

894.63/1-145 -- 12-314b - 47-48-49

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United States Senate

COMMITTEE ON MILITARY AFFAIRS

July 16, 1945

July 25, 1945

~~JA~~
~~SEA~~
~~GE~~
DCIR

OFFICE OF THE SECRETARY

The Secretary wishes an acknowledgment sent immediately if this communication cannot be answered in three days.

Office of
 FAR EASTERN AFFAIRS
 JUL 20 1945
 DIRECTOR
 Department of State

Honorable James F. Byrnes
 Secretary of State
 State Department
 Washington 25, D. C.

1945 JUL 17 PM 1 06

My dear Mr. Secretary:

DC/R
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 DC/RS
 BRANCH

Please let me invite to your attention the enclosed letter from Lieutenant Dennis M. Leary, Junior, which is self-explanatory. I shall appreciate your furnishing me with an appropriate response, submitted in duplicate, which I may send my correspondent.

Kindly return the enclosure when it has served your purpose.

With kindest regards, I am

Most sincerely yours,

H M Kilgore

DIVISION OF GEOGRAPHY
 AND CARTOGRAPHY
 AUG 1 1945
John Sub
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DIVISION OF FAR EASTERN AFFAIRS
 PACIFIC
 JUL 30 1945
 OFFICE OF FAR EASTERN AFFAIRS
 DEPARTMENT OF STATE

AUG 3 1945

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DIVISION OF JAPANESE AFFAIRS
 JUL 18 1945
 DEPARTMENT OF STATE

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(COPY)

6 July 1945

Senator Harley M. Kilgore
United States Senate
Washington, D. C.

Dear Senator Kilgore:

It is common knowledge that some of the Pacific Islands formerly held by Japanese have valuable mineral deposits.

My associate and I would like information as to how we could acquire the rights to lease, or the authority to conduct mining operations on one of these islands after hostilities cease. We are particularly interested in the possibility of operating and improving one of any existing Japanese Mines.

If this information is available I would appreciate your giving me the name of the proper person and department of the government that should be contacted in this matter.

I read in the, "Raleigh Register", of Mrs. Kilgores' death and take this occasion to express my sympathy. I, also have lost my mother since war began, as well as, Patrick, my brother, a Lieutenant on a Cruiser, whom you probably didn't know.

I remain, respectfully yours,

DENNIS M. LEARY, JR.

Dennis M. Leary, Jr.,
Lieutenant, USNR.

SEA

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DIVISION OF GEOGRAPHY
AND CARTOGRAPHY
AUG 1 1945
file - mhh
DEPARTMENT OF STATE

JUL 25 1945

In reply refer to
JA 894.63/7-1645

My dear Senator Kilgore:

I have received your letter of July 16, 1945 with which you transmitted a letter to you from Lieutenant Dennis M. Leary, Jr., USNR, asking for information with regard to how he and his associate could acquire rights to conduct mining operations on one of the Pacific islands formerly under Japanese control.

At the present time it is too early to reach decisions on the many points to be settled in connection with the conduct of enterprises such as the one in which Lieutenant Leary is interested, and I can therefore only suggest that he write again when the final disposition of the Pacific islands formerly held by Japan has been more fully determined. If he should then wish to write to this Department we shall be glad to give him whatever information may be available or to refer him to any other Government agency which may be charged with the matter.

The letter from Lieutenant Leary, a copy of which has been made for the Department's files, is returned herewith.

Sincerely yours,

Joseph G. Grew

Acting Secretary

Enclosure:
From Lieutenant Leary, Jr.,
July 6, 1945 (Returned).

The Honorable

Harley M. Kilgore,

United States Senate.
JA:HLory:MH
7/19/45

SA/M

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A true copy of the original sent.

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JUL 25 1945

INCOMING AIRGRAM

DEPARTMENT OF STATE DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

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ACTION: DC/L
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AIRGRAM

FROM: USPOLAD, Tokyo

Date of Mailing: April 15, 1949

Date rec'd:

April 18, 1949 10:20 a.m.

UNCLASSIFIED

The Secretary of State
Washington.

A-91, April 14, 1949.

Following press release entitled "Mining Law Expert Aids in Revising Japanese Mining Code" issued April 1, 1949, by Public Information Office, General Headquarters, Far East Command, Tokyo:

Royal R. Duncan, an internationally known mining law expert, has arrived in Tokyo from the United States to assist the Natural Resources Section of SCAP in helping the Japanese revise their mining code.

A Japanese committee headed by the Minister of Commerce and Industry, and including leading figures in industry, agriculture, labor and jurisprudence, has been working on a proposed draft of the code since December 1946.

Duncan, who at 76 is probably the oldest DAC in the Far East Command, will assist in coordinating recommendations for changes now under consideration. He has already noted the need for elimination of conflict between users of the surface of the land and those seeking to exploit the minerals beneath.

American mining laws, he pointed out, accomplish this by determining in advance the probable value of minerals under the surface as well as the potential value of the land for crops which mining activities might destroy. This makes it possible, he said, to designate land as being more essential for either farming or mining, and reduce the wasting of natural resources.

Japanese regulations, permitting removal of minerals wherever found, frequently result in farm lands being sacrificed for low grade ore, of less value to the economy of Japan than crops from the ruined land.

PERMANENT RECORD COPY.—This copy must be returned to DC/R central files with notation of action taken.

DEPARTMENT OF STATE
LIAISON OFFICE
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Tokyo's A-91,
April 14, 1949.

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Although Japanese mine operators pay damages to farmers whose lands are affected, such expenditures are charged to mining costs and are ultimately paid by the consumer or the government in subsidies. In some instances, it was said, this system might tend to encourage farmers to own lands subject to mining damage in preference to raising crops.

One plan being studied would require prospective mining operators to set forth the damage his operations would inflict upon the land to enable the government to determine in advance when and where mining would be unprofitable in the overall Japanese economy. Also under consideration is the establishment of an arbitration board, on cabinet level, to handle miner-farmer disputes as a neutral agency.

Another objective of the Japanese committee is to encourage free enterprise by eliminating blanket permits under which operators remove large areas of mineralized land from production. American mining laws, Duncan said, discourage such monopolies by limiting prospecting permits and requiring that work be performed for renewals. In this connection, the committee is considering reducing the time of permits from four years to two with one renewal in the same area to be granted only in cases where diligence in operation has been shown.

Current Japanese laws were enacted in 1905 on the basic premise that mineral resources belong to the government. Although these laws give the state possession of iron, zinc, copper, gold, silver, antimony and other minerals, some, including clays and limestone, do not come under the laws. Owing to these omissions, sites from which clay is extracted are under the protection of the Ministry of Agriculture and Forestry.

Land reform, now being carried out, has no provision for holding farm lands for developing clay deposits. Because of this a special liaison must be maintained between SCAP's agriculture and mining experts to continue the production of refractory clays, critically needed in the Japanese iron and steel industry. Alterations in the mining code, Duncan said, would eliminate such situations by defining and including all minerals.

Born in Baltimore, Nov. 28, 1872, Duncan was graduated from the University of Maryland Law School in 1895 and is a veteran in government legal service. For many years, until his retirement in 1945, he was a member of the solicitor's staff of the Department of Interior.

SEBALD

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OUTGOING TELEGRAM

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SUPREME COMMANDER FOR THE ALLIED POWERS

TOKYO 148

INFO ARMY CHIEF OF STAFF

FOR ACTING POLITICAL ADVISER

In connection programming short-supply commodities under ERP,
ECA would find useful to have data all important producing and
consuming areas. They have requested actual 1948 and estimated 1949
mine production, smelter production and consumption of aluminum,
copper, lead and zinc in Japan. Can you make this data available?

*XR
840,50 Recovery*

894.63/4-1549

BJM
U/FAA: Ben T. Moore :mow
4/13/49

NA
Fearey

*Robinson
(BJM)*

ECA
(Cleared with R.L. Wilcox
Non-Ferrous Metals Branch)

CS/A

894.63/4-1549

DISTRIBUTION
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Corrections made on this original MUST be made on all
copies before delivery to Telegraph Branch.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Le - Mr. Freeman

FROM : JK - Mr. Martin

DATE: December 23, 1946

SUBJECT: Request of French Representatives for Release of Certain Earmarked Gold in Japan.

1. A meeting was held on December 19, 1946, at which time Messrs. Robert Douteau and Marcel Clement, Representatives of French Government, presented certain information to Messrs. Whitman, Smith and McDiarmid of JK, Department of State, and indicated the position of the French Government in respect to certain gold said to have been earmarked in the name of the Saigon Branch, Bank of French Indo China, and which the French Government now understands is in the vaults of the former Yokohama Specie Bank, Tokyo. The French Government considers this gold to be the legal property of the Bank of Indo China and are prepared to ask that it be turned over to that Bank. No written request for such action has as yet been submitted. The matter is brought to your attention for comment, particularly on the legal and political considerations that may be involved. The facts as verbally set forth by the French representatives, and as supplemented by information from other sources are as follows.

2. The French representatives stated that the earmarked gold consists of 33,056,813.6 grams in the form of 2,283 gold bars and, at current U.S. official price, is valued at approximately \$37,310,000. The earmarkings were made in payment for obligations incurred by the Japanese Government in connection with imports to Japan from French Indo China and Japanese military operations in that area. The portion allocable to these two categories of obligations is not accurately known but the French representatives understand about 50% may be attributable to each. No definite information was given as to the years during which this earmarking occurred, or the Japanese gold funds out of which earmarkings were made. Supplementary information contained in a report prepared in Division of Monetary Research, Treasury Department, entitled, "Japanese gold production and operation of Gold Fund Special Account," indicates, however, that earmarkings for Indo China from the Japanese Gold Fund Special Account were made in 1941, 1942, 1943 to the amounts of \$9.7 million, \$10.4 million and \$9.3 million respectively, for a total of \$29.4 million. No exact information is available as to the source of the remaining \$7.9 million (approximately) claimed by the French representatives, but the recent discussions with the Treasury it is understood that the French Government stated that approximately \$7 million in gold was earmarked by Japan for French Indo China account prior to the extension of the Pacific war to French Indo China, or during 1940 and early 1941.

894. 6341/15-2346

- 2 -

3. The French representatives stated that their government did not consider its claim for this gold as falling under either the restitution or reparations programs and policies of the FEC. The basis, as stated, for this position, is that, since the gold was not confiscated in an allied country, no restitution problem is involved, and since the action of the Japanese Government in earmarking the gold represented an act of payment for Indo Chinese resources, no spoliation had occurred upon which a reparations claim could be based. A further reference was made to an exchange of letters between the U.S. and French Governments when France entered the FEC, the substance of which was that French interests in the Far East should be considered outside the FEC. This latter consideration was given as a reason for the direct approach to this government on the matter.

4. In further support of their position, the French representatives stated that repeated requests had been made to Japan during the war by French authorities to allow the transportation of this earmarked gold to Indo China, but without success. These requests together with the fact that these earmarkings represented some payment by the Japanese for resources taken from Indo China, are considered by the French as evidence of non-collaborationist policies of the French authorities.

