows:

"Members of the Supreme Court should be elected by the Diet for 5 years service."

The motion lapsed for lack of a second.

ADMIRAL RAMISHVILI moved the adoption of paragraph 4 of FEC-087/5 as follows:

"The Article concerning regency should be worded in the sense that regency is established on the principle of the free expression of will

Encl. "B"

-2-

of



146

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 a 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.'"

The motion lapsed for lack of a second.

ADMIRAL RAMISHVILI moved and DR. DE KAT seconded the motion that paragraph 5 of FEC-087/6 be adopted as follows:

"The Committee agrees that the House of Councillors should not have any predominance over the House of Representatives and considers that it will be essential to scrutinize the implementing legislation very carefully to ensure that such predominance shall not be established."

The motion was carried unanimously.

SIR CARL BERENDSEN moved and MR. VESUGAR seconded the motion that the Commission reaffirm its previous decision taken in FEC-031/19, Basic Principles for a New Japanese Constitution, that all cabinet ministers should be civilians and decide as a matter of policy that the House of Councillors should not have any predominance over the House of Representatives and that the Commission state that it considers essential its continuing right to scrutinize the implementing legislation very carefully to ensure that such predominance not be established. The motion was carried unanimously.

THE COMMISSION unanimously agreed to table FEC-087/6.

ADMIRAL RAMISHVILI presented the following formal statement:

"Proceeding from the desire to bring the draft of the Japanese Constitution into full compliance with the Potsdam Declaration and the decision of the Far Eastern Commission: FEC-031/19, the Soviet Delegation has made the following proposals at the 26th meeting of the Far Eastern Commission:

(a) The provision to the effect that 'sovereign power resides in the people' should constitute a separate Article, and not in connection with the definition of the role of the Emperor.

(b) To

Encl. "B"



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(b) To recognize the right of the Diet to appoint not only the prime minister but also the remaining Cabinet ministers.

(c) All the ministers, including the prime minister, should be civilians.

(d) The members of the Supreme Court should be elected by the Diet for 5 years service.

(e) The Constitution Article concerning regency should be worded in the sense that regency is established on the principle of the free expression of will of the Japanese people with whom the sovereign power resides.

(f) The USSR Delegation doesn't insist on the unicameral system provided the House of Councillors has no predominance over the House of Representatives.

"The Soviet Delegation is convinced that the above proposals are in full accord with the principles set out in the Potsdam Declaration and with the decisions of the Far Eastern Commission: FEC-031/19, and represent the necessary provisions of a truly democratic Constitution.

"However, the proposals of the Soviet Delegation under (a), (b), (d) and (e) have been rejected by the majority of the members of the Far Eastern Commission.

"Under these circumstances, the Soviet Delegation, acting on behalf of the Government of the USSR, states that it does not consider it possible to approve the draft of the Japanese Constitution, as the latter, without inclusion of the above-mentioned proposals, does not comply with the principles set out in the Potsdam Declaration nor with the decision of the Far Eastern Commission: FEC-031/19.

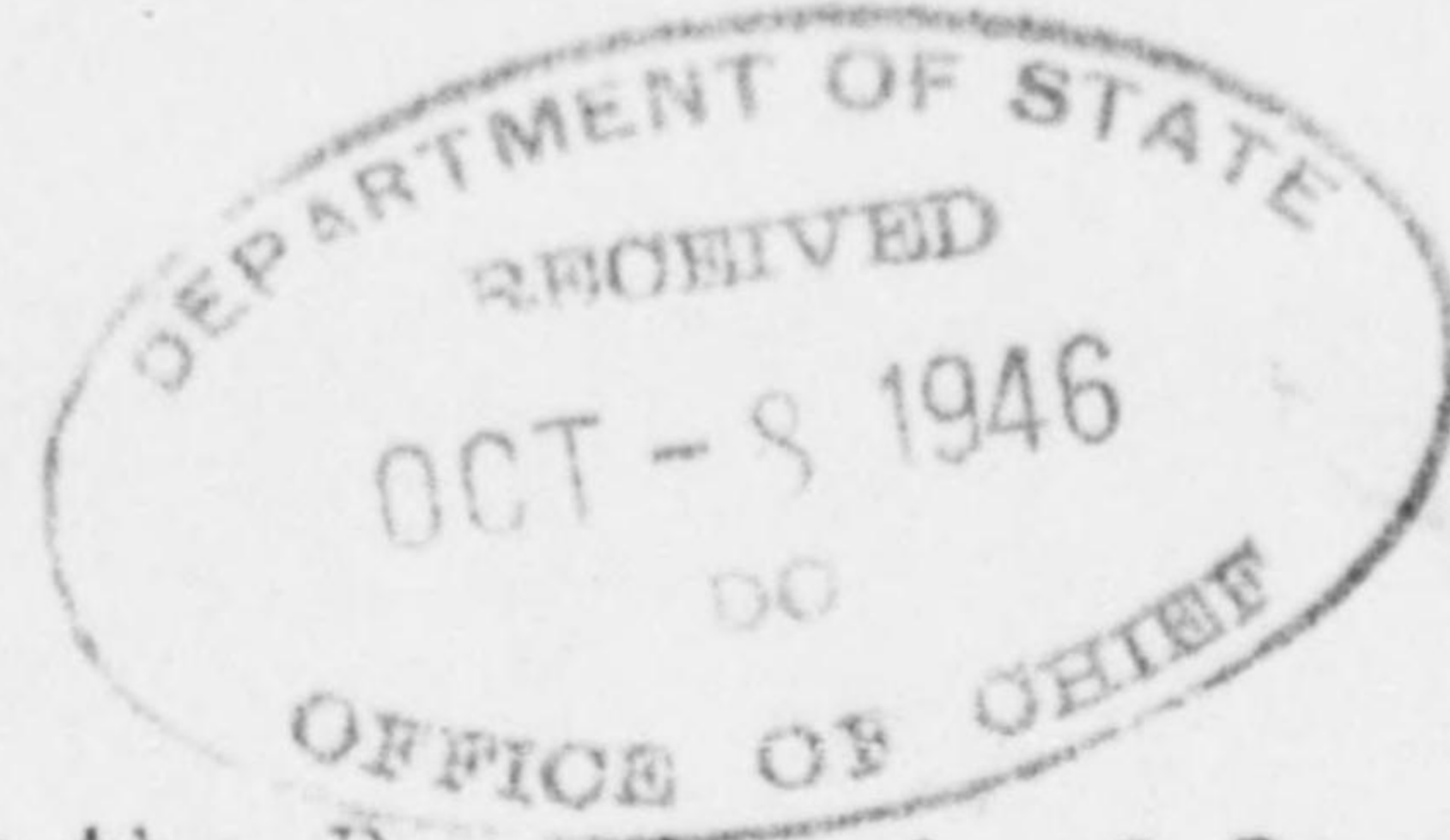
"The Soviet Delegation reserves its right of criticism and consideration in future of the questions concerning the Japanese Constitution."

Encl. "B"

-4-



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DIRECTIVE

1. The following directive prepared by the Department of State to implement the policy adopted by the Far Eastern Commission on 25 September 1946 under the provisions of paragraph II, A, 1 of its Terms of Reference has been received from the State, War and Navy Departments for transmission to you for guidance in accordance with paragraph III, 1 of those terms of reference.

2. The Far Eastern Commission reaffirms its previous decision, taken in FEC-031/19, Basic Principles for a New Japanese Constitution, that all cabinet ministers should be civilians, and further decides as a matter of policy that the House of Councillors should not have any predominance over the House of Representatives. The Commission considers essential its continuing right to scrutinize the implementing legislation very carefully to insure that such predominance is not established.

3. See War-X for supplementary explanation of above.

Confidential File

FID 894.011 / 10-146



SUPPLEMENTARY CABLE

The directive forwarded you in War-Y, to which this message is a supplement for your information, was passed under circumstances somewhat different from normal Commission procedure.

You will note that in the directive the Commission reaffirms its previous decision that all cabinet ministers should be civilians. This reaffirmation was agreed after receipt of your message (War-Z) to the effect that you had persuaded the Japanese Government to write such a provision into the Constitution. There was some question within the U. S. Government as to whether there was any need to send such a reaffirmation to you as a directive in view of your statement that you had taken the necessary steps. In view of the fact, however, that you have taken this action and consequently no harm can be done by repeating this policy to you, and of the further fact that the Commission expects their reaffirmation to be conveyed you, the reaffirmation is included in the directive in order that the United States may fulfill its obligations with the Commission according to paragraph III, 1 of the Terms of Reference of the Commission.

As to the Commission's other decision, that the House of Councillors should not have any predominance over the House of Representatives, there was similarly some question in the U. S. Government as to whether the Commission was merely making a statement of its own intentions or whether it intended this policy to be conveyed you as a directive. Since this matter will be of some concern to you in any case, and since you should be aware of the Commission's **concern** in this connection, again, this policy decision is being transmitted you as a directive in accordance with paragraph III, 1 of the Terms of Reference.

The last sentence of the directive, with respect to implementing legislation, is another matter of which you should be aware in order that there may be appropriate coordination between the Commission and yourself.

In accordance with paragraph III, 4 of the Terms of Reference, the U. S. Government intends to file with the Commission only the directive which is being sent you but not repeat not this supplementary cable.



149

**MEMORANDUM FOR THE SECRETARY, SWNCC**

**Subject: Opinion of United States Government and the Chairman of the Far Eastern Commission on Directive Relative to Further Policies Relating to a New Japanese Constitution.**

With reference to the draft directive prepared on the basis of a policy decision unanimously approved at the 28th meeting of the Far Eastern Commission on September 25, 1946, relative to Further Policies Relating to a New Japanese Constitution and forwarded to the Secretary, SWNCC, it is requested that the enclosed message be forwarded to the Joint Chiefs of Staff for transmission to the Supreme Commander for the Allied Powers for his information.

**J. H. Hilldring  
Assistant Secretary**

**Enclosure:**

**Draft Message to the  
Supreme Commander for  
the Allied Powers**

Confidential File

894.011/10-146

SIGNED & RECEIVED  
IN SWNCC

10/8/46

JA:ALDanning/pm  
10/4/46

FE YKP

9/21/46  
1946 P.M.

DCF NE Unit

*mp*

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894.011/10-146



150

DRAFT MESSAGE TO SCAP

*Dept of State*  
It is the opinion of the ~~United States Government~~ and the Chairman of the Far Eastern Commission that the directive sent to you in WAR *HN* based on a policy decision of the Far Eastern Commission taken at its meeting of September 25 does not require any specific action by you. However, it has been forwarded to you as a directive in view of the obligation of the United States Government under paragraph III, 1, of the terms of reference of the Commission.

*member*  
You will note that the Far Eastern Commission reaffirms its previous decision that all cabinet ministers should be civilians. The Commission had been informed of your action in persuading the Japanese Government to amend the Constitution accordingly and therefore it was clear that no further action was necessary. However, the United States ~~delegate~~ saw no objection to the Commission's going on record as reaffirming its previous decision.

With regard to the decision that the House of Councilors should not have predominance over the House of Representatives, you will note that the only action the Commission contemplates in this matter is to scrutinize the implementing legislation. Consequently, it is the opinion of the ~~United States Government~~ and the Chairman of the Far Eastern Commission that no action by you is required other than supplying the Commission with texts of such legislation when they are submitted to the Diet.

*Dept of State*



151

10/7/46

MEMORANDUM FOR THE SECRETARY, SWNOG

**Subject: Directive Relative to Further Policies Relating to a New Japanese Constitution.**

There is enclosed a draft directive prepared on the basis of a policy decision unanimously approved at the 28th meeting of the Far Eastern Commission on September 25, 1946, under the provisions of paragraph II, A, 1, of its terms of reference. It will be noted that the policy decision is quoted verbatim in the enclosed draft directive.

It is requested that the enclosed directive be forwarded to the Joint Chiefs of Staff for transmission to General MacArthur for his guidance in accordance with paragraph III, 1, of the terms of reference of the Far Eastern Commission. It is assumed that if the Joint Chiefs of Staff have any question regarding the draft directive they will refer the matter to the State Department for clarification before transmitting a directive on the subject.

J. H. Hilldring  
Assistant Secretary

Enclosure:

Draft Directive

894.011/10-746

CS/HH

RECEIVED & RECEIVED  
IN SWNOG

JA:ALDunning/pm  
10/4/46

FE

10/8/46

9/26/46  
7 1946 P.M.

894.011/10-746



152

**DRAFT DIRECTIVE FROM JCS TO SCAP  
RELATIVE TO FURTHER POLICIES RELATING  
TO A NEW JAPANESE CONSTITUTION**

The following directive, prepared by the State Department to implement the policy adopted by the Far Eastern Commission on 25 September 1946 under the provisions of Paragraph II, A, 1, of its terms of reference, has been received from the State, War, and Navy Departments for transmission to you for guidance in accordance with Paragraph III, 1, of those terms of reference:

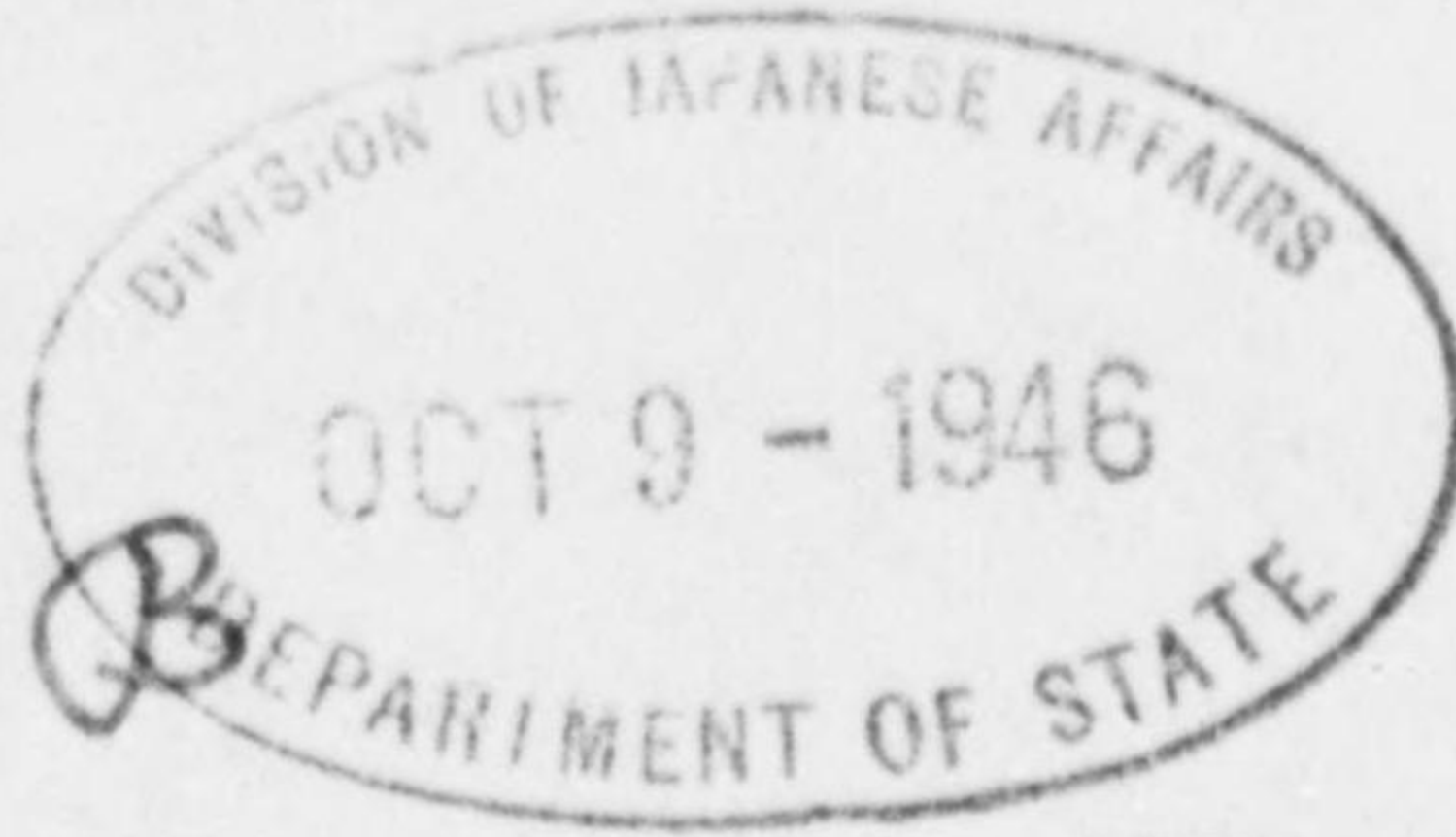
"The Far Eastern Commission reaffirms its previous decision, taken in FEC-031/19, Directive Serial No. 547 Basic Principles for a New Japanese Constitution, that all cabinet ministers should be civilians, and further decides as a matter of policy that the House of Councilors should not have any predominance over the House of Representatives. The Commission considers essential its continuing right to scrutinize the implementing legislation very carefully to insure that such predominance is not established."



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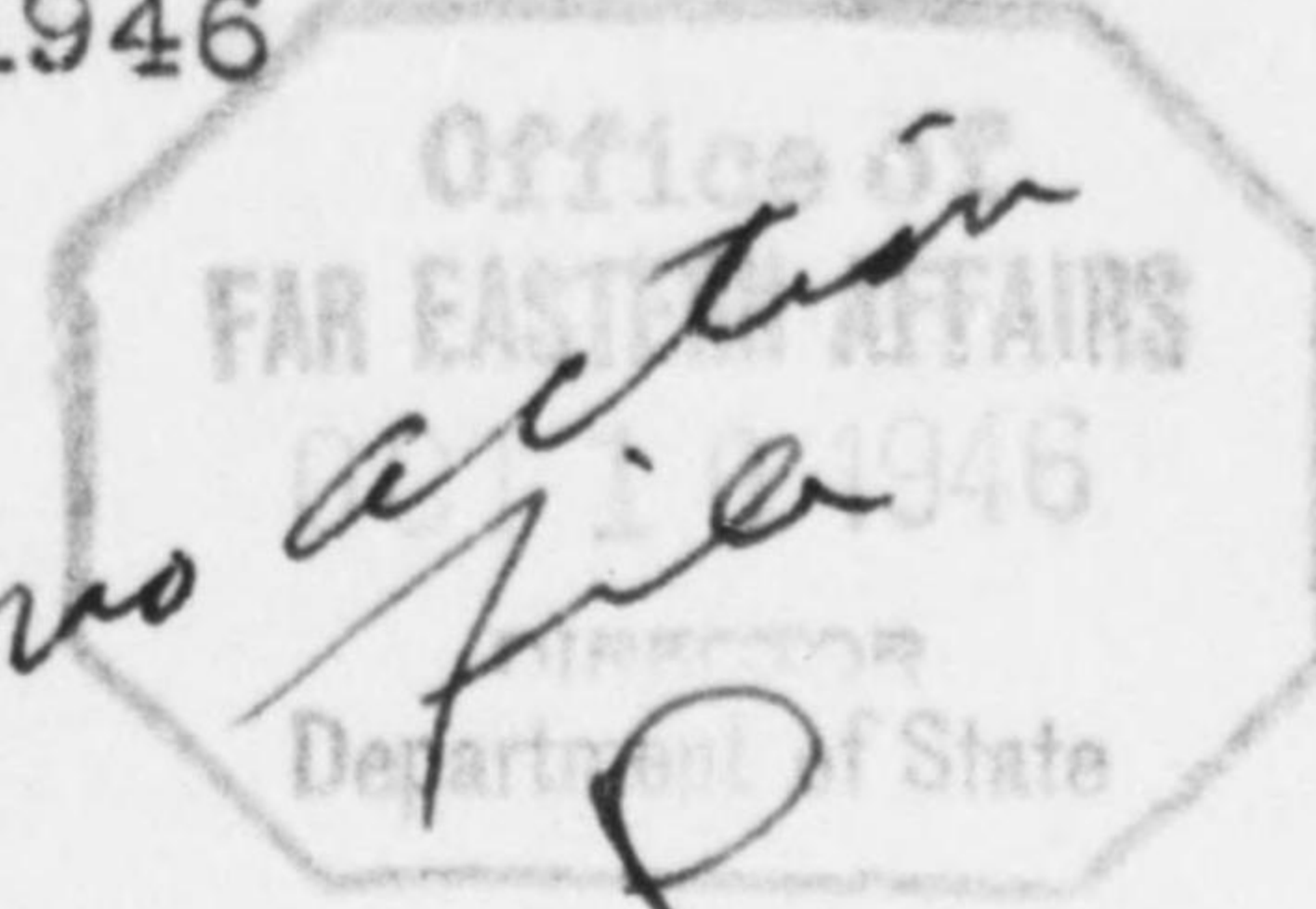
THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

*JA*  
*FE*



*DC/R*

SWN-4807  
8 October 1946



MEMORANDUM FOR THE SECRETARY OF STATE:

Subject: Amendments to New Constitution  
for Japan.

Reference: MC-IN-52490  
(7 Oct 46).

At the request of the Joint Chiefs of Staff,  
the enclosed message from the Commander in Chief,  
American Forces, Pacific is forwarded to the  
Secretary of State for his information.

For the State-War-Navy Coordinating Committee:

*JH* *H. H. Hilldring*  
J. H. HILLDRING,  
Chairman

894.011/10-846

Enclosure

Stamp: OCT 14 1946  
Handwritten initials: *WJ*

OCT 14 1946

FILED

894.011/10-8



WAR DEPARTMENT 154  
CLASSIFIED MESSAGE CENTER  
INCOMING CLEAR MESSAGE

OPERATIONAL PRIORITY

From: CINCAFPAC Tokyo Japan  
To: War Department for WARCOS JCS info copy to Mr Petersen  
Nr: 2 20663 7 October 1946

The House of Peers on 6 October by standing vote of 298 to 2 passed proposed new constitution for Japan with following amendments and revisions:

1. There are few minor changes in Japanese text of preamble, but they are stylistic changes only which do not alter English translation.

2. Article 15 is revised to read: "The people have the inalienable right to choose their public officials and to dismiss them."

"All public officials are servants of the whole community and not of any special group."

"Universal adult suffrage is guaranteed with regard to the election of public officials."

"In all elections, secrecy of the ballot shall be preserved inviolate, nor shall any voter be answerable, publicly or privately, for the choice he has made."

3. Article 59 is revised to read: "A bill becomes a law on passage by both houses, except as otherwise provided by the Constitution."

"A bill which is passed by the House of Representatives, and upon which the House of Councillors makes a decision

MC-IN-52490 (7 Oct 46)

UNCLASSIFIED



155

WAR DEPARTMENT  
CLASSIFIED MESSAGE CENTER  
INCOMING CLEAR MESSAGE

OPERATIONAL PRIORITY

Page 2

From: CINCAFPAC Tokyo Japan

Nr: Z 20663

7 October 1946

different from that of the House of Representatives becomes a law when passed a second time by the House of Representatives by a majority of 2/3 or more of the members present."

"The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a Joint Committee of both houses, as provided for by law."

"Failure by the House of Councillors to take final action within 60 days after receipt of a bill passed by the House of Representatives, time in recess excepted, may be determined by the House of Representatives to constitute a rejection".

4. Article 66 is revised to read:

"The cabinet shall consist of the Prime Minister, who shall be its head, and other ministers of state as provided for by law."

"The Prime Minister and other ministers of state shall be civilians."

"The cabinet, in the exercise of executive power, shall be collectively responsible to the Diet".

House of Representatives this date by standing vote of 342 to 5 adopted new version with amendments approved by upper house. Prior to this final action by House of Repre-

MC-IN-52490 (7 Oct 46)

UNCLASSIFIED



WAR DEPARTMENT 156  
CLASSIFIED MESSAGE CENTER  
INCOMING CLEAR MESSAGE

OPERATIONAL PRIORITY

Page 3

From: CINCPAC Tokyo Japan

Nr: Z 20663

7 October 1946

sentatives members of lower house constitution committee had  
deliberated of all changes adopted by House of Peers."

This ends all legislative action on constitution.

Action by Privy Council and date of promulgation will  
be reported. Promulgation not expected prior to 20 October.

End.

ACTION: JCS

INFO : AAF  
Admiral Leahy  
ASW  
CAD  
Admiral Nimitz  
ID  
P & O  
CSA

MC-IN-52490 (7 Oct 46)

DTG: 070951Z jjf

UNCLASSIFIED



THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

*File*  
*10-29-46*  
*FE*  
*DC/R*

OFFICE OF  
FAR EASTERN AFFAIRS  
OCT 15 1946  
Department of State  
SWN-4828  
16 October 1946

MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Directives Transmitted to SCAP  
by the Joint Chiefs of Staff

Enclosed are three copies of Directive,  
Serial No. 60, transmitted to SCAP by the Joint  
Chiefs of Staff. Copy No. 1 is for transmittal  
to the Far Eastern Commission and Copies Nos. 2  
and 3 are for the files of the State Department.

For the State-War-Navy Coordinating Committee:

*A. D. Reid.*  
A. D. REID,  
Secretary

Enclosures:  
Copy Nos. 1, 2, and 3  
of Serial No. 60

*WJL*

*Division of Japan*  
*10-17-46*  
*FEC.*  
*HD*  
OCT 16 1946  
DEPARTMENT OF STATE

OCT 29 1946  
FILED

CONFIDENTIAL FILE

894.011/10-1646



Serial No. 60

COPY NO. 2

10 October 1946

DIRECTIVE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSFURTHER POLICIES RELATING TO A NEW  
JAPANESE CONSTITUTION

The following directive, prepared by the State Department to implement the policy adopted by the Far Eastern Commission on 25 September 1946 under the provisions of paragraph II, A, 1, of its terms of reference, has been received from the State, War, and Navy Departments for transmission to you for guidance in accordance with paragraph III, 1, of those terms of reference:

"The Far Eastern Commission reaffirms its previous decision, taken in FEC-031/19,\* basic principles for a new Japanese Constitution, that all cabinet ministers should be civilians, and further decides as a matter of policy that the House of Councilors should not have any predominance over the House of Representatives. The Commission considers essential its continuing right to scrutinize the implementing legislation very carefully to insure that such predominance is not established."

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\* Serial No. 54.



FE

OCT 21 1946

**MEMORANDUM FOR THE SECRETARY GENERAL,  
FAR EASTERN COMMISSION**

In accordance with instructions of October 16, 1946, from the State-War-Navy Coordinating Committee, there is enclosed a certified copy of a directive, Serial No. 60, to the Supreme Commander for the Allied Powers regarding Further Policies Relating to a New Japanese Constitution, to be filed with the Far Eastern Commission under the provisions of paragraph III, 4, of its Terms of Reference.

894.011/10-1646

CS/V

**J. H. Hilldring  
Assistant Secretary**

**Enclosure:**

Copy No. 1 (certified) of  
Directive to Supreme Commander  
for the Allied Powers,  
Serial No. 60.

JA:ALD *AD*  
10-17-46 *AB*

FE *gcp*

OCT 18 1946 P.M.

TO: _____
FROM: _____
SUBJECT: _____
DATE: _____

the original  
inal. *AB*

894.011/10-1646



160

OCT 24 1946

MEMORANDUM FOR THE SECRETARY, SWNCC

**Subject:** Draft Directive Regarding Provisions  
For the Review of a New Japanese  
Constitution.

There is enclosed a draft directive prepared on the basis of a policy decision unanimously approved at the 30th meeting of the Far Eastern Commission on October 17, 1946, under the provisions of paragraph II, A, 1, of its Terms of Reference. It will be noted that this policy decision is quoted verbatim in the enclosed draft directive.