5. At subsequent meetings with the French representatives, it is proposed to discuss in addition to the gold earmarkings, the Indo Chinese yen balances in Japan and a small amount of dollars for which they have a claim. The yen balances of Saigon Branch, Bank of Indo China which, as in the case of the gold earmarkings, arose out of Japanese imports from and military expenses in Indo China, are said to be in excess of one billion yen. It is felt that the time and manner of accrual of these yen balances may have some, though not an important bearing, on the disposition of the gold claim.

6. As far as is indicated from available information, the only other area for which Japan effected substantial gold earmarkings during the war, was Siam. Large amounts of Japanese gold were, however, shipped to occupied China for currency and exchange stabilization purposes and to finance military operations.

7. It is recommended that informal discussions of this matter be arranged as expeditiously as possible since the next meeting with the French representatives is scheduled for December 27, 1946.

oym
JK:OJMcDiarmaid:mw

DEPARTMENT OF STATE

THE LEGAL ADVISER

January 7, 1947.

JK - Mr. McDiarmid

REQUEST OF FRENCH REPRESENTATIVE FOR RELEASE OF
CERTAIN EARMARKED GOLD IN JAPAN

351.9443

1. Le's comments have been requested on the legal and political considerations that may be involved in the anticipated request of the French Government for certain gold now in the vaults of the Yokohama Specie Bank, Tokyo. It appears that this gold was earmarked in the name of the Saigon Branch, Bank of French Indo-China, in payment for obligations incurred by the Japanese Government in connection with imports to Japan from French Indo-China. Of the total amount of \$37,310,000 in gold bars, some \$7,900,000 was earmarked by Japan for French Indo-China prior to extension of the Pacific War to French Indo-China, and the remainder subsequently. The French Government has taken the position that its claim for the gold does not fall under either the restitution or reparations program and policies of the FEC; that earmarking was tantamount to an act of payment for Indo-Chinese resources, and that consequently no spoliation occurred for which reparations could be claimed.

2. Existing directives of the Far Eastern Commission relative to the restitution of looted property (FEC-011 series, in particular FEC-011/14, dated 5 August 1946, and see also SWNCC-227/13, 14 June 1946) deal only with property identified as having been located in an allied country at the time of occupation of that country and removed by fraud or duress by the Japanese. There is also under consideration by the Far Eastern Commission a statement of principles for the restitution of identifiable property confiscated in Japan from Allied nationals (cf. the C6-014 series, and FEC-011/20, dated 14 October 1946); but it is concerned exclusively with property located in Japan prior to 7 December, 1941, and which was seized, confiscated or sequestered during the war by the Japanese or by other enemy individuals or groups.

3. It seems clear that the gold here involved does not fall within either of the categories of property for which restitution is provided, or contemplated under FEC policies. If title to the gold is in the French Government or in a French governmental agency, it would seem difficult to dispute the right of France to the possession thereof. If, on the other hand, title did not pass as a result of the earmarking, the French Government would only have a claim as a general creditor against Japanese assets. The

principal

64. 6341/1-7-47

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principal legal question, therefore, would seem to be whether earmarking by the Japanese operated as a transfer of property.

4. The Department of the Treasury (Office of the General Counsel) has advised that in the practice of the Federal Reserve Bank of New York, gold which is earmarked is considered as the physical property of the central bank for which it is held, being roughly equivalent to a safe-deposit box holding as distinct from a general account against the bank. Earmarking involves an actual physical moving of the gold bars into another vault, and a segregation of the bars from other gold. JK's memorandum does not disclose what "earmarking" by the Japanese in the Yokohama Bank involved; presumably banking practices on this point are more or less uniform. It would seem, nevertheless, important to ascertain definitely whether this earmarking had the effect of a dispositive act, rather than being a mere bookkeeping entry the result of which might be merely to leave the French Government with a general claim against Japan.

5. Accordingly, Le is of the opinion that if the earmarking resulted in a passage of property in the gold, the French Government's claims thereto would be justified. This conclusion is predicated upon the assumption that the Bank of French Indo-China is a French governmental agency. But it is not believed that the result would vary even if the bank were a private institution. The present memorandum expresses no opinion on the extent to which existing directives of the Supreme Commander relative to the blocking of gold and other precious metals, would affect the right of France to effect a removal of the earmarked gold.

6. While the French claim to the gold therefore has a substantial legal basis, serious policy considerations are here involved which should not be lightly disregarded in the final position to be taken on this property. It seems unquestionable that no earmarking would have occurred, or indeed, the transactions giving rise thereto, had it not been for the collaborationist activity of the Vichy regime of De Coux in Indo-China. The source of the gold, in consequence, was in activities directed against the Allies. It may be true that as a matter of law such right as exists to the gold was not that of the Vichy regime, but inheres in the French State, and that if the Japanese paid for property which might otherwise have been confiscated, that is a part of the fortunes of war. Nevertheless, it cannot be said that in asserting the right, the French Government comes with "clean hands", and to recognize it would be to place a premium upon activity which was prejudicial to the conduct of Allied operations. Finally, to permit withdrawal of the gold would be inconsistent

with the

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with the practice which Le understands has been followed with respect to assets of the Philippine and other puppet governments in Japan.

7. For these reasons, Le is not disposed to conclude that the legal argument set forth above should necessarily override considerations of policy which conduce to the opposite result.

Allyn V. Freeman

Le:AVFreeman:VM

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : FE - John Carter Vincent
EUR - Mr. Matthews
FROM : ESP - Mr. Robinson

DATE: January 17, 1947

SUBJECT: Request of French for Release of Gold Earmarked
by the Japanese Government.

Representatives of the French Government have submitted to JK a verbal request that certain gold said to have been earmarked by the Japanese Government in the name of the Saigon Branch, Bank of French Indo China, and which the French Government understands is now in the vaults of the former Yokohama Specie Bank, Tokyo, be released to the Bank of French Indo China, for use by French authorities in French Indo China. The French Government considers this gold to be the legal property of the Bank of French Indo China, and is not willing that their claim for it be considered in connection with the reparation settlement. The matter is brought to your attention for information and comment, particularly in respect to the political considerations that may be involved in considering the French request.

The French Government desires to have a decision made on the principles involved prior to a consideration of the technical details of the matter. The French representatives have stated that the earmarked gold is valued at approximately 37.3 million dollars. This amounts to approximately 18% of the present gold holdings of the Japanese Government. The earmarkings were made by the Japanese Government in payment to French Indo China for imports to Japan and for Japanese military operations in French Indo China. No definite information has been supplied as to the exact purposes for which earmarkings were made, the periods during which they occurred, or the Japanese gold funds out of which transfers were effected. Supplementary information regarding transactions in the Japanese Gold Fund Special Account, indicate that earmarkings for Indo China from that account were made in 1941, 1942, and 1943, to the total amount of 29.4 million dollars. No information is available as to the remaining 7.9 million dollars in gold claimed by the French representatives, but it is considered likely that approximately this amount was earmarked during 1940 or early 1941. Inasmuch as it is considered that the treatment of this claim may well depend upon the exact purposes of the earmarkings and the time at which earmarkings were made in relation to the political developments in the relations of this and other Allied Governments with French Indo China, a request has been sent to the Supreme Commander to obtain from the Japanese Government all pertinent information that may be available in Tokyo. Special importance may attach to the amount of earmarkings made prior to the Japanese Occupation of French Indo China in May 1941, the amount earmarked between May and December 8, 1941, and subsequent to that date. Information available here, indicates that approximately 17.6 million dollars was earmarked before December 8, 1941 and 19.7 million dollars between that date and March 1943, when an agreement was reached between French Indo China and Japan, providing for

settlement

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settlement of balances in blocked yen.

The French representatives have stated that their Government does not consider its claim for this gold as falling under either the restitution or reparations programs and policies of the FEC. The basis for this position is that since the gold was not confiscated in an Allied country, no restitution problem is involved, and since an action of the Japanese Government in earmarking the gold represented payment for Indo Chinese resources, no spoliation occurred upon which a reparations claim could be based. Tentative opinion held by JK Division is that only such gold as may have been earmarked by Japan prior to occupation of French Indo China in May, 1941, should be considered as the ~~gross~~ proceeds of normal commercial transactions and therefore apart from the general reparations settlement. It is further believed that the treatment of this claim may have important relations to consideration of claims for assets formerly belonging to puppet regimes and to organizations and individuals formerly in Japan under Japanese domination in occupied areas.

The French Government has indicated that in addition to the gold earmarkings, it will have a claim for some 1.3 billion yen now on deposit in the YSB to the account of Saigon Branch, Bank of French Indo China, and for a small amount of dollars also on deposit there. The French representatives have indicated, however, that their Government may be willing to consider its claim for yen and dollars in connection with the general reparation settlement.

Your comment on the questions raised by the French Government will be appreciated for use in further discussions with the French representatives.

RNM
JK:OJMcDiarmid:mw

STANDARD FORM NO. 64

(H) *Ger. Gold Hldgs - China*

Office Memorandum • UNITED STATES GOVERNMENT

TO : ES - Mr. Fletcher.

DATE: January 20, 1947

FROM : Le/E - Mr. Metzger.

SUBJECT: Chinese gold discovered on premises of German Legation in China.

Pursuant to our recent discussion concerning this question, I suggest that the gold now in custody of the Navy Department following its discovery in the premises of the German Legation in China, be turned over to the Chinese Government with a request to that Government to hold it for the account of IARA if it is discovered to have been brought to China from Germany.

This differs from your recommendation that SCAP determine whether the gold was looted, and return it to China only in the event that it were not looted. The reason for my recommendation are:

1. China was not a party to the IARA Gold Resolution.
2. It is doubtful whether the IARA Gold Resolution was intended to apply to the Far East; it was apparently intended to cover those territories which were under German occupation or influence during the war.
3. The amount of gold involved in this particular case and probably in all other such cases is quite small.
4. The US came into possession of this small amount of gold under unusual circumstances; if any significant amount of such gold exists in China it is probably not in non-Chinese hands.

Under these circumstances it appears to be far more profitable to invite Chinese accession to the IARA Gold Resolution at the time of returning this gold to China, rather than apply the technical language of the IARA Gold Resolution.