It is requested that the enclosed directive be forwarded to the Joint Chiefs of Staff for transmission to General MacArthur for his guidance in accordance with paragraph III, 1, of the Terms of Reference of the Far Eastern Commission. It is assumed that if the Joint Chiefs of Staff have any question regarding the draft directive they will refer the matter to the State Department for clarification before transmitting a directive on the subject.

J. H. Hildring  
Assistant Secretary

Enclosure:

Draft Directive.

OCT 23 1946 P.M.

A true copy of  
the signed origi-  
nal.

ALD HOB  
JA:ALDunning:mls  
10-18-46

J.F.E.

894.011/10-1746

CONFIDENTIAL FILE



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DRAFT DIRECTIVE REGARDING PROVISIONS  
FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

The following directive, prepared by the State Department to implement the policy adopted by the Far Eastern Commission on 17 October 1946 under the provisions of Paragraph II, A, 1, of its Terms of Reference, has been received from the State, War, and Navy Departments for transmission to you for your guidance in accordance with Paragraph III, 1, of those Terms of Reference:

"1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision 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.

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

FEC-C31/40



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OCT 24 1946

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY, SWNGC

**Subject:** Communication from the Chairman of the Far Eastern Commission for Transmittal to the Supreme Commander for the Allied Powers.

The Far Eastern Commission, acting under paragraph VI of its Terms of Reference which provides that the Commission "may make such arrangements through the Chairman as may be practicable for consultation with the Supreme Commander for the Allied Powers" requested its Chairman on October 17, 1946, to consult with the Supreme Commander for the Allied Powers regarding the time and manner of issuance of the policy decision on the Provisions for the Review of a New Japanese Constitution.

There is enclosed a draft consultative message on this subject.

It is requested that the enclosure be forwarded to the Joint Chiefs of Staff for transmission to the Supreme Commander for the Allied Powers.

J. H. Hilldring  
Assistant Secretary

*JH*

Enclosure:

Draft Message.

A true copy of the signed original.

*pk*

23 1946 P.M.

JA: ALanning: sg  
10-21-46

FE  
*J.C.V.*

894.011/10-1746

CONFIDENTIAL FILE



163

**E N C L O S U R E****REQUEST FOR CONSULTATION WITH THE SUPREME COMMANDER  
FOR THE ALLIED POWERS REGARDING PROVISIONS FOR THE  
REVIEW OF A NEW JAPANESE CONSTITUTION**

\* \* \* \*

Before the policy decision regarding Provisions for the Review of a New Japanese Constitution (directive forwarded to the Supreme Commander for the Allied Powers as War \_\_\_ ) was formerly approved by the Far Eastern Commission on October 17, 1946, Ambassador Makin, Australian Representative on the Far Eastern Commission, stated with reference to the announcement of the policy decision that the Australian view was that the announcement should take place immediately following its adoption. However, Mr. Makin agreed that the Supreme Commander should be consulted on the question of publication. Sir Carl Berendsen, the New Zealand Representative, expressed general agreement with the views of Mr. Makin.

The U. S. member made the formal statement to the effect that the U. S. was prepared to agree to the policy decision "provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider a time and manner of issuance of the policy decision embodied in the paper."

General McCoy moved and Mr. Makin seconded the motion that the Commission adopt the policy decision regarding Provisions for the Review of a New Japanese Constitution with the understanding that the Chairman be authorized to consult with the Supreme Commander to determine his views regarding the time and manner of issuance of the policy decision and that after the Supreme Commander's views had been received the Commission would reconsider the time and manner of such issuance. The motion was carried unanimously.

In accordance with the above, the views of the Supreme Commander are requested as to the time and manner of the issuance of the policy decision regarding Provisions for the Review of a New Japanese Constitution.



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FAR EASTERN COMMISSION  
2516 MASSACHUSETTS AVENUE  
WASHINGTON 8, D. C.

DEPARTMENT OF STATE  
OCT 25 1946  
COMMUNICATIONS SECTION  
CONFIDENTIAL

DEPARTMENT OF STATE  
OCT 15 1946

17 October 1946

*Sumner*  
*1. draft decision - 10/18/46*  
*2. draft consultation memo - 10/21/46*

*File*  
*10-2846*

The Honorable Dean Acheson  
Acting Secretary of State  
Washington, D. C.

My dear Mr. Secretary:

The Terms of Reference of the Far Eastern Commission provide that one of the functions of the Commission should be to "formulate the policies, principles and standards in conformity with which the fulfillment by Japan of its obligations under the Terms of Surrender may be accomplished."

It is further provided that when such decisions are made by the Far Eastern Commission, "The United States Government shall prepare directives in accordance with the policy decisions of the Commission and shall transmit them to the Supreme Commander through the appropriate United States Government agency."

At the thirtieth meeting of the Far Eastern Commission held at 2516 Massachusetts Avenue, Northwest, Washington, D. C., on 17 October 1946, the enclosed policy decision relative to Provisions for the Review of a New Japanese Constitution was unanimously approved.

As Secretary General of the Far Eastern Commission, I have been instructed to forward this decision to you on behalf of the Commission, in order that the appropriate directives may be prepared and transmitted to the Supreme Commander in accordance with the Terms of Reference.

Before the enclosed policy decision was formally approved by the Commission, the United States member made a formal statement, recalling the position of his government to the effect that the United States was prepared to agree to the enclosed policy "provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider the time and manner of issuance of the policy decision embodied in the paper." The United States member's statement explained that the enclosed policy would be forwarded to the United States Government to be transmitted as a directive to the Supreme Commander in the usual fashion. At the same time the Chairman would request the Supreme Commander to express to the Commission his views as to the time and manner of issuance of the enclosed policy decision. After the views of the Supreme Commander have been received, the Commission would then be in a position to consider the time and manner of

*File*  
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Confidential File  
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CONFIDENTIAL

- 2 -

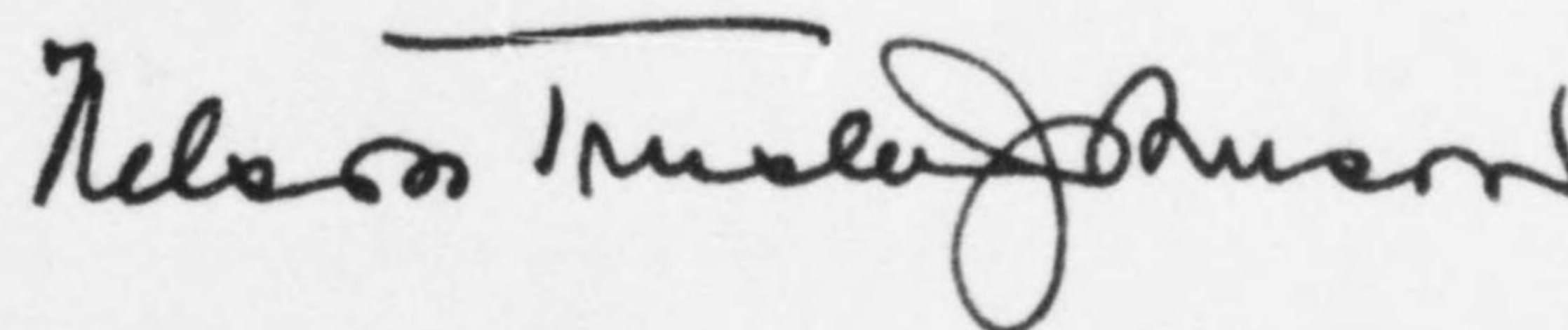
the issuance of this policy decision.

The Commission agreed to the proviso of the United States member and authorized him to consult with the Supreme Commander in order to obtain the Supreme Commander's views on this subject. I am enclosing, for your information and guidance, a copy of the draft minutes of the thirtieth meeting of the Commission covering this action.

The Chairman has accordingly instructed me to request, in his behalf, that the United States Government, in transmitting the enclosed policy decision to the Supreme Commander, at the same time inform the Supreme Commander of the Commission's discussions as set forth in the enclosed excerpt from the draft minutes and request his views with respect to the appropriate time and manner of issuance of the policy decision enclosed herewith.

It is requested that the enclosed policy decision, as well as the formal consultation accompanying it, both be classified as confidential.

Sincerely yours,

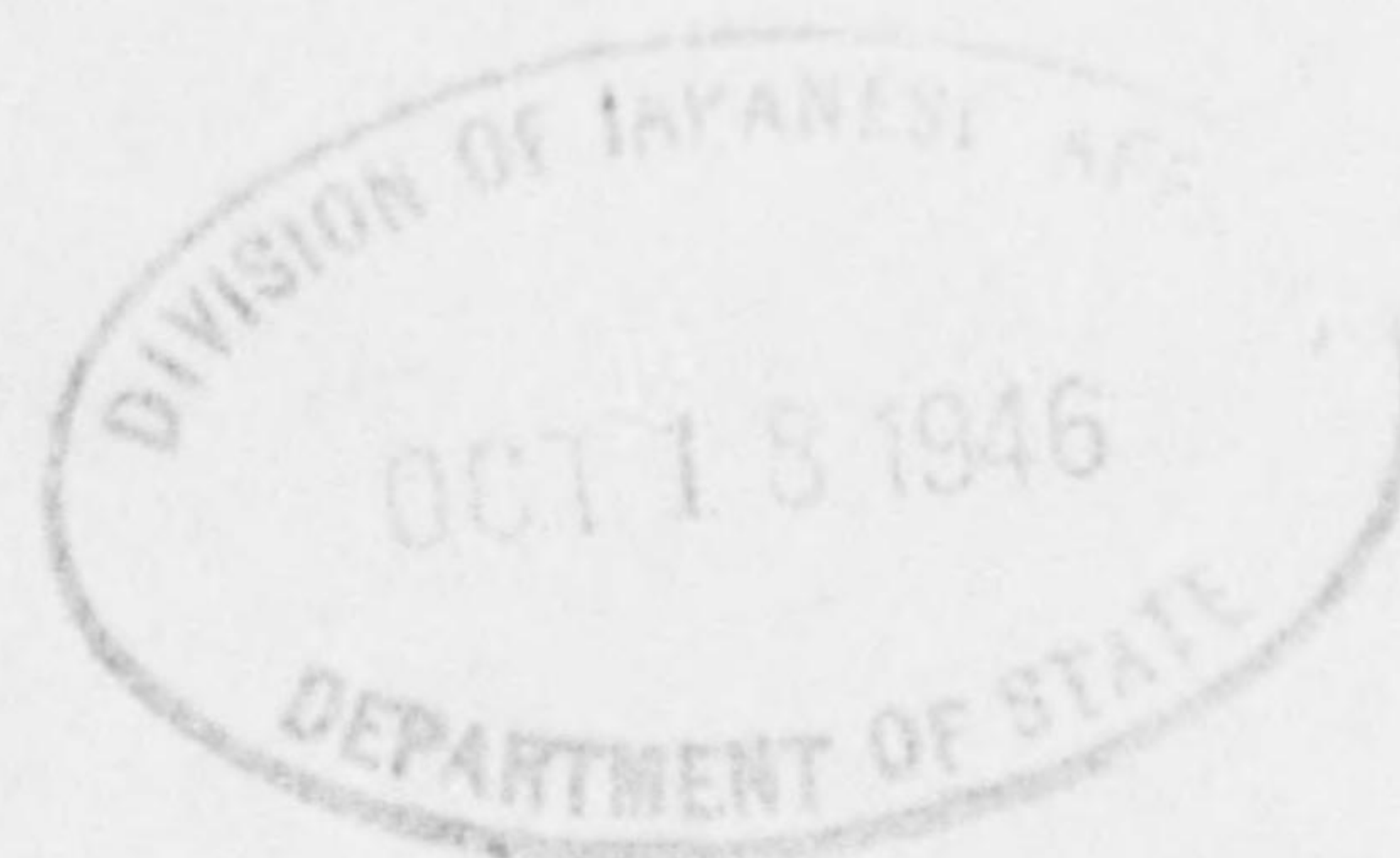


Nelson T. Johnson  
Secretary General

Enclosures



FAR EASTERN COMMISSION  
2516 MASSACHUSETTS AVENUE, N. W.  
WASHINGTON 8, D. C.



The attached copy of a document unanimously adopted at the thirtieth meeting of the Far Eastern Commission, held at 2516 Massachusetts Avenue, Northwest, Washington, D. C., on 17 October 1946, has been compared with the original text and is hereby certified to be correct.

A handwritten signature in cursive script, which appears to read "Nelson T. Johnson".

Nelson T. Johnson  
Secretary General

Washington, D. C.  
17 October 1946



CONFIDENTIAL

ENCLOSURE

PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision 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.

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



EXCERPT FROM THE MINUTES OF THE THIRTIETH MEETING OF THE FEC, 17 OCT. 1946

CONFIDENTIAL

ITEM 4 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/40)

GENERAL McCOY said that informal consultation participated in by the Australian, Soviet, and United States representatives had resulted in the agreement by those three on the present version of the review paper.

MR. MAKIN said that the only remaining difference of opinion was as to the time of announcement to the Japanese of the adoption of the review principle. He recalled that ever since the original proposal for review was made by Dr. Evatt the general opinion on the Commission had been that announcement should follow immediately upon adoption of the policy by the Commission. The United States Government, however, had since doubted the wisdom of this course and had advocated postponement of announcement. The Australian view, he continued, was that announcement of the policy should take place immediately following its adoption. To delay announcement, he pointed out, might lay the Commission open to the charge from the Japanese that it had broken faith by not declaring to them the existence of the review provision, particularly since the Japanese were planning elaborate ceremonies to celebrate the new constitution.

Despite this conviction on the part of his government, MR. MAKIN said, he was prepared, in order to secure unanimous adoption of the paper, to consent to delay in the time of the announcement to the Japanese of adoption of the policy. He agreed that the Supreme Commander should be consulted on the question of publication. He urged, however, that such announcement take place as soon as possible, and that it not be delayed later than the date of promulgation of the constitution.

SIR CARL BERENDSEN expressed general agreement with the views of Mr. Makin. He also expressed general agreement with the present document and was, indeed, pleased to see that the Commission had reached an agreement on the affirmation of the principle of review. He asked what difficulties the United States Government now saw in connection with the immediate announcement of the adoption of this paper. He conceded that it would have been unwise to announce such a policy while the constitution was under consideration by the Japanese Diet and he granted, furthermore, that it might be unwise to announce the decision before promulgation of the constitution. However, he said, he could not understand why the United States Government deemed it unwise to announce the review principle at the time of promulgation, and he asked for an explanation of the United States position on this point. GENERAL McCOY replied that numerous reasons had existed for the United States position. One of these reasons had been consideration for the difficult position of the Supreme Commander who had felt that nothing should be done which, in the eyes of the Japanese, would condemn a constitution at the moment of its adoption by them. Other reasons for the United States position had been of a legal nature, and these points had now been met by the present version of paragraph 1.

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CONFIDENTIAL

GENERAL McCOY presented the following formal statement:

"At the meeting of the Commission on September 21st, I stated that my Government is prepared to accept the Review paper provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider the time and manner of issuance of the policy decision embodied in the paper. That is: if the pending paper is approved by the Commission, as we trust it will be, the next step, after transmitting this paper as a policy decision to the United States Government for communication as a directive to the Supreme Commander, will be to request the views of the Supreme Commander as to the time and manner of issuance of this policy decision. After the views of the Supreme Commander have been received, the Commission will then be in a position to consider the time and manner of the issuance of this policy decision.

"After this Review paper is passed, I should be pleased to be authorized to consult with the Supreme Commander in order to obtain his views on this subject."

DR. PATTERSON asked whether the reservation respecting "issuance" meant that the forwarding of a directive to the Supreme Commander would be delayed. GENERAL McCOY replied that the directive to the Supreme Commander would go forward immediately, but that the time of issuance in Japan and publicity was a question for continued consideration when the views of the Supreme Commander had been received.

GENERAL McCOY moved and MR. MAKIN seconded the motion that the Commission adopt FEC-031/40, with the understanding that the Chairman be authorized to consult with the Supreme Commander as to the Supreme Commander's views regarding the time and manner of issuance of the policy decision and that after the Supreme Commander's views had been received the Commission would reconsider the time and manner of such issuance. The motion was carried unanimously.

GENERAL McCOY said that the foregoing views of Mr. Makin and Sir Carl Berendsen would be communicated to the Supreme Commander at the time of requesting his views as to the time and manner of issuance of the policy decision.



NOV 4 1946

CONFIDENTIAL

MEMORANDUM FOR THE SECRETARY, SWNCC

Subject: SWN-4854, October 25, 1946 Concerning  
Transmission of Messages Dated  
October 10 and 18 for Transmittal to  
the Far Eastern Commission.

In reference to the transmittal of a copy of a message to SCAP dated October 10 which contains comment by the Department of State and the Chairman of FEC on a directive regarding further policies relating to a new Japanese Constitution, as this message was of an explanatory nature and was drafted at the instigation of the Department of State and the United States Member of FEC and was not requested by FEC, it is considered unwise to transmit copies of this message to the FEC. Consequently, copy No. 1 of the message to SCAP dated October 10 and forwarded in your memorandum, SWN-4854, of October 25, 1946 is returned herewith. Copies No. 2 and 3 have been retained for the Department of State files.

894.011/10-2546

OCB NE Unit	
<i>muf</i>	
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Enclosure:	
Dist:	

J. H. Hilldring  
Assistant Secretary

Copy No. 1 of message  
to SCAP.

*h*  
1946 P.M.

*H03*  
JA:HBorton:mls  
10-30-46

*JH*  
FE

A true copy of  
the signed original  
*[Signature]*

Confidential File

894.011/10-2546



STANDARD FORM NO. 64

*Office Memorandum* · UNITED STATES GOVERNMENT

DATE: 10-30-46

TO : SWNCC - Mr. Moseley  
FROM : JA - Mr. Borton  
SUBJECT: Attached memorandum.

Reference your memorandum of October 25 to Mr. Penfield and your remark that I had advised Colonel Field that I thought copies of the message dated October 18 should be made available to FEC, I am afraid that there has been some misunderstanding on this matter. Apparently I was not clear as to just what Colonel Field was referring to in his conversation with me as I do not feel it advisable to transmit to FEC a message such as this one which was designed to explain FEC action further to General MacArthur and was written for U.S. Government use and not that of FEC. You will note there is a memorandum from General Hilldring attached returning copies of the JCS message of October 18.

NOV 7 1946

FILED

1HB  
JA:HBorton:mls

FD 894.011/10-2546



COPY FOR DEPARTMENT OF STATE

UNITED STATES POLITICAL ADVISER FOR JAPAN

Tokyo, October 23, 1946.

Miss Anna Rothe,  
 Editor, Current Biography,  
 The H. W. Wilson Company,  
 950-972 University Avenue,  
 New York 52, New York.



FE/  
 JWS  
 JHP  
 HB  
 EF

Dear Miss Rothe:

I have received your letter of September 6, 1946, enclosing tear sheets of the September issue of Current Biography and requesting information as to any errors of fact therein.

Your publication is new to me and I have no knowledge of its policies or tendencies. However, in response to your request, I may say that errors of fact which I find in the text are numerous. Many of them are minor and perhaps not worthy of correction at this late date. Among the less minor I may mention the following:

In the first paragraph General MacArthur is referred to as head of the Occupation Forces in Japan. General MacArthur is Supreme Commander for the Allied Powers in Japan and as such is Commander in Chief of the Occupation Forces. The Commanding General is Lieutenant General Eichelberger.

You may wish to check the historical accuracy of the beginning of the fourth paragraph: "At the end of 1942, when Japan was making more gains in her war against China while armed clashes occurred between Chinese Government and Communist troops....". Incidentally, I went to Chungking in May 1943 not 1942 and was United States chargé d'affaires there from May to September and also for a period in 1944.

The statement that General Hurley "effected his removal together with other members of the Chungking embassy...." is incorrect. Pursuant to the general policy that Foreign Service officers not serve more than two summers in Chungking and in response to my own desire not to remain in Chungking—request for an expression of which had been made in December 1944—I received orders transferring me from Chungking in March, before the incident

occurred



- 2 -

occurred to which General Hurley raised public objection.

Your statement of General Hurley's complaint might also be corrected. As Mr. Byrnes made clear before the Senate Foreign Relations Committee I had sent a telegram to Washington which, in the light of the developing situation, suggested a change in tactics for discussion with General Hurley.

In the next paragraph the statement of General MacArthur's title is incorrect and I believe that the reference to a statement by the Under Secretary is not entirely in place, especially as the lifting of it from its context gives emphasis to an incorrect implication.

In the same paragraph there is a quotation purporting to outline my duties. I do not know where this quotation has come from as I have never seen any such instruction.

In the following sentence there is a statement that the "General had overstepped his bounds as a military commander in issuing a policy-making statement without consulting Washington". I know of no foundation whatsoever for this sentence. I believe that if you would read the provisions of the Moscow Communiqué of December 27, 1945, you would obtain a clear picture of the role of the Supreme Commander in the regime of control for Japan and as the representative of the Allied Powers here.

In the next paragraph the Allied Council for Japan is stated to represent the Far Eastern Commission. This is incorrect. ~~The~~ <sup>a</sup> reading of the Moscow Communiqué will also clarify this matter.

At the end of the paragraph in question the statement that newspaper men criticized me for a "tendency to impugn the Soviet delegate" etc., is incorrect to the extent that such criticism has been voiced by some newspapers but by no means all or even a majority.

The "manifesto" stated in the next paragraph to have been "adopted by the Japanese" apparently refers to a petition presented by a committee in charge of the May Day demonstration; it was not a petition adopted by the Japanese people and it spoke for only a small group. The statement that I said it had originally been drawn up by a foreign power is not correct.

In the next paragraph the statement that I branded a Soviet  
labor



- 3 -

labor legislation program as Communistic is also incorrect as will appear from a study of the record. The statement that "MacArthur declared that one of the Soviet recommendations, a proposal that workers be allowed to take over plants closed down by owners, was a violation of private property rights" is also incorrect. General MacArthur has never made any such statement. For an accurate account of the other matters mentioned in that paragraph I would also refer you to the minutes of the meetings. As now outlined the matters covered in the paragraph are not correctly stated and give rise to wide misinterpretation.

The statement of the Secretary of State in regard to the Hurley affair was published in the State Department Bulletin which can readily be obtained from the Department. Minutes of the meetings of the Allied Council for Japan are, it is believed, accessible in the office of Mr. Erle R. Dickover in the Department of State.

Sincerely yours,

George Acheson, Jr.

Copy to: Department of State,  
Washington.



THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

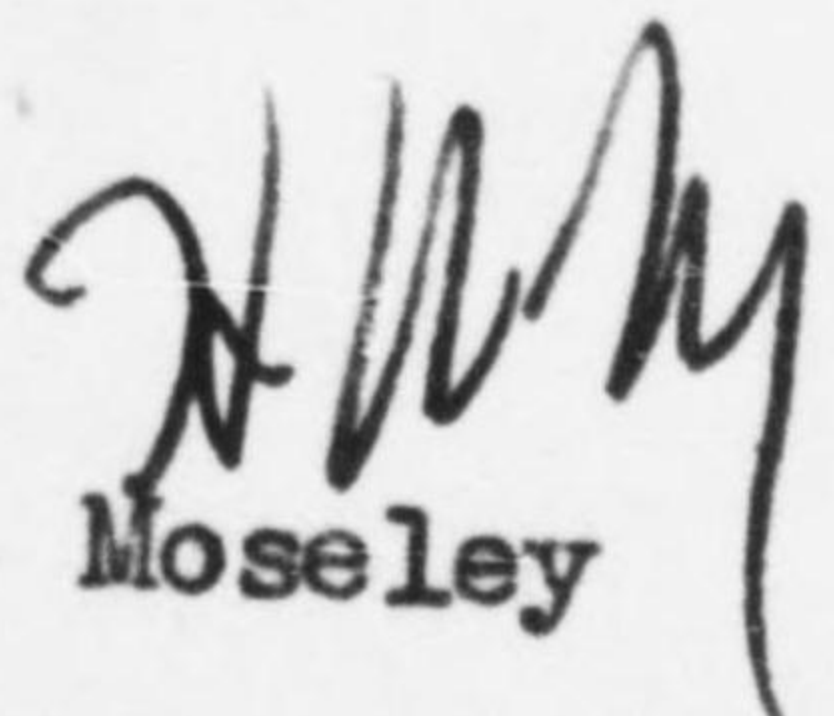
October 25, 1946

FE  
Mr. Penfield,

Your particular attention is invited to the copies of the messages sent to SCAP which set forth the comments of the Department of State and the Chairman of FEC. You will recall that this was sent as a separate message to make comment on the FEC Directive regarding further policies relating to a new Japanese Constitution.

Some question has been raised whether copies of the messages should be sent to FEC for regular distribution because they merely represent comments. However, Mr. Borton has advised Col. Field that he is of the opinion that they should be made available to FEC. I merely call this matter to your attention in order that you may determine whether they should receive the usual distribution.

Copies of the directive which this message refers to were sent to you a few days ago in the usual manner for transmittal to FEC.

  
H. W. Moseley

FD 894, 811 / 10-25-46



**CONFIDENTIAL**

THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

Division of Japanese  
Messages for Jap. Gen. PSC  
manage by Dept. of State  
reference to file  
OCT 28 1946 10-29-46  
file  
H.D.  
DEPARTMENT OF STATE

SWN-4854  
25 October 1946

MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Copies for the Far Eastern Commission  
of Messages to the Supreme Commander  
for the Allied Powers.

*xr 694.0031*

Enclosed herewith are three copies each of the  
messages dated October 10th and 18th, which were  
transmitted to the Supreme Commander for the Allied  
Powers by the Joint Chiefs of Staff. Copy No. 1 is  
forwarded for transmittal to the Far Eastern Commission  
and Copies No. 2 and 3 are for the files of the  
Department of State.