SD

Le/E:SDMetzger;nlc

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STANDARD FORM NO. 64

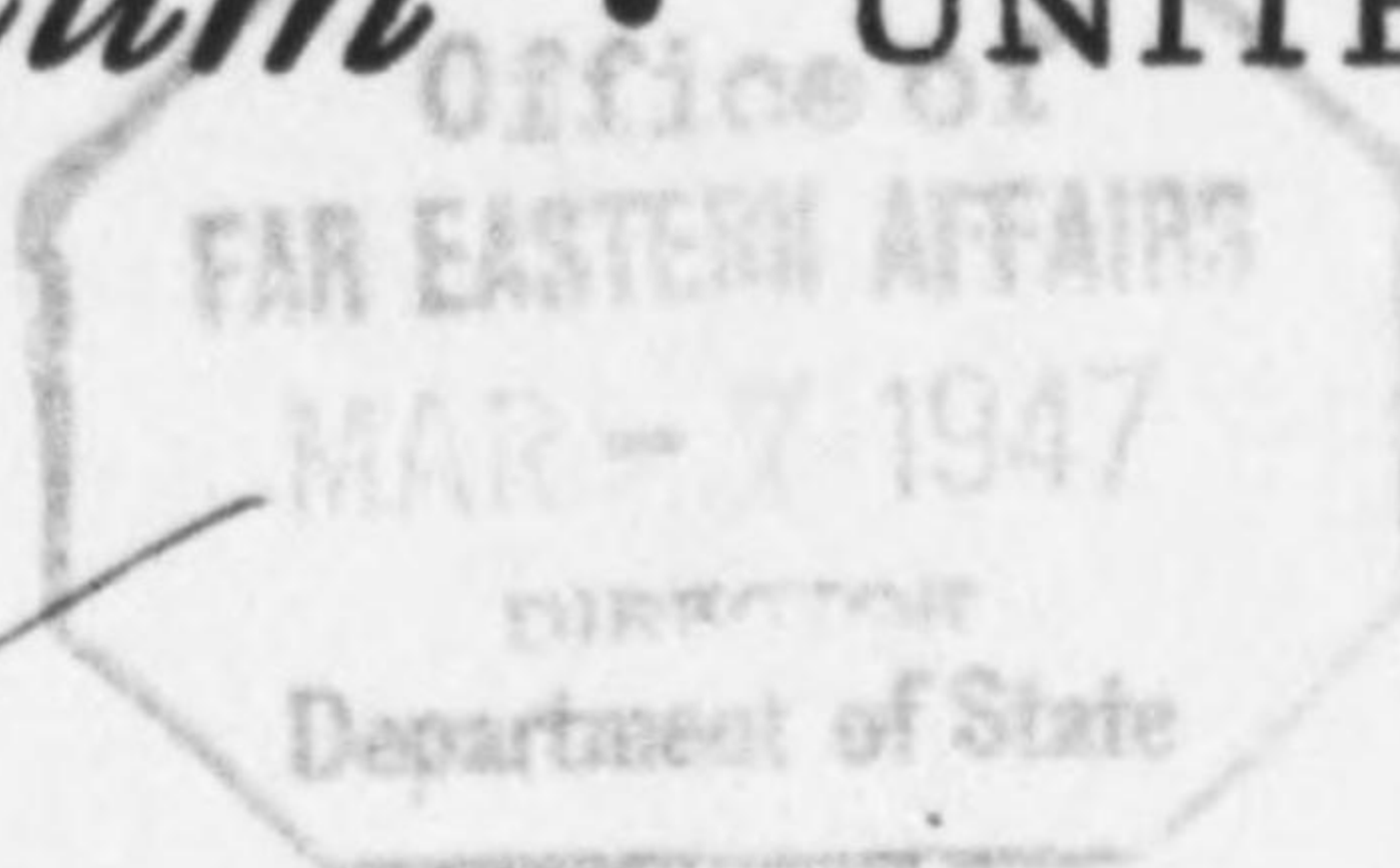
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Office Memorandum • UNITED STATES GOVERNMENT

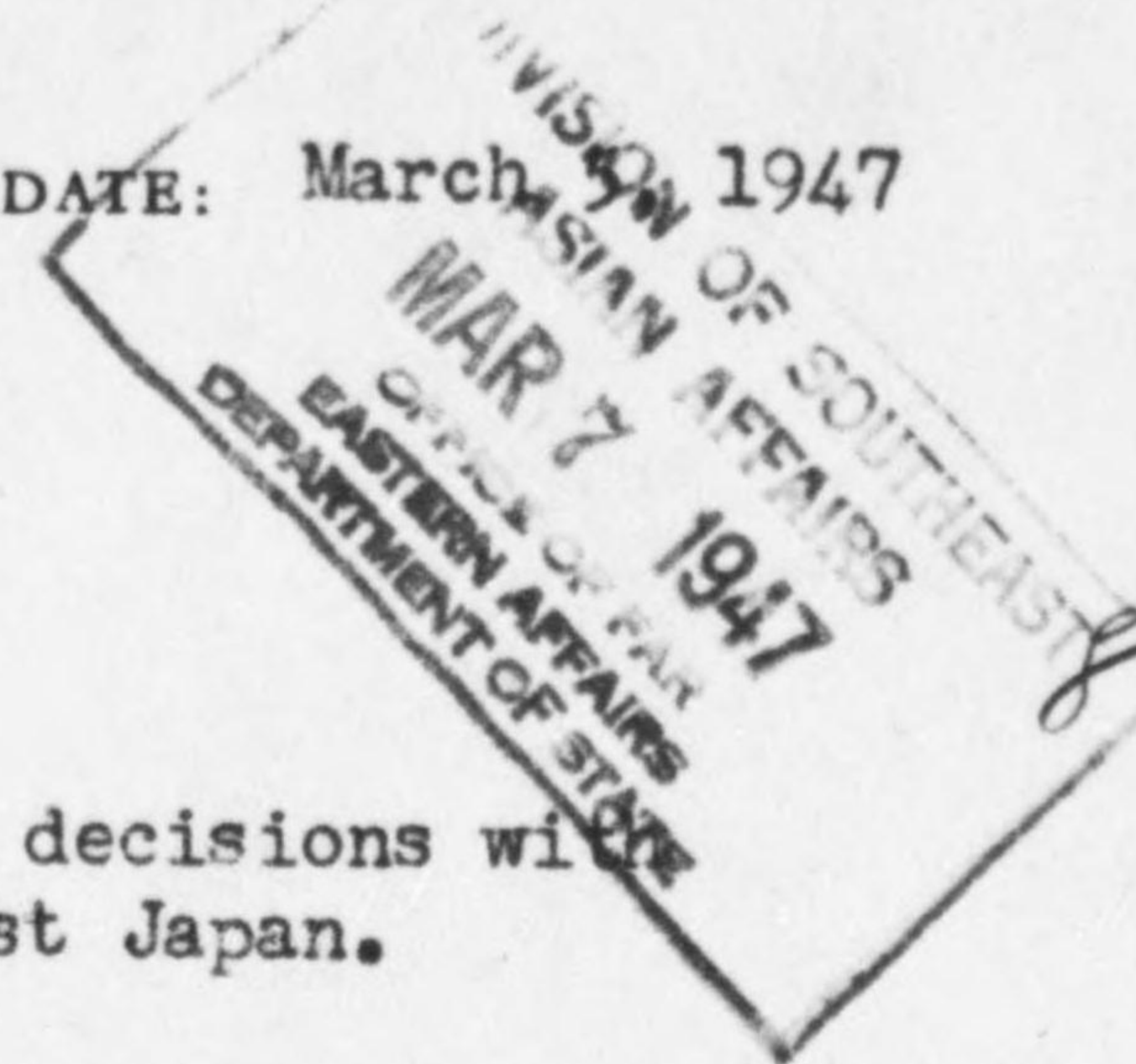
TO : FE - Mr. Vincent ✓
EUR - Mr. Matthews

FROM : JK - Mr. Martin

SUBJECT: French Claim to Earmarked Gold in Japan



DATE: March 7 1947



The State Department is faced with several decisions with respect to French participation in the war against Japan.

Fundamentally, two issues are involved.

1. What was the position of the French authorities in French Indo-China vis-a-vis the Japanese occupation forces?
2. When, in the course of the war with Japan, did France acquire a belligerent status which was applicable to French Indo-China.

The issues affected by the answers to these questions are also two.

1. What claim does France have to gold earmarked to the account of the Saigon Branch of the Bank of French Indo-China by Japan in payment for goods and local currency for military expenditures furnished by Indo-China to the Japanese between November 4, 1941 and May 1, 1943?

2. For costs and losses in what period of time does France have a claim against Japan for reparations?

In the case of the gold, about 37 million dollars is at issue. The French want it turned over to them now, not as reparations or restitution, but as an asset owned by them in full title, which only by accident was not shipped from Japan and was not in the vaults in Saigon when the war ended.

The French Government in Indo-China during this period when the country was occupied may be considered to have been, in relation to Japan:

1. Neutral, in which case the French might have a claim to gold under the policies to be established with respect to the return of United Nations property found in Japan at the close of the war, though if the draft treaty for Austria is any precedent it seems unlikely that property acquired after the U.S. declared war will be recognized for this purpose. However, for restitution policies for the return of UN property in Japan, the French at FEC have cited August or September 1940 as the

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date for the beginning of hostilities between France and Japan as Jap bases were then established in northern Indo-China.

2. Puppet, in which case it is possible that U.S. policy will be to return to the successor governments, in this case France, the assets in Japan of puppet regimes, although it is also possible that they will be considered to be Japanese assets. (The French will certainly deny that a puppet regime existed). In any case, it is not contemplated title to puppet assets will pass to successor governments pending the reparations settlement.

3. Belligerent, in which case there would be a restitution claim for the goods for the removal of which the gold was paid or a reparations claim for the value of the resources and manpower embodied in the goods, but no claim for the gold itself. (Since the gold was earmarked in accordance with an agreement signed by the Government of French Indo-China, this government was certainly not a belligerent de facto. De jure the De Gaulle Government was at war with Japan from 1941 but the U.S. did not recognize the sovereignty of this government over French Indo-China until October 1944. The Vichy Government never declared war on Japan.)

4. Collaborative, in which case the gold was acquired by acts on the part of a legitimate government which were tainted, and it is politically undesirable to recognize a French claim to them. (It may be noted in this connection that this account was never treated as "Enemy" by the Japanese Government.)

JK proposes to consider that the government of French Indo-China during this period was acting in collaboration with the Japanese Government, and, therefore, has no claim of any sort for the gold.

JK would like to secure the views of FE and EUR on this point at an early date as the French are pressing for an answer on the issue of principle involved.

On the second question JK proposes, if pressed by the French to do so, to defend the 1% allocation of reparations to France by stating that the belligerency of French Indo-China, ~~in which all the damage at the hands of the Japs was suffered,~~ did not start until October 1944, at the earliest. This is the date on which we recognized De Gaulle sovereignty over French Indo-China. De facto

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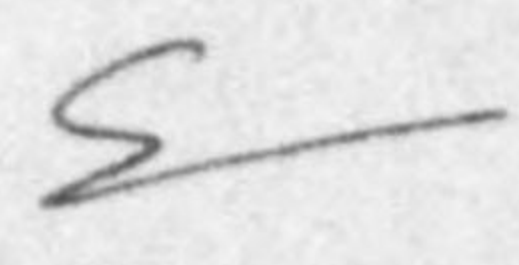
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the scattered opposition to the Jap occupation in 1940 does not justify a status of belligerency. It is generally accepted reparations policy to include only claims for costs and damages incurred after the existence of a state of belligerency.

Again, JK would like the comments of FE and EUR on this proposed position.

JK:EM^{ad}artin:jph
ESP

CONFIDENTIAL

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENTCONFIDENTIAL

TO : JK - Mr. Martin

DATE: April 24, 1947

FROM : FE - Mr. Vincent

SUBJECT: Gold credits in Japan in accounts subject to the French Indochinese and Siamese Governments

Reference is made to your memorandum of March 5, 1947, concerning gold credits in Japan to the account of the Saigon Branch of the Bank of Indochina, which were established in payment for goods and local currency for military expenditures furnished by the French Government of Indochina to the Japanese between November 4, 1941 and May 1, 1943.

It seems essential to consider not only these gold credits but also those credited to the account of the Siamese Government for similar purposes in as much as the cases are alike. It is believed that the United States Government should adopt identical policies with reference to the gold credit accounts at Tokyo of the Siamese and French Indochinese Governments.

The questions at issue are:

1. What was the position of the Governments with reference to the Japanese occupation forces?
2. When, in the course of the war against Japan, did those Governments acquire a belligerent status?

In Annex A it is shown that the French Government of Indochina, under duress, assisted Japanese forces in the course of aggression by furnishing goods, local currency, and other facilities from about August 30, 1940 to March 9, 1945. On March 9, 1945 the Japanese took over the administration of Indochina and replaced high French officials with Japanese on the grounds that the French were no longer providing adequate facilities.

In Annex B it is shown that the Government of Siam, likewise under duress, assisted Japanese forces from December 8, 1941 to May 25, 1945. The Government of Siam of which Phibun Songgram was Prime Minister, under Japanese pressure agreed on December 8, 1941 to provide facilities for the transit and feeding of Japanese troops.

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This agreement was replaced by a formal Pact of Alliance on December 21, 1941. Practical assistance was given the forces of Japan during the subsequent years until on May 25, 1945, the Siamese Resistance Movement, led by the Regent, was prepared to act belligerently against the enemy but yielded to the requests of the Acting Secretary of State and of the Supreme Allied Commander of the South-east Asian Command to avoid provoking open warfare with the Japanese until it would be possible to coordinate the efforts of the Siamese Resistance Movement with those of Allied troops.

In brief then, the Government of French Indochina gave assistance to the enemy from August 30, 1940 to March 9, 1945, and the Siamese Government did likewise from December 8, 1941 to May 25, 1945.

In view of the foregoing, it is believed that all gold credits established in Tokyo in accounts subject to the Governments of French Indochina and Siam during the foregoing designated periods, during which facilities were provided Japanese forces in the course of aggression, should be forfeited on the grounds that those Governments were giving aid to the enemy. Any gold credits established before or after those periods should be considered the rightful property of those Governments and should be made available to them.

The French Government may assert, however, that all gold credits at Tokyo, regardless of when or why established, belong to the present Government of French Indochina as the legal successor of that Government which, under duress, provided facilities for the enemy. If the French are successful in pressing their claim to all of the gold credits in Tokyo under discussion, then it is believed that a similar decision should be made with respect to the Siamese Government, which is the legal successor of a Government which likewise acted under duress and whose acts were disavowed by the successor Government at the earliest opportunity. If all of the French gold credits at Tokyo revert to the present Government of French Indochina, then likewise all of the Siamese gold credits should revert to the present Government of Siam.

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ANNEX A

French Indochina

The questions at issue are:

- I. What was the position of the French authorities in French Indochina vis-à-vis the Japanese occupation forces?
- II. When, in the course of the war with Japan, did France acquire a belligerent status which was applicable to French Indochina?

I.

With regard to Question I, it is FE's view that the French Government of Indochina, under duress, began to provide facility to Japanese forces some time between June 19, 1940 and September 23, 1940. The following events which took place during this period may be cited:

1. On June 19, 1940 (two days after news of the French request for an armistice in Europe was received in the Far East), General Catroux, Governor-General of Indochina, yielded to Japanese pressure and decided to close the Indochinese border to shipments to China. He authorized the Japanese themselves to supervise, on the spot in Tonkin, the effective cessation of this traffic.
2. As the result of a Japanese ultimatum of August 2, 1940, demanding that Japanese forces be permitted transit through Tonkin and the possession of airfields in Indochina, the French on August 30, entered into an agreement with the Japanese recognizing "the dominant interests of Japan in the Far East in the economic as well as in the political domain," guaranteeing "to Japan and its nationals, in Indochina, the most advantageous possible situation and, in any case, a predominating situation as compared with that of other third powers," and providing for discussions between French and Japanese military authorities to determine what military facilities would be required by Japan in Indochina.

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3. Between September 5 and 22, supplementary agreements were concluded authorizing the landing of Japanese troops in Indochina, the quartering of 6,000 Japanese troops in Indochina, the passage of Japanese troops (not to exceed 25,000 at one time) through Indochina to China, and the use by the Japanese of certain airfields.

4. On September 23, a Japanese armed force which had been specifically excluded from the foregoing agreements, crossed the Indochina border from China and was resisted by the French. Within two days, the opposing French force was compelled to surrender. Meanwhile, although the Japanese had obtained the right to land troops at Haiphong, they apparently preferred to force a landing and did so at Doson. They also bombed Haiphong. The French were under the impression that the Japanese forces engaged in these operations had acted independently. The incidents were settled under the terms of the September 22 agreement.

FE believes that the signing of the August 30, 1940 Agreement might well be considered as marking the definite beginning of the period of collaboration.

Other noteworthy developments occurring before November 4, 1941 and bearing upon the question of Indochina's status may also be mentioned:

1. On October 7, 1940, Indochina was given customs autonomy.
2. On October 14, 1940, the Japanese insisted upon sending a mission to Hanoi to commence discussions of Indochina's economic relations with Japan as envisaged in the Agreement of August 30, 1940, despite French contentions that discussion should be held in Tokyo.
3. On May 6, 1941, an agreement concerning customs, commercial exchanges and method of payment and a convention of establishment and navigation concerning Indochina with related documents was signed at Tokyo. While these agreements for the most part provided for most-favored-nation for Japan or national treatment

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in Indochina for Japanese nationals, the Japanese received substantially preferential treatment over the nationals of third powers.

4. On July 29, 1941, a French-Japanese protocol was signed at Vichy by which France undertook "to conclude in regard to Indochina no agreement or understanding with a third power which envisages political, economic, or military cooperation of a character directly or indirectly opposed to Japan". Further, the two governments promised "to cooperate in military matters for the defense of French Indochina".

5. On October 2, 1941, the Acting Secretary of State in commenting upon this agreement stated that in effect it "virtually turns over to Japan an important part of the French Empire." He added "effort has been made to justify this agreement on the ground that the Japanese assistance is needed because of some menace to the territorial integrity of French Indochina by other powers. The Government of the United States is unable to accept this explanation". He further stated that under the circumstances "this Government is impelled to question whether the French Government at Vichy in fact proposes to maintain its declared policy to preserve for the French people the territories both at home and abroad which have long been under French sovereignty."

II.

With regard to Question II, FE considers that the acquisition by France of a belligerent status toward Japan did not apply to Indochina until March 9, 1945. On that date the Japanese assumed direct control of Indochina. While it is understood that many Frenchmen continued in administrative positions, the higher officials were on this date replaced by Japanese. Of the French armed forces, some resisted while others were disarmed and interned. Eventually those which had fought were killed, captured or forced to flee. The significant point is that before March 9, 1945, the Japanese must be judged to have been content with the French Administration of Indochina and not until then did they find it necessary to supplant this administration with one of their own in

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order to assure the preservation of their interests and attainment of their objectives in the area. Moreover, there is good reason to believe that this change of policy was dictated not by any stiffening of the attitude of the French in Indochina but rather by the success of the American armed forces in the Philippines and by the beginning of the rout of the Burma Area Army by the British. These developments together indicated that Indochina might soon be the object of a direct assault, which would require the consolidation of maximum power in Japanese hands.

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SEA:COgburn:eh

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ANNEX B

SIAM

The questions at issue are:

- I. What was the position of the Siamese Government with reference to the Japanese occupation forces?
- II. When, in the course of the war against Japan, did the Siamese authorities acquire a belligerent status?

I.

With regard to Question I, it is known that a few weeks before Japan struck, the Siamese sent a military mission throughout Malaya to see how prepared the British were for war against Japan. Siamese officials in Indochina had already provided extensive reports on the strength of Japanese forces in Indochina. On December 8, 1941, acting under duress and faced with an ultimatum, the Siamese Government informally agreed to provide facilities for the transit and feeding of Japanese troops in their prosecution of the war.

On December 21, 1941, Japan and Siam signed a Pact of Alliance including the following articles:

1. An alliance is to be established between Japan and Siam on the basis that each will respect the independence and sovereignty of the other.
2. In case either Japan or Siam is engaged in an armed conflict with an outside country or countries, Siam or Japan will immediately join with the party to this Pact and will accord all assistance politically, economically, and militarily.
3. Details relative to the execution of Article 2 will be determined by common agreement between the competent authorities of both Japan and Siam.

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4. In case Japan and Siam are engaged in a common war, Japan and Siam agree that neither party will conclude an armistice or peace treaty without the complete agreement of both parties.
5. The present Pact will come into force on the date of signature. It will be in force for a period of ten years. Both parties will consult each other on the subject of renewing the said Pact before its expiration.

On January 25, 1942, the Siamese Government made an independent declaration of war on Great Britain and the United States. Practical assistance in the form of loans of baht currency for the use of Japanese troops, goods and other facilities were provided by the Siamese Government during the subsequent years.

II

With reference to Question II, on March 13, 1945, the Siamese Minister, M. R. Seni Pramoj, together with two representatives of the Siamese Resistance Movement who had escaped from Siam and come to Washington on a special mission in behalf of the Regent of Siam, Pridi Banomyong, asked the Department for advice as to whether Siamese representatives of the Resistance Movement outside of Siam should declare war against the Axis nations. The Siamese Minister stated that the Regent was eager to identify Siam with the United Nations. This was one in a series of conversations between representatives of the Siamese Resistance Movement and Officers of the Department on the general subject of how Siam should proceed in order to join forces with the Allied nations against the Axis powers.

On May 21, 1945, the Siamese Regent sent a message to the Secretary of State to the effect that the Siamese Resistance Movement continually adhered to the advice of the American representatives not to take any premature action against the enemy; that at this time he believed that the Japanese desire to fight could be weakened if the Resistance Movement no longer tried to remain under cover; that the Siamese Resistance Movement was blocking every effort of the Japanese forces to secure substantial assistance from the Siamese in support of their war; that the Japanese were suspicious of the existence of a Siamese Resistance Movement and that an open break might

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occur at any time; that the Japanese were demanding additional credit of 100,000,000 bahts, which loan the Siamese Government was attempting to avoid; the existing Government would not remain in office if the Japanese persisted in the matter; that then a new Government would take action against the Japanese by declaring void all debts and agreements previously contracted with the Japanese including the declaration of war against Great Britain and the United States; and that before going ahead with this plan he desired to inform the Secretary of the situation. The Siamese Regent concluded his message by asking that, on the day that open action began against the Japanese, the United States would declare her respect for Siam's independence and state that Siam was regarded not as an enemy but as a member of the United Nations. An almost identical message was sent to the Supreme Allied Commander of the Southeast Asian Command.

On May 25, 1945, the Supreme Allied Commander of the Southeast Asian Command sent a message to the Siamese Regent urging him to prevent sabotage actions which might provoke the Japanese to assume control of Siam.

On May 28, 1945, the Acting Secretary of State answered the Siamese Regent and urged him to prevent premature action which would precipitate the taking over of the Siamese Government by the Japanese. The Acting Secretary assured the Regent that at the appropriate time the United States Government would reiterate its respect for Siamese independence and declare that at no time had it considered Siam an enemy.