For the State-War-Navy Coordinating Committee:

*H. W. Moseley*  
H. W. MOSELEY,  
Secretary

Enclosures

DCR NE Unit  
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**CONFIDENTIAL FILE**

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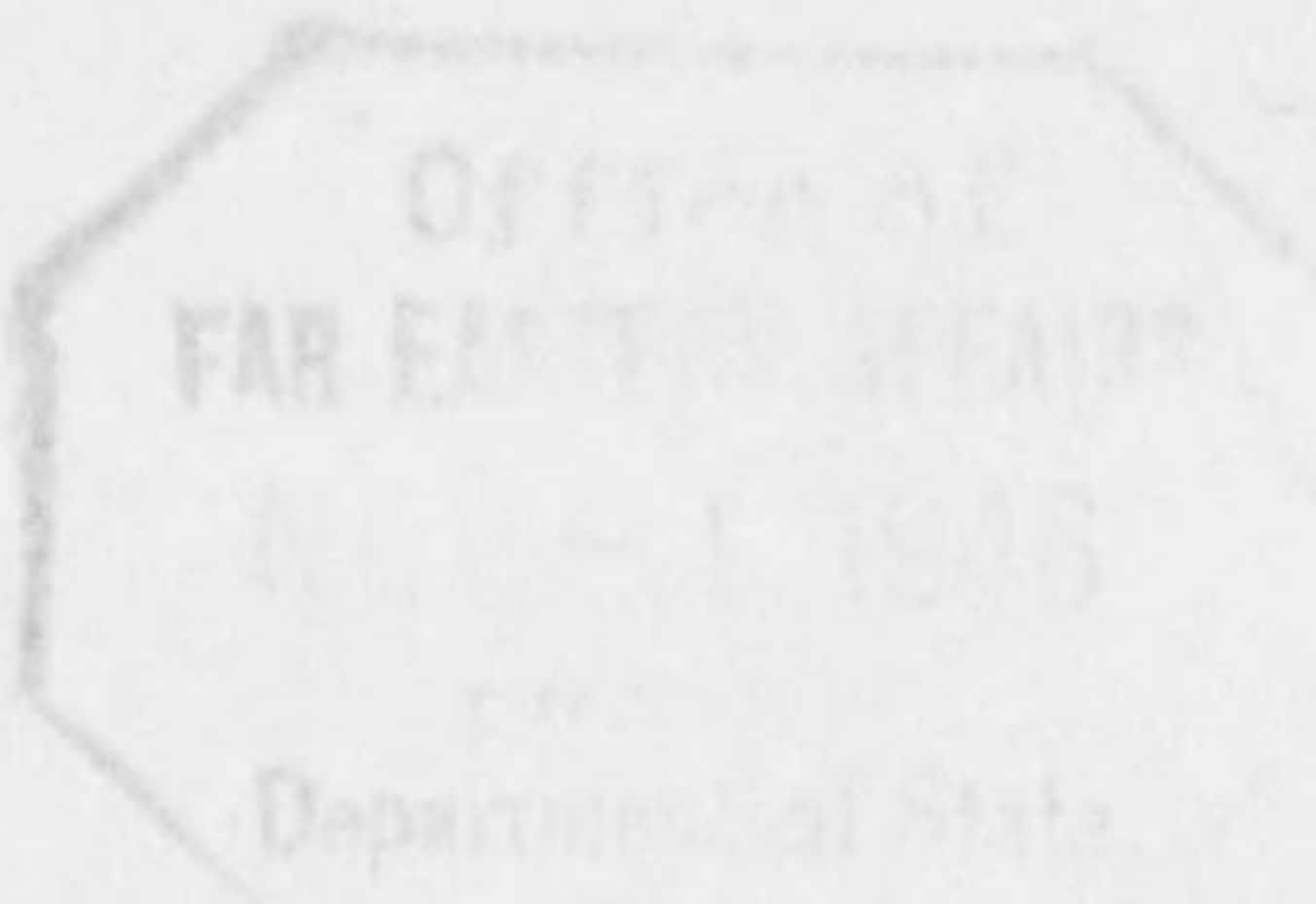
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**RESTRICTED**

THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

*File  
11-8-46*



SWN-4869  
31 October 1946

MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Directives Transmitted to SCAP  
by the Joint Chiefs of Staff

Enclosed are three copies of Directive, Serial No. 62, transmitted to SCAP by the Joint Chiefs of Staff. Copy No. 1 is for transmittal to the Far Eastern Commission and Copies Nos. 2 and 3 are for the files of the State Department.

For the State-War-Navy Coordinating Committee:

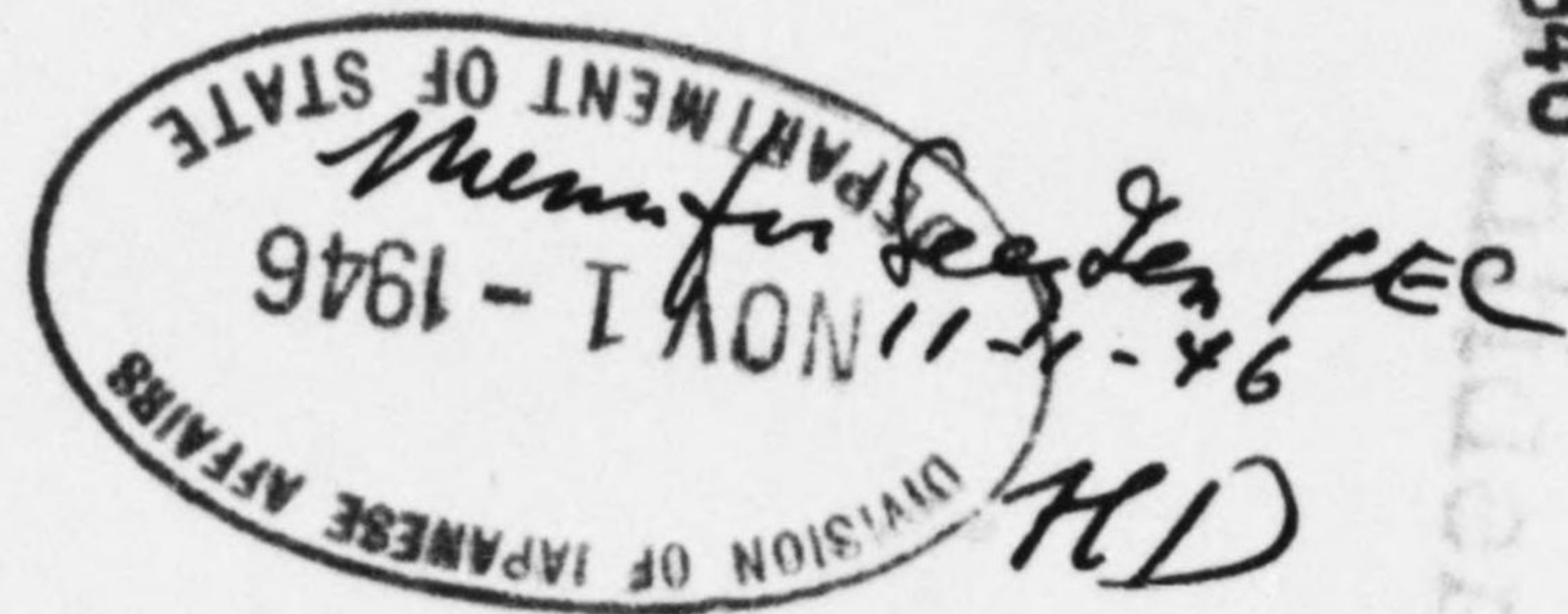
*H. W. Moseley*  
H. W. MOSELEY,  
Secretary

894.011/10-3146

NOV 8 1946

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Enclosures:  
Copy Nos. 1, 2, and 3  
of Serial No. 62



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*894.011/10-31*



**RESTRICTED**  
THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

SWN-4869  
31 October 1946

MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Directives Transmitted to SCAP  
by the Joint Chiefs of Staff

Enclosed are three copies of Directive, Serial No. 62, transmitted to SCAP by the Joint Chiefs of Staff. Copy No. 1 is for transmittal to the Far Eastern Commission and Copies Nos. 2 and 3 are for the files of the State Department.

For the State-War-Navy Coordinating Committee:

H. W. MOSELEY,  
Secretary

Enclosures:  
Copy Nos. 1, 2, and 3  
of Serial No. 62

**RESTRICTED**

COPY TO ACCOMPANY ORIGINAL



RESTRICTEDCOPY NO. 3Serial No. 62

28 October 1946

DIRECTIVE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSDIRECTIVE REGARDING PROVISIONS FOR THE REVIEW  
OF A NEW JAPANESE CONSTITUTION

The following directive, prepared by the State Department to implement the policy adopted by the Far Eastern Commission on 17 October 1946 under the provisions of paragraph II, A, 1, of its terms of reference, has been received from the State, War, and Navy Departments for transmission to you for your guidance in accordance with paragraph III, 1, of those terms of reference:

"1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision 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.

"2. 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 1 year



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and not later than 2 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 or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution."



*DCM*

**RESTRICTED**

NOV 5 1946

**MEMORANDUM FOR THE SECRETARY GENERAL,  
FAR EASTERN COMMISSION**

In accordance with instructions of October 31, 1946 from the State-War-Navy Coordinating Committee, there is enclosed a certified copy of a directive, Serial No. 62, to the Supreme Commander for the Allied Powers regarding Provisions for the Review of a New Japanese Constitution, to be filed with the Far Eastern Commission under the provisions of paragraph III, 4, of its Terms of Reference.

894.011/10-3146

TO: <i>sg</i>
FROM: <i>J. H. Hilldring</i>
SUBJECT: <i>62</i>
DATE: <i>NOV 5 1946</i>
INITIALS: <i>JH</i>

**J. H. Hilldring  
Assistant Secretary**

**Enclosure:**

**Copy No. 1 (certified) of  
Directive to the Supreme Commander  
for the Allied Powers,  
Serial No. 62.**

NOV 5 1946 P.M.

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11-1-46

*72 ghp*

A true copy of  
the signed original.  
*5/59*

CONFIDENTIAL

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DIVISION OF  
COMMUNICATIONS AND RECORDS  
TELEGRAPH BRANCH

164  
DEPARTMENT OF STATE  
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DEPARTMENT OF STATE

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Action: FE/JA  
Info: FROM: Tokyo  
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ESP NO: 495, November 1  
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Control 595  
Rec'd November 2, 1946  
3:40 p.m.  
Office of  
FAR EASTERN AFFAIRS  
NOV - 3 1946  
10:00 am  
DIRECTOR  
Department of State

Asahi daily is requesting each member Allied Council to make statement on new constitution for special supplement November 3, date constitution will be promulgated. Understand Soviet and Chinese members have assented and accordingly responsive to this request, with concurrence General MacArthur, I am giving Asahi statement as follows:

"The new constitution is being promulgated against a background of far reaching steps which have been taken in the past 14 months in Japan's progress from defeat to democracy. New political parties have arisen, the press has made vigorous use of its new freedom, the franchise has been expanded among men and extended to women, the labor movement has been liberated, the tenant farmer has been given new hope in ownership of the land he works, all men and women have become free to think and speak and assemble and worship.

The constitution gives new substance to these developments and creates essential framework for a democratic life. It is of profound significance that the new constitution comes into being through a Diet whose members hold their seats as a result of the free elections of April of this year. It is of profound significance that all aspects of constitutional revision have long received wide discussion in the press, in the govt and among the people. The Japanese people have learned that the past betrayed them and that their hopes lie in a new kind of future. The framework for democracy erected by the new constitution is the gateway to that future. There of course remains much to be accomplished. In final analysis the Japanese people must make their own way along the road from defeat to

democracy.

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NOV 18 1946

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PERMANENT RECORD COPY: THIS COPY MUST BE RETURNED TO DC/R CENTRAL FILES WITH NOTATION OF ACTION TAKEN.

*140.00119 Control  
(Japan)*



165

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-2- #495, November 1, from Tokyo

democracy. The future of democracy in Japan now rests squarely on the shoulders of the Japanese people and their leaders. Their achievement of full success will be in the interests of the world at large as well as in their own interests. I am confident that the Japanese people may look hopefully to a democratic future."

ATCHESON

JM:AGA

PLAIN



166



UNITED STATES POLITICAL ADVISER FOR JAPAN

Tokyo, November 2, 1946

RECEIVED  
DEPARTMENT OF STATE  
UNRESTRICTED  
No. 685  
NOV 15 1946

DC/M  
POLITICAL BRANCH

Office of  
EASTERN AFFAIRS  
NOV 23 1946  
Department of State  
*Please file 161*

NOV 18 1946  
DIVISION OF FOREIGN AFFAIRS  
REPORTING SERVICES

SUBJECT: Chinese Suggestion to Change Date of Promulgation of New Japanese Constitution.

The Honorable  
The Secretary of State,  
Washington.

~~DEPARTMENT OF STATE~~

XK740.00119 Control (Japan)

Sir:

I have the honor to enclose a copy of a letter, October 25, 1946, from Lieutenant General CHU Shih-ming, Chinese Member of the Allied Council for Japan and Chief of the Chinese Mission here, on the subject of the date for promulgation of the new Japanese constitution, and a copy of my reply, October 31, 1946, as Chairman of the Allied Council.

General Chu suggests that November 3, the date on which the Japanese commemorate the birthday of the late Emperor Meiji, is not an auspicious day for promulgation of the new constitution. The reason for this suggestion is stated to be that the Meiji period is remembered by the Japanese people chiefly for the success achieved in the expansion of their empire, marked as this period was by two aggressive wars against Japan's continental neighbors.

In my reply, which had the concurrence of General MacArthur, I stated that this day was chosen because the Emperor Meiji was mainly responsible for the first Japanese constitution. I also stated that the choice of this day does not appear to have any far-reaching significance and that it does not seem desirable that steps be taken to intervene.

Respectfully yours,

*George Atcheson, Jr.*  
George Atcheson, Jr.

Enclosures:

1. From Lieutenant General Chu, October 25, 1946 to Ambassador George Atcheson, Jr.
2. From Ambassador George Atcheson, Jr. to Lieutenant General Chu, October 31, 1946.

Original and hectograph to Department

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894.011/11-246

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894.011/11-246

DEC 9 - 1946



167

Enclosure No. 1 to despatch No. 685 dated November 2, 1946 from the United States Political Adviser for Japan, Tokyo, on the subject "Chinese Suggestion to Change Date of Promulgation of New Japanese Constitution".

COPY

CHINESE MISSION IN JAPAN

TOKYO

October 25, 1946

His Excellency  
George Atcheson, Jr.,  
Chairman, Allied Council for Japan,  
Tokyo, Japan.

Dear Ambassador,

According to reports appearing in the Japanese newspapers, the new constitution of Japan will be promulgated on November 3, which is the day set by the Japanese for their annual celebration of the Meiji-setsu or Meiji festival. Marked by two aggressive wars against Japan's continental neighbors, the Meiji period is remembered by the Japanese people chiefly for the success achieved in the expansion of their empire. It is suggested for this reason that November 3 is hardly an auspicious day for the promulgation of the new constitution which is intended to serve as the political foundation of a democratic Japan. If you concur with me in this interpretation, I hope that means will be found to persuade the Japanese Government to select a more auspicious day for the event.

Yours very sincerely,

/s/ Chu Shih-ming



Enclosure No. 2 to despatch No. 685 dated November 2, 1946 from the United States Political Adviser for Japan, Tokyo, on the subject "Chinese Suggestion to Change Date of Promulgation of New Japanese Constitution".

COPY

ALLIED COUNCIL FOR JAPAN

TOKYO

Office of the Member  
for  
The United States of America

October 31, 1946.