The Siamese Regent replied to the Acting Secretary of State and to SACSEA that every possible means would be used to avoid an open clash with the Japanese, stating that only in case the Japanese forced the issue would there be an open break. In order to prevent an open clash, the Regent stated that the Siamese Government would be required to loan the Japanese another 50,000,000 baht.

It seems clear from the foregoing that the Siamese Resistance Movement was prepared to act overtly against the enemy but withheld action on instruction of SACSEA on May 25, 1945, and the Acting Secretary of State on May 28, 1945.

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STANDARD FORM NO. 64

Office Memorandum



UNITED STATES GOVERNMENT

TO : EUR - Mr. Matthews
 FE - Mr. Vincent
 FROM : WE - S. Reber

DATE: May 16, 1947.

SUBJECT: Gold credits in Japan in accounts subject to the French Indochinese and Siamese Governments.

WE agrees with the conclusions contained in Mr. Vincent's memorandum of April 24, 1947, to the effect that gold credits established in Tokyo in accounts subject to the Governments of French Indochina and Siam during a period to be designated when facilities were provided Japanese forces in the course of aggression, should be forfeited on the grounds that those governments were giving aid to the enemy. Any gold credits established before or after those periods should be considered the rightful property of the government concerned and should be made available to it. Inasmuch as this conclusion is based on the ground that supplies for which payment is sought were used to give aid to the enemy, it is difficult, however, to see how we can consider the period during which these supplies were turned over to the enemy would begin before the United States was at war with Japan. Therefore it is suggested that it be established that the Government of French Indochina gave assistance to the enemy from December 8, 1941 to March 9, 1945. Although Japan's acts prior to that date were of an aggressive nature, can it be legally designated as the enemy prior to December 7, 1941?

S. Reber

WE: SReber:mdm

894. 6341/5-1647

STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Secretary

DATE: May 29, 1947

FROM : General Hilldring - A-H

SUBJECT: French Earmarked Gold in Japan

1. The Ambassador of France has requested the release to the French Union of 37.3 million dollars in gold earmarked on French account ~~(during the war)~~ by the Japanese Government and now in the custody of our forces in Japan. The memorandum attached hereto is with respect to this request.

2. The gold was earmarked during ^{for} the period of Japanese occupation of French Indochina in payment of Indochinese exports to Japan and Japanese military expenses in Indochina. ~~It is believed the French claim is properly a reparations matter, as the origin of the claim is resources taken from Indochina during Japanese occupation. A ~~year~~ claim, arising under identical circumstances, is being regarded as a reparations matter by the French.~~

3. Recognition of the French claim ^{falling within the scope of their} would almost certainly engender recognition of a Siamese claim involving an even greater amount of earmarked gold (43.7 million dollars), and would substantially reduce the amount of Japanese liquid assets available to create a revolving fund to finance Japanese foreign trade.

4. ~~There is substantial legal basis for the French request, for possession of this gold, but serious policy considerations lead to a negative reply. Moreover, recognition of the French request would give the French an undue advantage with respect to payment for resources exploited by the Japanese in Indochina as compared with other Japanese-occupied areas which will obtain payment for exploited resources under reparations procedures.]~~

5. It is recommended that the French claim be regarded by this government only as a reparations matter, and that the Ambassador of France be so informed. There is attached for your approval, a proposed draft note to this effect.

However, ~~recognition of the return of this gold to France would give her, to the extent of the resources in payment for which the gold was earmarked, 100% compensation for assistance rendered Japan under agreements signed with the Japanese govt to the Japanese war effort under signed Franco-Japanese agreements. ~~Other~~ On other allies will receive only that small fraction for the resources taken from them by the Japanese only that small fraction which their reparations receipts are of their total reparations claims.~~

JK:RBP Parke:mw

ESP LE LE/e FN SEA NA EUR A-H

o/v RHM

from November 4, 1941 to May 1, 1943,

for your balance

Since this gold is in the custody of SCAP for the representative of the Allied Powers, any further decision of the matter should be in the F.E.C.

*April 22, 1947
September 29, 1945*

894.6341/5-29-47

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STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : A-T - Mr. Thorp
A-H - General Hilldring

FROM : OFD - Mr. Ness *nm*

SUBJECT: Indo-Chinese Gold Earmarked in Japan.

DATE: July 17, 1947

In the attached memorandum JK recommends that the French Ambassador's request for the release of \$37.5 million of gold held in Japan and earmarked for the account of the Bank of Indo-China be denied and that the French claim be regarded as a reparation claim.

OFD recommends that the French Ambassador be informed that the U.S. will support the French claim and that:

- (a) the U.S. member will be instructed to introduce a resolution to this effect in the Far Eastern Commission, or,
- (b) the U.S. member will be instructed to support a resolution to this effect that the French member may introduce in FEC, or,
- (c) SCAP will be instructed to effect the release of the gold.

This recommendation is based on the following considerations:

1. It is the policy of the U.S. to maintain as far as possible the inviolability of international transactions involving the legal transfer and earmarking of monetary gold.
2. In the European theater gold has not been made the subject of reparations, nor have claims for restitution of monetary gold been treated as reparation claims. The allied objective has been to restore to the rightful owners gold looted by Germany during the war regardless of the magnitude of reparation claims for other categories of losses.
3. It is the intention of this Government, for instance, to request the retransfer to the European gold pool of German gold transferred to Japan and now in the custody of SCAP. This action in itself would violate the principle proposed by JK that Japanese-held gold be declared available exclusively for reparation purposes.

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4. The contention that, in evaluating the French claim for the release of earmarked Indo-Chinese gold in Japan, consideration must be given to the conditions under which such earmark occurred runs counter to precedent in Europe. No attempt has been made in Europe to recover gold paid by Germany to other nations - axis countries or countries occupied by the Germans - in return for services and supplies rendered by such nations, provided such gold had not been looted by the Germans.
5. Refusal to grant the French request for release of the Indo-Chinese gold would not benefit other Far Eastern reparations claimants. Under a resolution introduced by the U.S. the FEC is being asked to make Japanese gold available in part to cover occupation costs under the first charge principle and in part to be used as a revolving fund to finance Japanese foreign trade.

FN: ^{MHA}Devy-Hawes:erm

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STANDARD FORM NO. 64

FRANCE*Office Memorandum* · UNITED STATES GOVERNMENT

DATE: 7/21/47

TO : A-T - Mr. Thorp
A-H - General Hilldring

FROM : OFD - Mr. Ness *mn*

SUBJECT :

With reference to the attached memorandum, I have been informed that the Treasury Department will strenuously oppose any decision not to release the Indo-Chinese gold to the French Union.

FN:ML *mt* Hawes:erm

STANDARD FORM NO. 64

FRANCE

Office Memorandum • UNITED STATES GOVERNMENT

TO : A-T - Mr. Thorp
 : A-H - Mr. Hilldring

FROM : FE - Mr. Vincent

DATE: July 24, 1947

SUBJECT: Indochinese Gold Earmarked in Japan.

I have initialed the memorandum by JK on Earmarked Indochina Gold in Japan. I have not initialed the memorandum by OFD.

With regard to paragraph 10 of the JK supporting memorandum, I feel that the criterion as to the holding or release of French, Siamese, Italian and Chinese gold earmarked in Japan should be whether at the time of such earmarking the area in question was in fact collaborating with Japan. I attach a copy of a memorandum which I sent JK on April 24 in which I recommended that Indochinese gold earmarked between August 30, 1940 and March 9, 1945 and Siamese gold earmarked between December 8, 1941 and May 25, 1945 should not be released but be regarded as reparations matters (and that French and Siamese gold respectively earmarked before or after those dates should be released). WE concurred in the basic premise but expressed the view that December 8, 1941, not August 30, 1940, should be the determinant date for Indochina. While preferring the earlier date, I would accept this as a compromise. The net effect would be the release of \$12,000,000 to France and \$8,000,000 to Siam.

If the August 30, 1940 date is adopted there will be no release of gold to France and the JK memorandum would appear satisfactory. It would be appropriate, however, I believe for the note to explain the criterion adopted in view of the probable release of Siamese gold earmarked prior to December 8, 1941. If December 8, 1941 be adopted as a determinant date for Indochina, the note should be re-drawn so to explain the criterion used, and set forth our willingness that SCAP release that amount; but that we believe the post-December 8 earmarked gold should be treated as a reparations matter.

SEA:ALMoffat;nrs

alm

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*Mr. Martin OF
Surgey has added his
Comments
CTW*

August 7, 1947



A-T - Mr. Wood

Subject: Indo-Chinese gold earmarked in Japan

It would appear that the basic issue to be decided with respect to the French Indo-China gold is political in character rather than legal. Following the points listed in both JK's and OFD's memoranda, the following observations can be made:

1. JK is correct in stating that a major question to be decided is whether the gold earmarked is to be recognized as accruing from a series of valid commercial transactions. However, the fact that these transactions may have been made under duress during Japanese occupation of French Indo-China is not to determine that the French do not have a claim for the gold. Since the duress was exercised by the Japanese against French Indo-China, the latter would legally be justified in claiming that they gave recognition to the transactions made under duress to the extent of now claiming the compensation for such transactions in the form of the earmarked gold.

2. I know of no similar case arising in the European theater; consequently, the fact that in the European theater our policy has been confined to the restitution of looted gold does not prohibit a decision at this time that a similar policy of restitution can be applied to earmarked gold under the facts of the case.

3. I do not believe that the comments of either memorandum on this point add much to the case.

4. The JK memorandum admits that had Japanese gold been paid and shipped to China, in return for goods and services, the policy would not be for returning the gold to Japan. However, if that is so, it can just as easily be argued that the mere fact that the Japanese failed to ship the gold to French Indo-China should not prejudice the recovery of the gold by the French. Moreover, the legal effect of the earmarking can be claimed to be equal to an actual shipment of the gold to French Indo-China. It is not believed that a decision should be made solely on the basis of whether earmarked gold was actually shipped to the country for which it was earmarked or whether it was merely held for their account.

5. No comment.

Summary:

From a legal standpoint, therefore, a decision is not dictated one way or the other. I would be inclined to state that a better legal case could be

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made out for the return of the earmarked gold to France. In the event that the decision is to return the gold to France, I believe that the case should be indirectly tied up with the various questions which the Under Secretary is scheduled to take up concerning Italian-French differences. While the return of this gold to France should not be related directly to, for example, the participation of Italy in the distribution of the Swiss gold, nevertheless, it is possible that a decision favorable to the French in this case would bring about a reversal of the French present position whereby they are opposed to Italy's sharing in the looted gold recovered from Switzerland. In other words, while the matters need not be related to each other, the decision in this case, if favorable to France's claim, might conveniently be discussed simultaneously with the Swiss gold problem.



Walter S. Surrey

Le/ESSurrey:PJ

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**WAR DEPARTMENT
WAR DEPARTMENT SPECIAL STAFF
CIVIL AFFAIRS DIVISION
WASHINGTON 25, D. C.**

1451

WDSCA 386.3

13 August 1947



Honorable John H. Hilldring
Assistant Secretary of State
Washington, D. C.