Dear General:

With reference to your letter of October 25, 1946, concerning the selection of November 3 as the date for promulgation of the new Japanese Constitution, it is my understanding that this day was chosen by the Japanese Government because the Emperor Meiji was mainly responsible for the first Japanese Constitution.

It does not seem to me that the choice of this date has any far-reaching significance and, in my opinion, it would accordingly not seem desirable that steps be taken to intervene in what is regarded as a matter for local administration.

Yours very sincerely,

/s/ George Atcheson, Jr.

His Excellency

Lieutenant General Chu Shih-ming,

etc., etc., etc.,

Chief, Chinese Mission in Japan,  
Tokyo.

Info copies: CinC  
C/S  
Govt Sec  
Sec Genl, ACJ  
AG







*JA*

168

NOV 7 1946

**MEMORANDUM FOR THE CHAIRMAN,  
FAR EASTERN COMMISSION**

With reference to the consultative message of the Chairman of the Far Eastern Commission to the Supreme Commander for the Allied Powers, dated October 29, 1946, regarding the time and manner of issuance of the Far Eastern Commission policy decision on the Provisions for the Review of a New Japanese Constitution, there is enclosed a copy of a message from the Supreme Commander for the Allied Powers dated November 1, 1946.

It is requested that the Chairman make this message available to the members of the Far Eastern Commission.

**J. H. Hilldring  
Assistant Secretary**

**Enclosure:**

**Message from SCAP,  
November 1, 1946.**

**JA: ALDunning:sg  
11-5-46**

*JHP*  
FE

NOV 6 1946  
NOV 7  
P.M.

*[Handwritten signature]*

A true copy of the original  
sent *[initials]*

894.011/11-446

CS/A

Confidential File

894.011/11-446



169

E N C L O S U R E

1 November 1946

I have received the suggestion of the Far Eastern Commission that its policy decision regarding Provisions for the Review of a New Japanese Constitution might be made public. The purpose underlying such a suggestion is obscure. As the policy decision in reference merely provides that some time after 18 months and before 30 months "The situation with respect to the new constitution should be reviewed by the Diet"; that the Far Eastern Commission shall review the constitution within the same period; and that the Far Eastern Commission may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution; it prescribes no action whatsoever for at least 18 months or until the new constitution has been in effect for one year. It is unrealistic in its failure to recognize the inescapable facts that by its very terms the constitution is constantly before the Diet from its effective date for any change or amendment that experience may suggest or otherwise may be proposed, and that the power of review or alteration of the instrument, or the enforcement of any measure to subject it to additional tests of public opinion, is inherent in the power of occupation itself, and will so remain as long as the Allied Control of Japan is maintained.

Throughout the development of the new constitution, action has been largely avoided which might be construed as compulsory process in order that nothing might negate or compromise the free character essential if the instrument is to live. The publication of referenced statement of policy on the other hand would inevitably result in just what we have thus scrupulously tried to avoid. And for what purpose? It would instantly be viewed in the public mind as a display of force by the Allied Powers. It would destroy the free character of the Charter and its expression of the popular will by the coercive threat of external force thereby implied. It would reduce the very essence of durability upon which the instrument has been built to a frail skeleton of temporary expedience overshadowed by the threat of forced abrogation or revision at the point of Allied bayonets, with an open and continuing invitation to the forces of reaction to conserve and extend their political strength against the time that, taking advantage of its very terms, pressure might be brought upon the Diet or the people direct to destroy the constitution and restore the old order which Allied policy seeks permanently to suppress.

As the harmful effect of such publicity is as patently clear as any benefit therefrom to the Allied case is obscured, I most strongly recommend against any such procedure at least until the proposed year of experience has passed and the Far Eastern Commission feels that the situation then existing calls for affirmative action.



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THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

*File*  
*11-20-46*  
*FE*  
*DC/A*

SWN-4874  
5 November 1946



MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Copies for the Far Eastern Commission  
of Messages to the Supreme Commander  
for the Allied Powers.

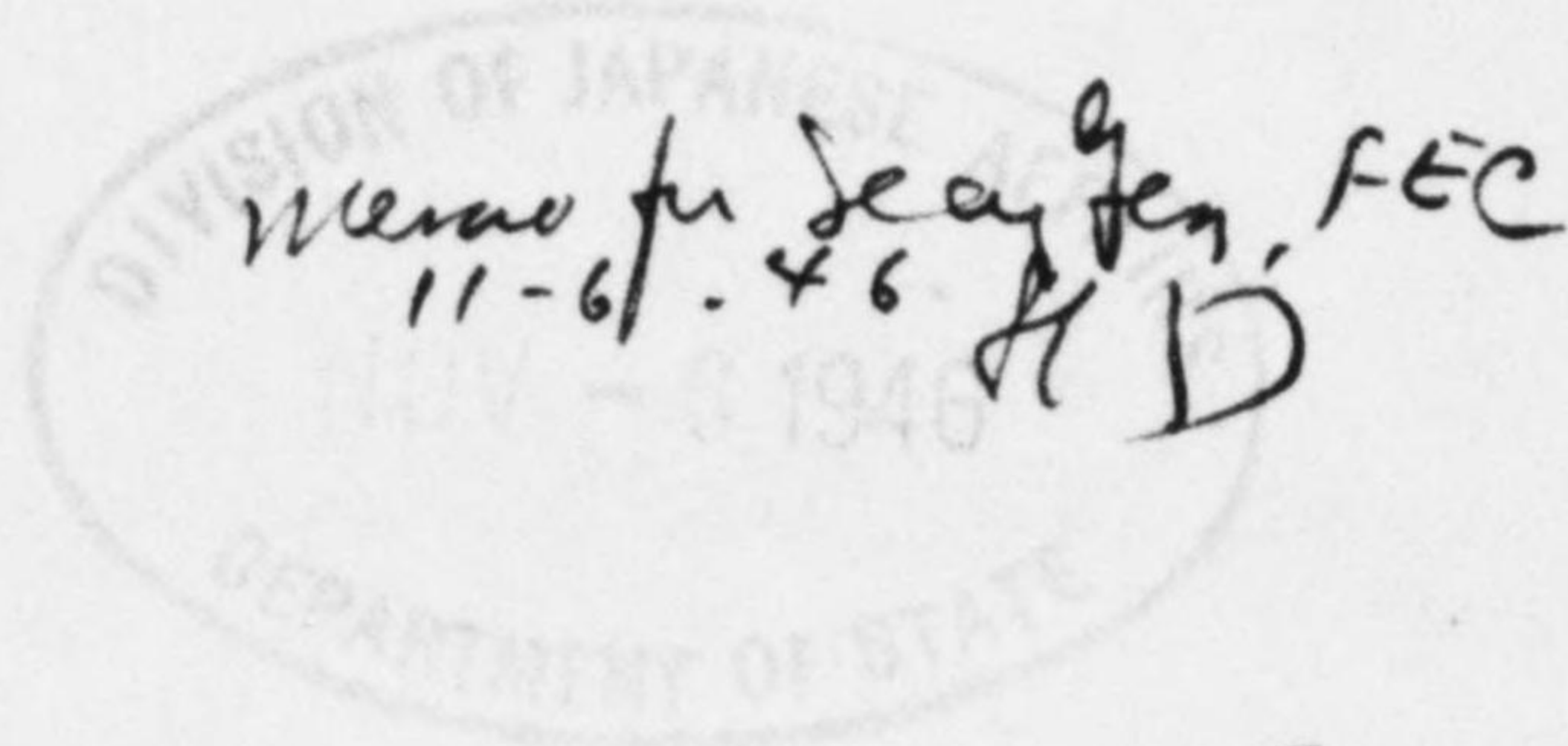
Enclosed are three copies of a message trans-  
mitted to the Supreme Commander for the Allied Powers  
by the Joint Chiefs of Staff. Copy No. 1 is for  
transmittal to the Far Eastern Commission and Copies  
Nos. 2 and 3 are for the files of the State Department.

For the State-War-Navy Coordinating Committee:

*H. W. Moseley*  
H. W. MOSELEY,  
Secretary.

Enclosure

DCR NE Unit  
Genl. *JG*  
Asst. *B.A.T.*  
Capt.  
Encl.



NOV 20 1946  
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CONFIDENTIAL

894.011/11-546

CONFIDENTIAL FILE



CONFIDENTIALCOPY NO. 3

29 October 1946

MESSAGE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSCONSULTATION BETWEEN THE FAR EASTERN COMMISSION AND THE  
SUPREME COMMANDER FOR THE ALLIED POWERS REGARDING THE  
TIME AND MANNER OF ISSUANCE OF THE POLICY DECISION ON  
THE PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

The following communication by the Chairman of the Far Eastern Commission was received from the State, War, and Navy Departments for transmittal to you.

"Before the policy decision regarding provisions for the review of a new Japanese constitution (Serial No. 62) was formally approved by the Far Eastern Commission on October 17, 1946, Ambassador Makin, Australian representative on the Far Eastern Commission, stated with reference to the announcement of the policy decision that the Australian view was that the announcement should take place immediately following its adoption. However, Mr. Makin agreed that the Supreme Commander should be consulted on the question of publication. Sir Carl Berendsen, the New Zealand representative, expressed general agreement with the views of Mr. Makin.

"The U.S. Member made the formal statement to the effect that the U.S. was prepared to agree to the policy decision 'provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider a time and manner of issuance of the policy decision embodied in the paper.'



CONFIDENTIAL

"General McCoy moved and Mr. Makin seconded the motion that the Commission adopt the policy decision regarding provisions for the review of a new Japanese constitution with the understanding that the chairman be authorized to consult with the Supreme Commander to determine his views regarding the time and manner of issuance of the policy decision and that after the Supreme Commander's views had been received the Commission would reconsider the time and manner of such issuance. The motion was carried unanimously.

"In accordance with the above, the views of the Supreme Commander are requested as to the time and manner of the issuance of the policy decision regarding provisions for the review of a new Japanese constitution."



STANDARD FORM NO. 64

170

## Office Memorandum • UNITED STATES GOVERNMENT

TO : ✓ FE - Mr. Vincent  
A-H - Mr. Gross

FROM : JA - Mr. Borton

DATE: November 5, 1946

SUBJECT: Time and Manner of Issuance of Far Eastern Commission  
Policy Statement on Review of Constitution.

Central  
Files

CS/W

894.011/11-546

In my report on pending problems on Japan of November 4, I noted that the Chairman of the FEC had requested, at the FEC meeting of November 1, that Committee #3 prepare a statement for the Chairman to use as basis for a consultative message between the Chairman and SCAP on the question of issuance. Committee #3 met on November 5 at which time the following arose:

(1) After general discussion of SCAP's reply [to FEC] in which he strongly recommended against publication of the policy decision at least for a year, the Committee decided to transmit for SCAP's information verbatim extracts of the minutes of FEC meetings of October 31 and November 1, with a view to informing him of the reasons why several members of the Commission favor issuance by SCAP of the FEC decision in the immediate future.

(2) The United Kingdom member proposed that a policy decision of the Commission be transmitted to SCAP as follows: "The Commission considers that it is now necessary to acquaint the Japanese ~~people~~ with the terms of the policy decision of October 17th and request the United States Government to direct SCAP to communicate the terms of the Commission policy formally to the Japanese Government before the date of the meeting of the special session of the Diet on November 25."

(3) There was considerable difference of opinion as to whether discretion should be left to SCAP and the Japanese Government to determine whether the Japanese people should be told that any such decision was that of the Far Eastern Commission. No decisive vote was taken on this point.

(4) Representatives of China, the Netherlands, the Philippines, and the United States concurred in the proposal that further consultation be undertaken with SCAP on the time and manner of issuance of the policy decision and that his views be obtained on the various alternative methods as to how the statement might be issued.

(5) This proposal was opposed by other members of the Committee who argued that such consultation had already taken place and had produced no favorable result, that SCAP's message

disregarded

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-2-

disregarded the decision of the Commission and implied that he was opposed to the policy decision, and that if any action was to be taken on November 25 there was not sufficient time for consultation.

(6) The Committee voted 7 to 4 in favor of a policy decision being issued to SCAP by the U.S. Government ordering him to inform the Japanese Government of the contents of the FEC decision on review of the Constitution.

(7) The divergent views of the Committee will be presented to the Commission when it next meets, probably on November 14.

It was obvious from the tone of the discussion that many members of the Commission, notably U.K., Australia, France, New Zealand and U.S.S.R. feel strongly that a further directive should be sent to General MacArthur covering the question of time and manner of issuance of the policy on review of the Constitution. The question arises as to whether:

(1) U.S. member of the FEC should be instructed by SWNCC to veto any attempt to issue a policy decision on the question of time and manner of issuance of the review paper;

(2) SWNCC should prepare a draft of a consultative message to SCAP on this subject which would be acceptable to the United States and which could be submitted to the Commission at its next meeting;

(3) Any other alternative action should be taken.

HB

JA:HBorton:mls



~~FE~~  
D/R

NOV 7 1946

**MEMORANDUM FOR THE SECRETARY GENERAL,  
FAR EASTERN COMMISSION**

In accordance with instructions of November 5, 1946, from the State-War-Navy Coordinating Committee, there is enclosed for the files of the Far Eastern Commission, a copy of a consultative message from the Chairman of the Far Eastern Commission to the Supreme Commander for the Allied Powers dated October 29, 1946, regarding the time and manner of issuance of the policy decision on the Provisions for the Review of a New Japanese Constitution.

894.011/11-546

TO: Mr. Tait
FROM: <i>W.C.</i>
DATE: <i>C.A.T.</i>
ENCLOSURE:

**J. H. Hildring  
Assistant Secretary**

*(H.M. Cameron)*

CS/Confidential File

Copy No. 1 (certified) of  
Message to the Supreme  
Commander for the Allied Powers

NOV 7 1946 *GE S.M.*

JA:ALDunning:sg  
11-6-46 *ALD*

FE *gdp*

A true copy of  
the signed original.  
*S.M.*

894.011/11-546



**CONFIDENTIAL**

THE STATE-WAR-NAVY COORDINATING COMMITTEE  
WASHINGTON, D. C.