Dear General Hilldring:

Reference is made to WAR 80781 of 24 June, a State Department (Mr. Hemmendinger, A-H, No. AH 2137) initiated cable requesting SCAP to furnish information pertaining to the time and circumstances surrounding the earmarking and the quantity, identification and present status of gold earmarked for Siamese account by the Japanese Government.

The SCAP has forwarded the requested information which is transmitted herewith.

Sincerely yours,

Ray J. Lane, Lt. Col, GSC -73913
for DANIEL NOCE
Major General, GSC
Chief, Civil Affairs Division

1 Incl.
Report of Gold in Japan
Earmarked for Thailand

894.6341/8-13417

*Col. Lynch, Executive Officer, CAP, cites:
SCAP'S letter AG 410.2 (23 July 47) CPC/GP as letter
transmitting attached report.*

[Signature]
7/19/48

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STANDARD FORM NO. 64

File
with McGuire's file

Office Memorandum • UNITED STATES GOVERNMENT

TO : OFD - Mr. Ness

DATE: August 20, 1947

FROM : FN - Mr. McGuire *mcg*

SUBJECT: French Claim for Gold Earmarked by Japanese Government for Account of Banque de L'Indo Chine During Period of Collaboration by Vichy France with Japan.

After most careful deliberation and review of the complete file on the subject French claim, I feel bound to record my strong opposition to the OFD memorandum of July 17, 1947, written in my absence, and my continued support for the position taken by ESP and FE, which is based upon an opinion rendered by me nearly two years ago. EUR endorsed that position (with minor exceptions) as recently as May 16, 1947, although I am informed EUR has since accepted the new OFD position as a welcome windfall gain for a France sorely beset with financial difficulties.

I fully appreciate the political and economic importance of maintaining the financial solvency of the present French Government. Furthermore, I am not without sympathy for the Government of Vichy France, although the French people have clearly indicated their disapproval of the collaborationist activities of Marshal Petain and other Vichy leaders. However, there are considerations involved in this gold earmarking case which, I feel, far outweigh any legalistic, sympathetic or short-run financial considerations which can be adduced in support of the present French claim.

In its memorandum of July 17, 1947, OFD makes no attempt to controvert the opinion of FE and JK that no earmarkings would have occurred except for the collaborationist activity of the Vichy regime of Decoux in Indochina. This collaboration, beginning as early as August, 1940, first cut off the supply of Indochinese rice to the Chinese Army, and then permitted Japanese forces to occupy Indochina without opposition, to use Indochina as a base for Japanese operations in the Malay States, and to obtain from Indochina substantial quantities of rubber and rice which were of incalculable value to the Japanese in waging war against the United Nations. As a reward for this collaboration, the Japanese granted to the Vichy Government of Indochina the status of a theoretically independent member of the Japanese "Co-Prosperity Sphere," and agreed to pay for goods and services provided to the Japanese war machine by earmarking gold for the account of the Vichy Banque de L'Indo-Chine.

Gold earmarking was a reward reserved for those areas of the Far East (Indochina and Siam) which accepted Japanese offers of membership in the Co-Prosperity Sphere promptly and without causing any trouble. Those areas which offered even a modicum of resistance, such as Burma, Malaya, the Netherlands Indies, the Philippines, and the eventually occupied areas of China, received either no payment at all or payment in restricted yen for goods and services taken by the Japs. The yen holdings of these countries will probably have no value except as measures of relative spoliation for determining proportionate shares of whatever Japanese assets will remain for reparations after the United States recovers occupation trade deficit costs.

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Perhaps the collaborationist action of Vichy France can be excused, on the ground that it could not have defended Indochina successfully, and merely bowed to the inevitable and avoided useless bloodshed. Perhaps the present government of France is entitled to participate in Japanese reparations on behalf of Indochina on equal terms with other Far Eastern countries. But the suggestion that France should obtain more favorable treatment than will the Far Eastern countries which resisted Japanese aggression is incomprehensible to me. Even the Japanese can scarcely have anticipated that the United States Government would go to such lengths to breathe substance into the once empty promises held out by Japan to the Co-Prosperity Sphere. It is unreasonable to suppose that even the Japanese ever intended that 40% of their gold reserves should be irrevocably pledged to such an infinitesimal portion of their hoped for empire as was represented by Indochina and Siam. Time and again the Vichy French Government requested physical delivery of the earmarked gold, to no avail. But now OFD proposes that the Co-Prosperity Sphere be made a reality two years after the defeat of Japan.

Quite apart from the injustice which would be done to all the participants in the war against Japan, the OFD proposal is fraught with the most serious implications for the future. It seems generally agreed that Russia is the most serious threat to world peace. Russia is also the one country in the world other than the United States which has substantial gold reserves. This would appear to be a most inappropriate time to go on record in support of the "inviolability of international transactions" in gold, regardless of circumstances. If half the European countries now outside the Russian orbit were to sell out to Russia for some billions of dollars worth of gold, and permit their territories to be used as bases for a Russian attack on the rest of Europe, would OFD propose that the traitor countries retain the gold, while the rest of Europe, devastated by war, received only such crumbs of reparations as could be extracted from a defeated Russia, minus her gold reserves? Under such circumstances, resistances will be a singularly unattractive course in any future war.

To me, the appropriate U.S. answer to the French note of May 6, 1947 is perfectly clear. Assuming it is desired to ignore the collaboration angle entirely, and to give France compensation for goods and services obtained by Japan in Indochina on the same basis as is applicable to other countries of the Far East, the French should be told that:

- (a) The U.S. Government does not consider that compensation for Indochinese goods and services obtained by Japan should be different in type or in amount from compensation for goods and services taken from other countries. Whatever the Japanese reason for establishing a different mode of compensation, the U.S. Government does not feel bound to implement the discriminatory Japanese action by completing the delivery of earmarked gold, an action which the Japanese themselves refused to take.

- 3 -

- (b) However, the U.S. Government will support a French claim for reparations from Japan on the same basis applicable to other reparations claimants. The formula proposed by the United States for determining reparations shares makes appropriate allowances for the value of goods and services obtained by Japan under duress. The U.S. Government will propose that the value of the earmarked gold, plus the value of the yen credits established after gold earmarking was suspended, be accepted as evidence of the value of goods and services taken by Japan from Indochina.
- (c) If the FEC refuses to grant France the right to participate in Japanese reparations on behalf of Indochina, the U.S. position re the earmarked gold may be reconsidered, and no final disposition will be made of such gold until the reparations question is settled. However, under no circumstances will the United States, by unilateral action, provide greater compensation for goods taken by Japan from Indochina than is available for goods taken from other countries.

With respect to the five points made in OFD's memorandum of July 17, 1947:

1. I have already signified my conviction that the United States Government cannot afford to endorse the particular earmarking transaction in question, regardless of its general position regarding the inviolability of transactions in monetary gold. Referring to the wording used by OFD, I would say that even if the transactions can be considered genuinely "international" and "legal" (and I think there is considerable question on both counts), this is a case where the words "as far as possible" become significant. In my opinion it is high time that the United States Government made clear that it will not recognize earmarkings growing out of transactions which assist an enemy in taking the lives of American soldiers.
2. The European and Far East gold situations are entirely different. In Europe, the total amount of looted gold recovered was less than the amount looted. Restitution procedures therefore absorbed all the recovered gold, leaving none available for reparations claimants. In the case of Japan, claims for looted gold are negligible as compared with Japanese gold assets, and gold therefore becomes available for either occupation costs or reparations. No one has suggested that the gold earmarked for Vichy France was looted. The question is simply whether a substantial portion of Japan's gold assets should be dissipated in payment of rewards for collaboration, at the expense of non-collaborators. (See (5) below.
3. *Correct* The German gold referred to was sent by the German Government to its Embassy in Tokyo to finance Embassy operations there, and remained German gold although located in Japan. It has no connection with gold owned by the Japanese Government, and the point therefore appears irrelevant to the question at issue.

- 4 -

(4) It is entirely feasible to distinguish German gold deliveries from Japanese gold earmarkings. The French are asking the U.S. Government to take a positive action to complete delivery of earmarked gold, an action which the Japanese refused to take, and which it is doubtful they ever intended to take. Failure to recover gold delivered by Germany to Roumania (the only case cited by OFD in supporting memoranda) is an act of omission rather than commission. The futility of attempting to recover gold from Russian dominated Roumania, plus the desire of the U.S. Government to avoid pressure on Roumania so long as there was any chance to win that country for the West, may justify failure to take action towards recovery of German gold physically transferred to Roumania. But this negative precedent does not justify the positive action requested by the French.

(5) The last OFD point is simply an error. The U.S. position is that the Japanese trade deficit during the occupation period is a first charge against all Japanese assets, of which Japanese gold is only a part. Transfer of \$80,000,000 worth of Japanese assets to Indochina and Siam will reduce the balance available for reparations after deduction of the trade deficit, unless it is assumed that the trade deficit will exceed total Japanese assets by more than \$80,000,000. In any event, it is too early to say what the ultimate reparations policy agreed on by FEC will be, and it is not at all certain that the United States will claim all monetary gold in Japan, or insist upon the first charge principle to the exclusion of all reparations.

RECOMMENDATION: I recommend that the OFD memorandum of July 17, 1947 be withdrawn, and that JK's draft note to the French be initialed by OFD, after perhaps some slight revision to make more explicit the U.S. position regarding French participation in Japanese reparations.

NOTE: I have myself suggested at various times the possibility of a compromise under which Indochina and Siam would be given that portion of the gold which was earmarked before December, 1941, when Japan became an actual enemy of the United Nations other than China. However, since Vichy France's collaboration with Japan injured China as early as June 19, 1940, (when Japanese inspectors were authorized to stop rice shipments to China), it would be surprising if China agreed to this compromise, and it may be inappropriate of the U.S. Government to suggest it, particularly if the real reason for compromise is to gain French support for Italian and Austrian participation in the European gold pot, which, to my mind is a quite unrelated matter. Siamese collaboration before December 8, 1941 was of a much less direct nature, but obviously any goods sold to Japan in the months immediately preceding Pearl Harbor were of assistance to subsequent Japanese aggression. But if compromise there must be, let it by all means stop with Pearl Harbor Day.

FN:PFMcGuire/ag

→ Saltzman N
 Lied in DE
 10/21/47

DEPARTMENT OF STATE
 ASSISTANT SECRETARY

October 13, 1947

U - Mr. Lovett:

Subject: French and Siamese Gold - Japan.

1. Unless it is believed of great importance to deliver this gold to France at this time, I would recommend that it be decided to refer the claim to the FEC.

2. If it should be determined to be of great importance to turn over the gold immediately to France, I suggest that it be done in such a way as still to recognize ultimate FEC competence. This could be done by recognizing that France has a prima facie title, delivering the gold, referring the question to the FEC and requiring France to agree to return an equivalent amount of gold if, upon FEC review, or action of another competent body, a decision adverse to the French claim should be reached.

3. This action would not require comparable action on the Siamese claim. Siam is an enemy state with respect to one or more of the countries which SCAP represents, so that even the existence of prima facie title would not lead to the delivery of the gold to Siam because of the potential claim of FEC countries, enemies to Siam, which might wish to set aside the Japanese-Siamese transaction or seize the gold as war booty. The question of the Siamese gold should be taken up ab initio with the FEC.

CES.

C. E. Saltzman

894. 6341/10-1347

3230

STANDARD FORM NO. 64

EUR

Office Memorandum • UNITED STATES GOVERNMENT

TO : OE: Mr. R. H. Whitman

DATE: November 10, 1947

FROM : EUR: Wayne G. Jackson *WGJ*
WE: Woodruff Wallner *WW*

SUBJECT:

WE and EUR are reluctant to initial the attached papers. It is not that we disagree with the proposal that the matter of the possible return of the gold to Indochina be referred to FEC but rather that the line of reasoning contained in the letter to Under Secretary Draper does not seem clear and the reference in the proposed note about placing the matter before FEC might be differently phrased.

As we understand the position which Le has previously taken, there was in fact a transfer of title to the gold when it was earmarked for the account of Indochina. If passage of title were by itself determinative, there would be no problem. We understand, however, that Le advises that the basic question is whether or not that transfer of title will be recognized. The decision on this point is not a legal decision but a political decision.

If the above analysis is correct, the question remains as to whether the U.S. proposes to make this political decision unilaterally or to refer it to FEC. It is our understanding that FE and OE feel strongly that reference of the matter to FEC is desirable. We are prepared to agree with this. The earmarking of the gold arose out of transactions with or for the benefit of the military activities of Japan, a country which was preparing its aggression in the months before December 7, 1941, and was actively at war with us and other FEC countries after that date. It would seem appropriate that the FEC, which has a general jurisdiction over matters arising out of the Far Eastern war, should consider this matter and we understand that Le believes this matter may properly be brought within FEC's jurisdiction.

On the basis of the above, we feel that the letter to the Army Department should state the situation and the Department's view, if it is concurred in by other interested parts of the Department, that the matter should be referred to FEC. With regard to the note to the French, it would seem more appropriate to advise the French that we are not prepared to take unilateral action with regard to the Indochina gold and to suggest that either the French take this matter up in FEC or, if the French do not wish to do

this, that

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this, that the U.S. will place the matter before the FEC. It would not seem appropriate to state, as is done in the present draft, that the U.S. will place the matter before FEC "on behalf of the French Government".

Attachments

STANDARD FORM NO. 64

CONFIDENTIAL*Office Memorandum* • UNITED STATES GOVERNMENTTO : ~~VEN, OED~~, Le/E, SEA, FE, WE, NA, A-T, A-S

DATE: December 3, 1947

FROM : OE - Mr. Whitman *RW*

SUBJECT: French and Siamese Earmarked Gold in Japan.

The attached letter to General Draper, Under Secretary of the Army, is submitted for the formal approval of the Divisions of the Department indicated above. It reflects the course of action agreed upon at the meeting called by A-S on December 1, 1947, which was attended by representatives of the Divisions of the Department interested in the question.


The letter informs the Department of the Army, and through it the SCAP, of the determination made by the Department that:

- (1) Unilateral action is inadvisable.
- (2) The question should be resolved by the Far Eastern Commission.
- (3) Once the question is before the Far Eastern Commission, the United States will take no initial position but will determine its final position in the light of the proposals advanced by other FEC countries.

A copy of the minutes of the meeting referred to above, is also attached, which outlines the course of further action vis-a-vis the French and Siamese Embassies.

Attachment:

Letter to Gen. Draper
Minutes of meeting of December 1, 1947



OE:RBParke:mw

(See Routings, above)

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3916

DEPARTMENT OF STATE
 THE LEGAL ADVISER

December 4, 1947.

TO: *Mr. Alving* A-S - Mr. Claxton *FC*
 FROM: Le/E - Walter S. Surrey *WSS*
 SUBJECT: Indo-Chinese and Siamese Gold in Japan.

With reference to the memorandum of conversation of December 1, 1947 dealing with the "Indo-Chinese and Siamese Gold in Japan", Le is of the opinion that the conclusions reached at the bottom of page 2 are fully satisfactory, with the exception of conclusion no. 4, reading

"That this Government will take no initial position at the time of the presentation to the FEC and will consider abstaining from taking a position throughout the debate."

Le is of the opinion that the Department should arrive at an initial position to be taken in the FEC prior to discussion of the matter in the FEC. In the event that the varying views cannot be resolved by the working levels, the question should be submitted to Mr. Lovett prior to discussion in the FEC for decision as to what the initial position should be.

On this basis Le/E has cleared the communications to the French and Siamese.

cc to: WE - Mr. Wallner
 EUR - Mr. Jackson
 NA - Mr. Green
 OE - Mr. Whitman
 SEA - Mr. Landon
 Le/P - Gen. Snow
 A-T - Mr. Wood
 FE - Mr. Butterworth

Le/E:WSS:vwm

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DEPARTMENT OF STATE
^{Western}
 DIVISION OF EUROPEAN AFFAIRS



EUR - Mr. Reber:

The question of French gold in Japan has again come to an impasse. There is general agreement that the matter should be taken to FEC after consultation with the French, but there is no agreement as to the position we should take in FEC.

I have proposed that, as we really can ~~not~~ decide the question one way or another without going to FEC and ~~that~~ we only resort to FEC because we are reluctant, for very good reasons, to make the decision ourselves, that we put it up to FEC without taking an initial position, thus letting the majority of FEC members decide. This was agreed to at a recent meeting but since then Le has reversed itself on this score and I suspect that some other Divisions feel the same way. Wayne Jackson and I feel that this is basically a political question upon which FE and EUR should reach agreement before the matter is again presented to the Department as a whole.

Would you consider having a meeting with Walton Butterworth and threshing this matter out.

Saw - I am not aware of a reversal of my position. My view is + has been that US should not go into FEC without a formulation of US position (or alternative positions to which we can retreat) for the guidance of the US members of FEC. We do not have to announce our position, or alternative positions in the FEC until we want to, but the key must know what they are. *copy*

WE:Wwallner;zy

STANDARD FORM NO. 64

SECRET

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Breithut
FROM : Mr. Fletcher ^{0.1.4}
SUBJECT: Indo-China Gold Claim

DATE: March 24, 1948

In compliance with your request, I am glad to give you the following information:

1. The French Embassy presented a note on subject matter to the Department of State on May 6, 1947 stating in short terms their claim in the name of the French Union to the 33,056.813 kg. of fine gold earmarked at the Yokohama Specie Bank for the account of the Bank of Indo-China. The gold was later transferred to the Bank of Japan by the occupying authorities. A reply to this note was drafted in OE and both the note and the draft reply were held for a number of months in Mr. Wallner's office (WE). I located the French note and the draft reply, which has not been sent yet, at Mr. Hemmendinger's desk (A-0). The note will now be sent over to us.

2. On October 20, 1947 a letter from the Washington law firm of Cox, Langford, etc., dated October 17th, was received in Le/E, containing a copy of a legal opinion prepared by Professor Hamel of the University of Paris, which I discovered in the files of OE.

3. OE also had on file a second French note dated October 23, 1947 elaborating on the claim as stated in their first note of May 6, 1947. To this note, too, a reply was drafted in OE, but was stopped by Mr. Hemmendinger and returned to OE with the remark that the case might have to be submitted to FEC and no reply should be made until then. The complete material is now in my file.

4. A solution of the Indo-China gold problem cannot be divorced from the decision regarding the similar Siamese claim. A memorandum is now being prepared by Bob Parke of OE and myself (in accordance with the assignment given us by the interdivisional meeting on this matter a few days ago) requesting Le/E to provide another legal opinion on the justification to deny on legal grounds, not as a matter of policy, the whole of the Indo-Chinese, Siamese gold claim or at least the post Pearl Harbor portion bulk of such claims of certain new legal and factual developments. ~~and on the question whether such a decision can be made unilaterally by the US, so that the gold would~~

automatically

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SECRET

The legal opinion should include a statement with regard to the strength of the claim of the U.S. under the first charge principle to all Japanese-owned gold and, consequently, whether decision can be made by the U.S. unilaterally or by submission to FEC only.

5. There is attached a copy of the policy paper on this matter prepared for the Secretary's office a few days ago. I gather you want to send this copy to Mr. Thorp's office.

Enclosure:

Policy paper,
Indo-China's and
Siam's Gold Claim,
drafted March 18, 1948.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : FN Mr. Fletcher
 FROM : O Mr. ~~Hemmerling~~
 SUBJECT: French and Siamese Gold in Japan.

DATE: March 24, 1948

In accordance with your telephone request, I am sending you herewith the French notes and other action documents on the above subject.

1. French note of May 6, 1947 together with draft reply.
2. Memorandum of October 13, 1947 from Mr. Saltzman to Mr. Lovett with indorsement from Mr. Lovett.
3. French note of October 22, 1947.
4. Copy of Siamese note of August 5, 1947 together with draft reply.
5. Copy of memorandum of conversation of December 1, 1947.
6. Memorandum from Mr. Surrey to Mr. Claxton referring to memorandum of conversation #5.
7. Memorandum from Mr. Butterworth to Mr. Gross of December 16, 1947.
8. Memorandum from Mr. Wallner to Mr. Reber dated December 18, 1947 with indorsement by Mr. Gross.
9. Memorandum of law submitted by Mr. Alk with letter dated August 28, 1947.
10. Drafts of letter from Department of State to General Draper together with memorandum by Mr. Whitman.

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STANDARD FORM NO. 64

CONFIDENTIAL

Office Memorandum • UNITED STATES GOVERNMENT

TO :OFD - Mr. Knapp

DATE: May 27, 1948

FROM :OE - Mr. Whitman

RSM

SUBJECT: Gold in Japan Under Earmark for Siam and Indo-China.

The Department has had under consideration for some time the question of the disposition of approximately \$80 million worth of gold in Japan under earmark for French Indo-China (approximately \$37 million) and Siam (approximately \$43 million). This gold was earmarked by Japan for these countries shortly before and during the war on the basis of agreements entered into by them involving the sale of commodities and services to Japan, including, in the case of French Indo-China, certain occupation costs. The Siamese and French Governments are pressing for the release of this gold, which is now in Japan in the custody of the Supreme Commander for the Allied Powers.

The Office of the Legal Adviser has indicated that as a question of legal principle, the U.S. recognizes that the earmarking of gold gives title to the country in whose name the gold is earmarked, and that the U.S. should recognize that French Indo-China and Siam hold title to the gold in question unless it is determined, as a matter of policy, that the transactions which gave rise to the earmarking of gold by Japan in the name of Indo-China and Siam were of such a nature as to justify the United States in holding that the legal effect of earmarking was therefor vitiated. The Treasury Department holds substantially the same view.

On October 13, 1947, the Under Secretary indicated he was inclined to the view that the question of the release of the gold in Japan earmarked for both Indo-China and Siam should be submitted to the Far Eastern Commission. This action was recommended primarily because of the amount of gold involved, the political implications of the problem, and because the Far Eastern Commission has assumed jurisdiction over the disposition of Japanese-owned gold in Japan and of United Nations' property in Japan, particularly when the disposition of such property is related to the payment of reparations by Japan. It was felt that these considerations are of sufficient weight to render unilateral action inadvisable.