~~FB~~  
file  
11-14-46  
DC/A

SWN-4886  
7 November 1946

MEMORANDUM FOR THE SECRETARY OF STATE:  
(Attention: Mr. J. K. Penfield - FE)

Subject: Consultation on Directive Regarding  
Provisions for Review of a New  
Japanese Constitution

At the request of the Joint Chiefs of Staff,  
the attached message from the Supreme Commander for  
the Allied Powers, correcting CM IN 129 previously  
furnished by SWN-4873, is forwarded to the State Depart-  
ment for transmittal to the Chairman of the Far Eastern  
Commission.

For the State-War-Navy Coordinating Committee:

*H. W. Moseley*  
H. W. MOSELEY,  
Secretary

Enclosure

TO:	DCR NE Unit
FROM:	<i>RG</i>
SUBJECT:	
DATE:	
DIST:	

DIVISION OF JAPANESE  
CORRECTION sent to  
NOV 14 1946  
FE  
11-5346  
HD  
DEPARTMENT OF STATE

**CONFIDENTIAL**

894.011/11-746

CONFIDENTIAL FILE



WAR DEPARTMENT  
CLASSIFIED MESSAGE CENTER  
INCOMING CLASSIFIED MESSAGE

SUPPLEMENTARY COPY

CONFIDENTIAL IVI

URGENT

PARAPHRASE NOT REQUIRED. HANDLE AS CONFIDENTIAL  
CORRESPONDENCE PER PARAS 511 and 60a, AR 380-5

From: CINCPAC Tokyo Japan sgd MacArthur

To: War Department for Joint Chiefs of Staff

Nr: C 66818

1 November 1946

Insert on page 2, line 5. the following:

"It would instantly be viewed in the public mind as a display of force by the Allied powers. It would destroy the free character of the charter in its expression of the popular will by the coercive threat of external force thereby implied. It would reduce the very essence of durability upon which the instrument has been built to a frail skeleton of temporary expedience....."

End

Note: Supplementary copy of CM IN 129 (1 Nov) JCS

ACTION: JCS

INFO: AAF, Adm Leahy, ASW, CAD, ID, Adm Nimitz, P&O,  
SW (Mr Rusk), CSA

CM IN 1097

(5 Nov 46)

DTG 010405Z

mk

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COPY NO.

THE MAKING OF AN EXACT COPY OF THIS MESSAGE IS FORBIDDEN



172



UNITED STATES POLITICAL ADVISER FOR JAPAN

Unrestricted

No. 718

Tokyo, November 21, 1946

Handwritten initials and marks: 4, FB, JA, D 7/19

DEPARTMENT OF STATE  
DEC 3 - 1946  
DIVISION OF FOREIGN REPORTING SERVICES

SUBJECT: Amendments to Japanese Government Draft Constitution Passed by the House of Representatives and the House of Peers.

The United States Political Adviser has the honor to refer to this Mission's despatch No. 296, March 8, 1946, with which was transmitted a copy of the Japanese Government Draft Constitution, and to enclose copies of the English translation prepared by Government Section, General Headquarters, Supreme Commander for the Allied Powers, of the changes in the original version passed by the House of Representatives and the House of Peers.

XR 740.00119 Control (Japan)

- ACTION
- 1 FE
- COPIES
- 10 ALB
- 1 JK
- 1 FN
- 1 CP
- 20 IC
- 60 CD
- 10 IG
- 1 FC
- 1 DRF
- 1 FEC(ERD)
- 1 VA
- 3 War
- 1 Navy

Enclosure: *A*

Copy of translation, as stated.

Original & hectograph to Department.

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GAAbbey:mf

Stamp: DIVISION OF JAPAN  
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DEC 5 - 1946  
DEPARTMENT OF STATE  
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894.011/11-2146

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Enclosure no. 1 to despatch no. 718 dated November 21, 1946 from the United States Political Adviser for Japan, Tokyo, on the subject "Amendments to Japanese Government Draft Constitution Passed by the House of Representatives and the House of Peers."

The following changes in the original translated version of the new Constitution for Japan were approved by the House of Representatives on 21 August, 1946:

Preamble - no change.

#### CHAPTER I

Article 1. The Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power.

Article 2. No change.

Article 3. No change.

Article 4. The Emperor shall perform only such acts in matters of State as are provided for in this Constitution. Never shall he have powers related to government.

The Emperor may delegate the performance of his acts in matters of State as may be provided by law.

Article 5. 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 1 of the preceding article will be applicable.

Article 6. The Emperor shall appoint the Prime Minister as designated by the Diet.

The Emperor shall appoint the Judge to head the Supreme Court, as designated by the cabinet.

Article 7. The Emperor, with the advice and approval of the Cabinet, shall perform the following acts in matters of State on behalf of the people:

Promulgation of amendments of the Constitution, laws, Cabinet orders and Treaties.

Convocation of the Diet.

Dissolution of the House of Representatives.

Proclamation of general election.

Attestation of the appointment and dismissal of ministers of State and other officials as provided for by law, and of full powers and credentials of Ambassadors and Ministers.

Attestation of general and special amnesty, commutation of punishment, reprieve, and restoration of rights.

Awarding



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Enclosure No. 1 to  
Tokyo's No. 718,  
November 21, 1946.

-2-

Awarding of honors.

Attestation of instruments of ratification and other  
diplomatic documents as provided for by law.

Receiving foreign Ambassadors and Ministers.

Performance of ceremonial functions.

Article 8. No change.

#### CHAPTER 2

Article 9. Aspiring to an international peace based on justice and order, the Japanese people renounce war forever as a sovereign right of the nation, and the threat or use of force as a means of settling disputes with other nations.

For the above purpose, land, sea and air forces, as well as other war potential, will never be maintained. The right of belligerency of the State will not be recognized.

#### CHAPTER 3

Article 10. The qualifications for Japanese citizenship shall be determined by law. (new article)

Old Articles 10, 11, 12 renumbered as 11, 12, 13. No change.

Article 13. Renumbered as Article 14, and in lieu of sentence: "No peerage shall be granted", the following sentence is inserted: "Peers and peerage shall not be recognized."

Article 14, and Article 15 renumbered as 15 and 16. No change.

Article 17. Every person has the right to sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official. (new article)

Old articles 16 through 22 inclusive, no change except renumbered as 18 through 24.

Article 23. Renumbered 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living.

In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security and of public health.

Article 24. Renumbered 26. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.

All people shall be obliged to ensure that all of the children under their protection receive elementary education as provided for by law. Such education shall be free.

Article 25.



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Enclosure No. 1 to  
Tokyo's No. 718  
November 21, 1946.

-3-

Article 25. Renumbered 27. All people have the right and the obligation to work. Standards for working conditions, wages, hours, and rest shall be fixed by law. The exploitation of children shall be prohibited.

Articles 26 and 27. Renumbered 28 and 29. No change.

Article 30. The people are liable to taxation as fixed by law.  
(new article)

Old Articles 28 through 36 inclusive. Renumbered as 31 through 39. No change.

Article 40. Any person, in case he is acquitted after he has been arrested or detained, may sue the state for redress as provided by law. (new article)

## CHAPTER 4

Old Articles 37, 38, 39. Renumbered as 41, 42 and 43. No change.

Old Article 40. Renumbered 44. The qualifications of electors, and members of both houses shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

Old Articles 41 through 50, inclusive. Renumbered as 45 through 54. No change.

Old Article 51. Renumbered 55. Each house shall judge disputes related to qualifications of its members. However, in order to deny a seat to any member, it is necessary to pass a resolution by a majority of two-thirds or more of the members present.

Old Articles 52 through 55, inclusive. Renumbered 56 through 59. No change.

Old Article 56. Renumbered 60. Time limit of 40 days changed to 30 days.

Old Article 57. Renumbered as 61. No change.

Old Article 58. Renumbered 62. Each house may conduct investigations in relation to government, and may compel the presence and testimony of witnesses, and the production of records.

Old Articles 59 and 60. Renumbered as 63 and 64. No change.

## CHAPTER 5

Old Articles 61 and 62. Renumbered as 65 and 66. No change.

Old Article 63. Renumbered 67. The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business.

If the



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Tokyo's No. 718  
November 21, 1946

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If the House of Representatives and the House of Councillors disagree and if a joint committee of both houses, provided for by law, cannot reach an agreement, or the House of Councillors fails to make designation within 10 days, exclusive of the period of recess, after the House of Representatives has made designation, the decision of the House of Representatives shall be the decision of the Diet.

Old Article 64. Renumbered 68. The Prime Minister shall appoint the ministers of State. However, a majority of their number must be chosen from among the members of the Diet.

The Prime Minister may remove the ministers of State as he chooses.

Old Articles 65 through 71, inclusive. Renumbered 69 through 75.

#### CHAPTER 6

Old Articles 72, 73 and 74. Renumbered 76, 77 and 78.

Old Article 75. Renumbered 79. The Supreme Court shall consist of a Judge who is its head and such number of judges as may be determined by law; all such judges excepting the judge who is its head shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of the House of Representatives following their appointment, and shall be reviewed again at the first general election of the House of Representatives with a lapse of 10 years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters show they favor the dismissal of a judge concerned, he shall be dismissed.

Matters pertaining to the review mentioned in the foregoing paragraph shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Old Articles 76, 77 and 78. Renumbered as 80, 81 and 82. No change.

#### CHAPTER 7

Old Articles 79 through 83 inclusive. Renumbered as 83 through 87. No change.

Old Article 84. Renumbered 88. 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.

Old Articles 85, 86 and 87. Renumbered 89, 90 and 91. No change.

#### CHAPTER 8



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Enclosure No. 1 to  
Tokyo's No. 718  
November 21, 1946.

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## CHAPTER 8

Old Articles 88 and 89. Renumbered 92 and 93. No change.

Old Article 90. Renumbered 94. Local public entities shall have the right to manage their property, affairs and administration, and to enact their own regulations within such laws as the Diet may enact.

Old Article 91. Renumbered 95. No change.

## CHAPTER 9

Old Article 92. Renumbered as 96. No change.

## CHAPTER 10

Old Article 93. Renumbered as 97. No change.

Old Article 94. Renumbered 98. This constitution shall be the supreme law of the State and no public law or ordinance and no imperial rescript or other act of Government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

Old Article 95. Renumbered 99. The Emperor or the Regent, as well as the Ministers of State, the members of the Diet, judges, and all other public officials have the obligation to respect and uphold this constitution.

## CHAPTER 11

Old Article 96. Renumbered as 100. No change.

Old Article 97. Deleted.

Old Articles 98, 99 and 100. Renumbered as 101, 102 and 103.



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Enclosure No. 1 to  
Tokyo's No. 718  
November 21, 1946.

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The following changes in the translated version of the new Constitution for Japan, in addition to those changes made by the House of Representatives on 21 August, were approved by the House of Peers on 6 October: It was then referred back to the House of Representatives which approved it without further change on 7 October.

## PREAMBLE

There were a few minor changes in the Japanese text of the Preamble but they were stylistic changes only which did not alter the English translation.

\*\*\*\*\*

1. A new provision was inserted after the second paragraph of Article 15: "Universal adult suffrage is guaranteed with regard to the election of public officials."
2. The following clause was included (after paragraph 2 of Article 59): "The provision of the preceding paragraph does not preclude the House of Representatives from calling for the meeting of a joint committee of both Houses, as provided by law."
3. A new provision was inserted after the first paragraph of Article 66: "The Prime Minister and other Ministers of State shall be civilians."



STANDARD FORM NO. 64

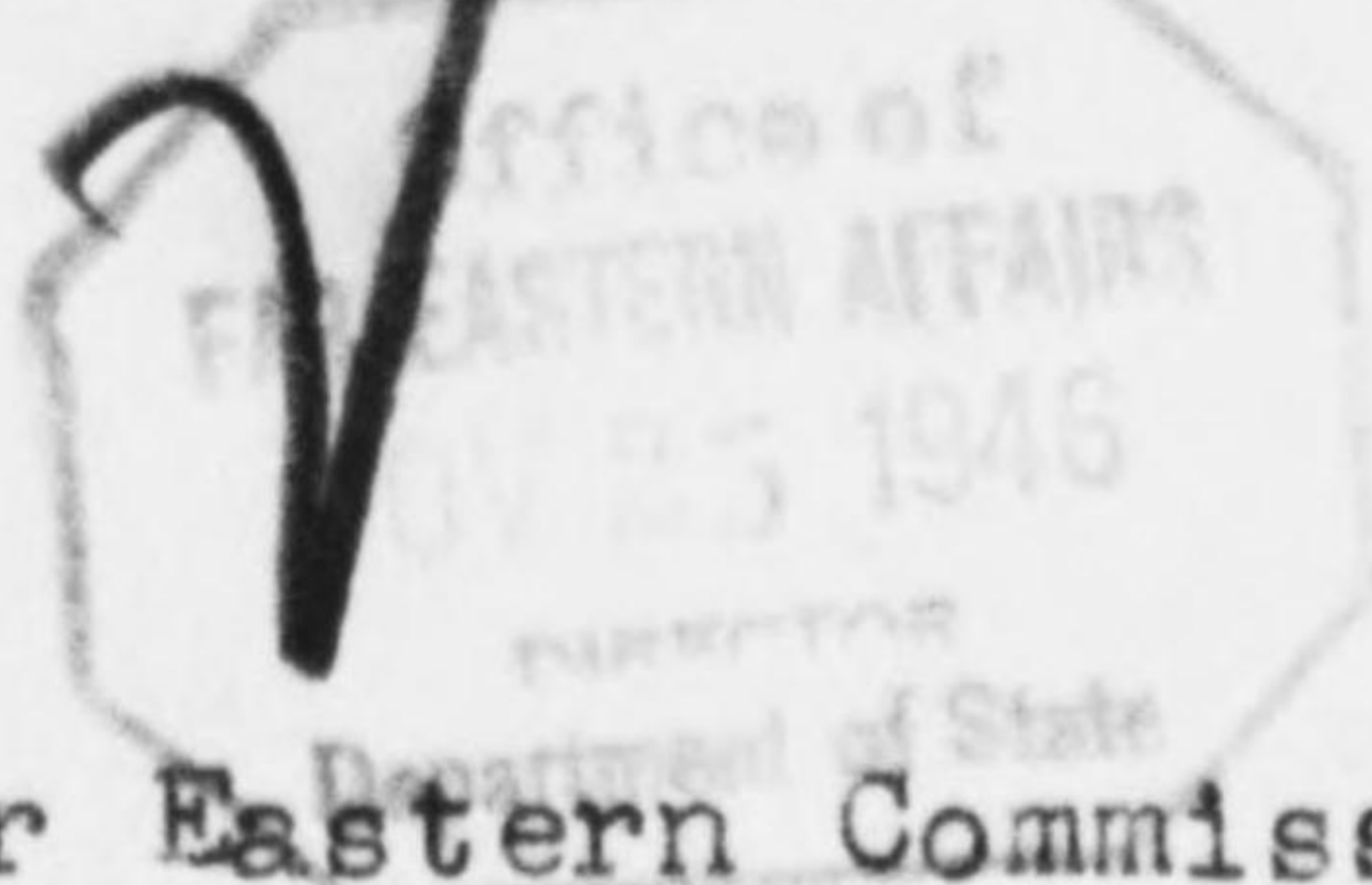
Office Memorandum • UNITED STATES GOVERNMENT

TO : FE - Mr. Vincent

DATE: November 25, 1946

FROM : JA - Mr. Emmerson

SUBJECT: Authority of the Far Eastern Commission in Regard to Implementing Legislation.



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See memo 690 FEC 894.03

As you will note by the attached FEC document, the Australian Representative at the meeting of the Commission on November 21 formally raised the question of the procedure by which the Commission would pass upon legislation to implement the Japanese Constitution. Major Plimsoll stated that he was not raising the question in the spirit of criticism but only to place it upon the record and to be sure that the Commission would have ample time to examine draft legislation before its enactment by the Japanese Diet. General MacCoy stated that every effort was being made to obtain copies of Japanese draft legislation and that the War Department had sent an official to Tokyo to look into the matter of obtaining all necessary drafts.

It is apparent that most members of the Commission take for granted that they will be permitted to examine and pass upon implementing legislation. Nothing has been said in any Commission meeting to indicate that the United States Government might oppose such a course. In fact, General MacCoy has on at least two occasions indicated that the Commission would have the opportunity to examine draft legislation and to pass a policy decision if such legislation were found to be inconsistent with Potsdam or controlling documents.

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It is understood however that the War Department does not agree with the assumption by the Commission of this authority to review legislation while it still is in draft form. To obtain a United States position it will therefore be necessary to resolve the differences between the State and War Departments. Since the Australian Representative has officially raised the question and since the Commission so far has assumed that it possesses this right, it appears necessary to obtain such a United States position at the earliest possible moment. It is hoped that it will be unnecessary to take this question to SWNCC; however, as the basis for a SWNCC document, if necessary, we have prepared the attached draft paper <sup>which</sup> while affirming the right of the

96-58-11/110768

FEC to



-2-

FEC to pass upon draft legislation solely for the purpose of determining its consistency with Potsdam and controlling documents and FEC decisions. ~~The paper~~ also suggests that formal liaison be set up between SCAP and FEC. It is believed that if such liaison were to function efficiently, much of FEC's anxiety over implementing <sup>Commission's</sup> legislation would be removed and the likelihood of the ~~the~~ pressing for policy decisions considerably lessened.

JA:JKE *JKE* Emerson:mls



690 FEC

Competence of Far Eastern Commission with regard to Legislation Implementing the Japanese ConstitutionTHE PROBLEM

1. To determine competence of Far Eastern Commission to pass upon legislation passed in implementation of the Japanese Constitution, and methods of dealing with such legislation.

FACTS BEARING ON THE PROBLEM

2. See Appendix "A".

DISCUSSION

3. See Appendix "B".

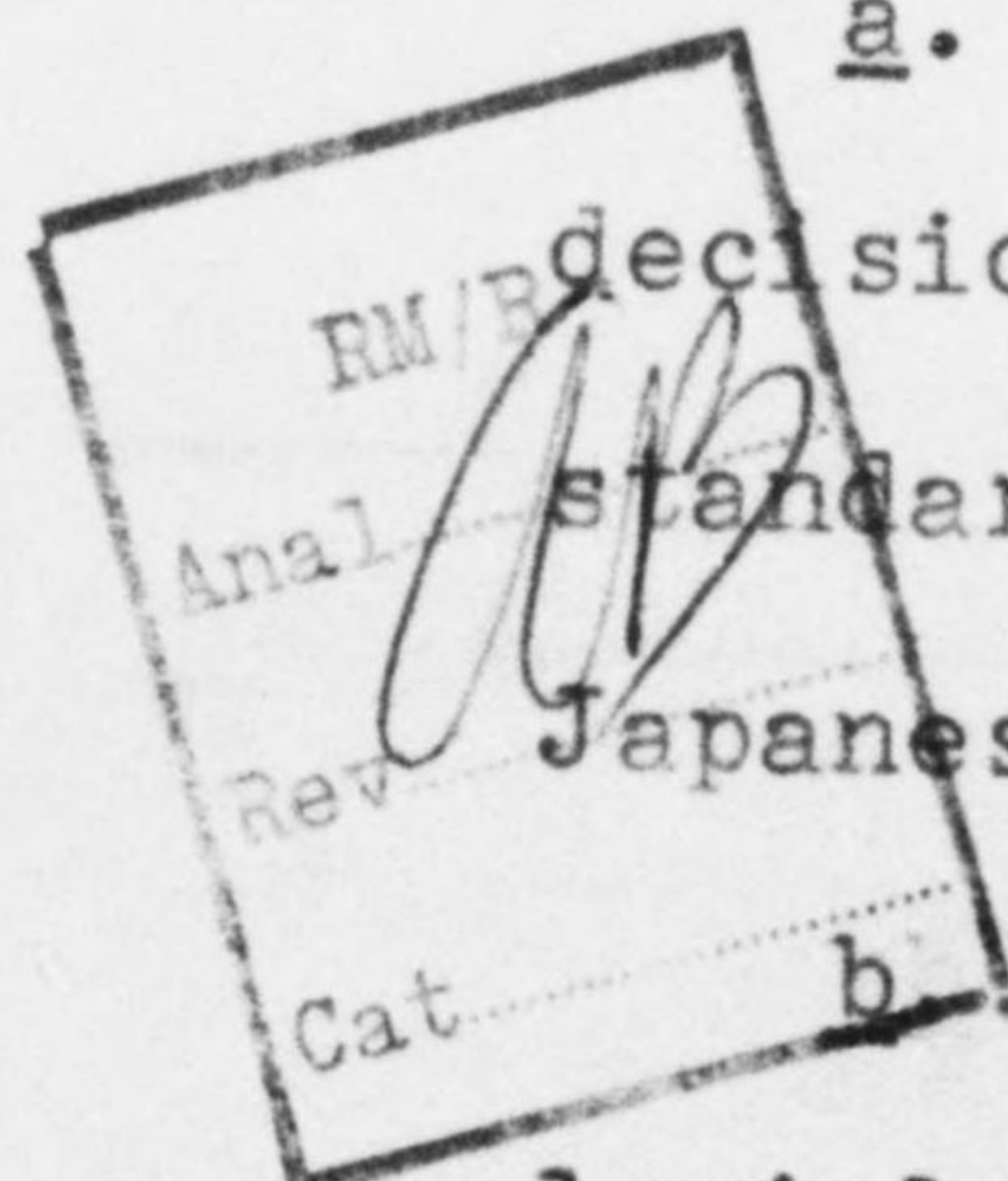
CONCLUSION

4. It is concluded that:

a. The Far Eastern Commission may pass policy decisions which formulate policies, principles, and standards to which legislation implementing the Japanese Constitution must conform.

b. The Far Eastern Commission may review draft legislation at any time subsequent to its introduction into the Japanese Diet solely for the purpose of determining whether such legislation is inconsistent with the Potsdam Declaration, controlling documents or decisions of the Far Eastern Commission.

c. In order that there may be continuing consultation between SCAP and the FEC on the subject of implementing legislation and that both FEC and SCAP may be completely informed of developments in the Japanese Diet and FEC respectively, formal liaison be established between FEC and SCAP to consist of an officer selected by SCAP to be sent to



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- 2 -

Washington and a representative of FEC (presumably a member of the Secretariat) to be attached to SCAP in Tokyo.

d. If the Far Eastern Commission determines that a draft law is inconsistent with the Potsdam declaration, other controlling documents or a decision of the Far Eastern Commission, it may pass a policy decision to this effect.

#### RECOMMENDATIONS

5. It is recommended that upon adoption by SWNCC, <sup>the State Dept</sup> ~~transmit~~ the conclusions in paragraph 4 above ~~be transmitted~~ to the United States member, Far Eastern Commission, for his guidance.



APPENDIX "A"Facts Bearing on the Problem

1. Excerpts of Report of Committee No. 3 on its Study of the Draft Constitution (FEC 087/2):

"b. Implementing Legislation. The Committee notes that the draft Constitution leaves many matters to be determined by subsequent legislation. This is of particular importance with regard to the status of the House of Councillors. 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 Diet."

2. Excerpts from Minutes of the 24th Meeting of the Far Eastern Commission, August 28, 1946.

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

3. Excerpts from Minutes of the 26th Meeting of the Far Eastern Commission, September 19, 1946.

"GENERAL MCCOY stated that his Government favored a constitution comprised of general principles which would depend for their execution on subsequent implementing legislation. Such implementing legislation, he said, would be filed with the Commission and the Commission might approve a subsequent policy decision on any aspect of implementing legislation which seemed



- 2 -

to violate the principles of the Potsdam Declaration."

4. In a policy decision approved by the Far Eastern Commission on September 25, 1946, the Commission referred to its right to scrutinize implementing legislation to ensure that predominance of the House of Councillors over the House of Representatives is not established.

"The Far Eastern Commission reaffirms its previous decision, taken in FEC-031/19, Directive Serial No. 547 Basic Principles for a New Japanese Constitution, that all cabinet ministers should be civilians, and further decides as a matter of policy that the House of Councillors should not have any predominance over the House of Representatives. The Commission considers essential its continuing right to scrutinize the implementing legislation very carefully to insure that such predominance is not established."

5. On April 12, 1946 the chairman of FEC requested the U.S. Government to consult with SCAP on the subject of sending to Washington a staff officer to confer with the Commission on the subject of constitutional reform. An excerpt from the State Department's reply (FEC 0318) follows:

"a reply has now been received from General MacArthur in which he states that he is in full agreement with the need for a closer working arrangement and understanding between SCAP and the Commission and stands ready to do everything in his power to further this end. He states, however, that it is impossible for him to send an officer to act as his deputy in the broad matters involving constitutional reform, as he has given his personal attention to this question and there is no officer in a position to express in detail his views."



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6. The Australian Representative on the Far Eastern Commission on November 21, 1946 raised "the question of the procedure whereby the Commission can discharge its function in regard to legislation to implement the Japanese Constitution in accordance with the Commission's decision of policy of 25 September 1946 (FEC-087/9)". (FEC-098, 15 November 1946). The matter of implementing legislation has also been placed on the agenda of the Steering Committee of the Far Eastern Commission for preliminary consideration.



APPENDIX "B"DISCUSSION

1. The Far Eastern Commission, by its terms of reference, may formulate policies, principles, and standards in conformity with which the fulfillment by Japan of its obligations under the terms of surrender may be accomplished. Among these obligations of Japan is the passage by the Japanese Diet of legislation implementing the Constitution which itself has been enacted in conformity with Far Eastern Commission policy decisions. It therefore follows that the Far Eastern Commission may pass policy decisions with regard to implementing legislation as it has done in the case of the Constitution.

2. When legislation implementing the Constitution is introduced into the Japanese Diet, it is assumed that copies of draft bills will be sent as a matter of information by SCAP to the Commission. Any member of the Commission should have the right to bring before the Commission, or an appropriate committee thereof, provisions in such draft legislation which such member may deem to be inconsistent with the Potsdam Declaration, the controlling documents, or decisions of the Far Eastern Commission. The Commission thereupon may examine such draft legislation solely for the purpose of deciding this question of consistency. It may not redraft Japanese legislation, suggest additions to laws, or take any action beyond that described above.

3. If the right of the Far Eastern Commission to review implementing legislation is conceded, as stated in 2 above, the question to be determined is whether this review should take place before or after the legislation



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is enacted by the Japanese Diet. If the Far Eastern Commission, by formal voting procedure, decides that a provision of a draft law introduced into the Diet is inconsistent with Potsdam, controlling documents, or policy decisions of the Far Eastern Commission, it may pass a policy decision to that effect as the basis for a directive to be sent to SCAP. If such a directive is sent to SCAP while the legislation in question is still under consideration by the Diet, it will be possible to obtain necessary changes by SCAP action, before the legislation is finally enacted by the Diet. In such instances, the action of the Far Eastern Commission will not come to the public notice of the Japanese and no action will be necessary which would in fact declare invalid laws enacted by the duly constituted representatives of the Japanese people in accordance with the Constitution. In the case of the Constitution, the Far Eastern Commission was able to scrutinize the draft and to make certain suggestions which resulted in changes in the draft obtained without publicity or derogation to the legal legislative processes in Japan.

4. If the Far Eastern Commission should decide, after a law is duly enacted by the Japanese Diet that such law is inconsistent with controlling documents or Far Eastern Commission policy decisions, it thereby assumes the right to veto and declare invalid acts of a legislative body set up under a Constitution passed in conformity to decisions of the Far Eastern Commission. Such action on the part of the Far Eastern Commission would render the Diet powerless in the eyes of the Japanese people, would destroy public faith in the organs of government established under the new constitution, would discourage the