There is now in the process of development within the Department the position which the U.S. Government should take in the Far Eastern Commission if the question is referred to that body. To date, there has been no agreement within the Department with respect to such a position. A number of divisions considered that the U.S. should take no position at all in the Far Eastern Commission, and should not actually seek to arrive at a position until FEC consideration had

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neared its conclusion. Others have insisted that although it may be appropriate for this Government to refrain from stating its position at the outset, the U.S. Representative should be fully instructed as to the U.S. position before the matter is submitted to the FEC.

The viewpoint heretofore developed by OFD has been that notwithstanding the earmarking, which would otherwise convey title, the belligerent governments against Japan should not, as a matter of policy, allow a preference to be given to governments which collaborated with the enemy over governments which were completely occupied, suffered disastrously and have no possibility of adequate compensation from Japan, and that, therefore, the gold earmarked after December 7, 1941, should not be turned over to the claimants but treated as Japanese and subject to the claim of the victors. So far as the U.S. is concerned, it would appear that there would be no strong grounds on which to impugn the validity of earmarkings made by Japan prior to the outbreak of hostilities between the U.S. and Japan, unless the U.S., on grounds of equity, would wish to consider the interests of other countries represented on the FEC, since they (e.g. China) might well wish to attack the validity of all such earmarkings on the ground that certain of them were actually at war with Japan before that date, or like Siam and French Indo-China, were occupied by Japanese forces and their resources exploited by the Japanese without payment of any adequate compensation. The earmarkings were performed in connection with war-time trade and military transactions consummated by regimes of French Indo-China and Siam while those countries were subject to Japanese occupation. The favorable treatment accorded these two countries by Japan in earmarking the gold rather than in settlement on a less favorable basis, is believed to have been because the regimes in control of these areas entered into cooperative commercial and military arrangements with Japan which were detrimental to the interest of the U.S. and her allies. Therefore, to recognize the validity of these claims would be to reward those areas for favorable arrangements consummated by their wartime regimes and to discriminate against other occupied countries which have no prospect of receiving compensation for the exploitation of their resources by the Japanese except by reparations payments, which would probably afford only very partial compensation at best.

The immediate interest of the United States would be best served, of course, if the gold in question is declared Japanese. As Japanese gold it would ultimately be disposed of as reparations, but in the meantime it would be available under FEC policy directive, for the acquisition of foreign exchange to aid in financing production programs designed to contribute to the revival of productivity in a

Japanese

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Japanese peace economy. Also, the United States claims the right, known as the "first charge principle", to avail itself of Japanese assets, including gold, to defray the costs of occupation and the maintenance of a minimum standard of living in Japan in preference to the use of such assets for the payment of reparations. This right, however, is not recognized by all the members of the FEC and may, therefore, be regarded as a controversial matter at this time.

In the event it should prove to be impossible to assert the first charge principle against this gold, or retain it for Japan, OE would prefer that it be distributed to all former Japanese-occupied countries, including Siam, rather than to France and Siam alone. The one serious question which would seem to arise if the gold presently under earmark for Siam and French Indo-China is declared Japanese, is whether, in view of its earmarked status and the possibility of claims by the claimants if the gold is transferred to other jurisdictions, it would be possible either to sell the gold for foreign exchange or use it as a credit base on which to negotiate a loan. Thus it would appear necessary to determine the legal capacity of the United States unilaterally or the FEC to give quit-claim in any transaction involving the gold in question.

On the other hand, FN now appears to be inclined to the view that this Government should suggest to the Supreme Commander for the Allied Powers that unless he perceives some objection not heretofore considered, he announce as his decision that the gold belongs to the claimants and will be transferred to them, but that the Supreme Commander for the Allied Powers should withhold actual transfer until the FEC has had a chance to consider the decision. If strong objection to this decision is met in the FEC, the U.S. should consider the various possibilities for a solution to the problem by negotiation with Siam and Indo-China. This position is taken on the grounds that the equitable argument that Indo-China and Siam received a preference by the earmarkings in question over other countries occupied by Japanese forces which should not be allowed to stand, is countered by the validity in international law of such payments (whether to an occupied enemy of Japan, a co-belligerent or a neutral) and the practice until now of treating such transfers in the course of the war as valid.

A working group composed of a representative of FN, OE, and NA, in coordination with O, is now in the process of preparing a list of questions for submission to the Office of the Legal Adviser for an

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opinion on the legal aspects of the issues involved. It is contemplated that after the opinion of the Legal Adviser is obtained on these questions a meeting will be called at the office level with a view to determining a U.S. position in the matter.

There is attached for further background information a number of papers pertinent to the problem.


OE:RBParke:mw:el**CONFIDENTIAL**

STANDARD FORM NO. 64

D R A F T

SECRET

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Gross - Le

DATE: April 14, 1948

FROM : Mr. Claxton - O

SUBJECT: Gold in Japan Earmarked for French Indo-China and Siam.

The attached memorandum (Annex "A") gives the substance of a discussion of the subject by representatives of interested Divisions of the Department on March 17, 1948.

You will note that it was decided to obtain from the Legal Adviser his opinion on two basic questions:

1. The strength of the United States claim to Japanese-owned gold generally under the first charge principle; and

2. Whether an acceptable case, from the standpoint of international law, can be made to treat the gold in Japan under earmark for French Indo-China and Siam, or a substantial part of it, as Japanese.

First Charge Principle.

The "first charge principle" is the right claimed by the United States to avail itself of Japanese assets to defray the costs of occupation and the maintenance of a minimum standard of living in Japan in preference to their use for the payment of reparations. This principle was established by the Far Eastern Commission in FEC-014/9 "Basic Post-Surrender Policy for Japan", Part IV (4), which provides, in part, that "The reparations shall be in such a form as would . . . not prejudice the defraying of the cost of occupation and the maintenance of a minimum civilian standard of living."

The question of the applicability of this principle to Japanese-owned gold arises because of paragraph 16 c of FEC-032/26, July 25, 1947, "Interim Import-Export Policies for Japan", which provides, in part, that "Stocks of gold . . . of clearly established Japanese ownership ultimately should be disposed of as reparations. In the meantime, values of such Japanese assets should be preserved, but such assets themselves may be used as a means of acquiring foreign exchange to aid in financing production programs designed to contribute to the revival of productivity in a Japanese peace economy . . ." (This paragraph was adopted by the FEC and concurred in by the U.S. to give SCAP immediate use of the gold for financing Japanese foreign trade.)

The United Kingdom has taken the position that the Far Eastern Commission, in passing FEC 032/26, had in effect decided that the

disposition

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disposition of Japanese gold for reparations did not in fact prejudice the question of meeting the costs of occupation, and hence "stocks of gold . . . of clearly established Japanese ownership . . ." are available for ultimate disposition as reparations without regard to "the defraying of the cost of occupation and the maintenance of a minimum civilian standard of living." On the other hand, the U. S. has consistently held that the provisions of paragraph 16 c were without prejudice to the provision of the earlier decision (FEC-014/9) and a statement to this effect was made by the U.S. Representative at the time FEC-032/26 was passed (See Annex "B").

The question to be resolved, therefore, would appear to be whether the "first charge principle" as it might apply to Japanese-owned gold, finds sanction in existing FEC policy statements or whether, in view of the British position, its applicability to such gold has to be reaffirmed by further FEC action which would, in effect, amend paragraph 16 c. Stated in another manner, at the time of the adoption of the FEC policy decision making Japanese-owned gold available for reparations, did the United States lose the right to assert the first charge principle in respect to such gold? Was that right lost with respect to both 1) the defrayment of accrued occupation costs; and 2) the defrayment of current occupation costs, including the maintenance of a minimum civilian standard of living in Japan? (Comment: OE is of the view that U.S. interests will be served regardless of the applicability of "the first charge principle" to Japanese gold if the earmarked gold in question is declared Japanese in view of paragraph 16 c, providing for the use of Japanese gold to finance Japanese foreign trade programs. Assuming that the first charge principle does apply to this gold, its use to defray current occupation costs, including the maintenance of a minimum civilian standard of living in Japan, probably would ultimately reduce the need for ~~currently~~ appropriated funds by more than the amount of the gold involved, and therefore would be preferable to its use to defray accrued occupation costs. Maximum benefit would, therefore, accrue to the United States and the Japanese economy if the first charge principle were clearly established in addition to the earmarked gold being declared Japanese-owned, as the gold ^{could} then be used under more flexible and economically sounder arrangements than are possible under the present terms of paragraph 16 c, FEC-032/26).

Case for Treatment of Gold as Japanese.

The OFD position, based on considerations of policy and overall equity to other former Japanese-occupied areas, as well as the claimants to this gold, has been set forth in previous memoranda. In summary, this position is as follows:

So far as the United States is concerned, it would appear that there would be no strong grounds on which to impugn the validity of earmarkings made by Japan prior to the outbreak of hostilities between the United States and Japan, unless the U.S., on grounds of equity, would wish to ~~espouse~~ ^{consider} the interests of other countries represented on the Far Eastern Commission, since they (e.g. China) might well wish to attack the validity of all such earmarkings, on the ground that certain of them were actually at war with Siam, or like Siam and French Indo-China, were occupied by Japanese forces and their resources exploited

by

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by the Japanese without payment of any adequate compensation.

In respect to the gold earmarked in Japan for the account of French Indo-China and Siam between December 7, 1941 and the date of the Japanese surrender, again so far as the U.S. is immediately concerned, the circumstances under which the earmarking occurred and the nature of the transactions involved were such as to warrant the determination, as a matter of policy, that they vitiate the transfer of title that the act of earmarking would otherwise convey. This earmarking was performed in connection with war-trade and military transactions consummated by regimes in French Indo-China and Siam while those countries were subject to Japanese occupation. The favorable treatment accorded these two countries by Japan in earmarking the gold, rather than in settlement on a less favorable basis, is believed to have been because the regimes in control of these areas entered into cooperative commercial and military arrangements with Japan which were detrimental to the interests of the United States and her allies. Therefore, to recognize the validity of these claims would be to reward those areas for favorable arrangements consummated by their wartime regimes, and to discriminate against other occupied countries which have no prospect of receiving compensation for the exploitation of their resources by the Japanese except by reparations payments, which will probably afford only very partial compensation at best. As an extension of this position consistent with the above analysis, OE would, provided it seemed desirable from a policy standpoint in the FEC, be prepared to support an FEC policy statement providing for the distribution of this earmarked gold among all former Japanese-occupied countries, including Siam, on an equitable basis.

The Legal Adviser has indicated (memorandum to the Under Secretary dated October 2, 1947) that "as a question of legal principle the United States recognizes that the earmarking of gold gives title to the country in whose name the gold is earmarked." The effects of earmarking as such might now be considered in the light of the recent action taken by the U.S. Government in regard to Swiss assets in the U.S. in which there is presumed to be an enemy interest (Annex "C"). This action might be taken as implying that the U. S. Government ~~would not recognize the validity of earmarking if higher policy considerations counsel otherwise, is prepared to withhold recognition of legal title to property if considered justified by higher policy considerations.~~

There also appears to be some question as to whether the Japanese regard the effect of earmarking as conveying title. SCAP reports that "an official of the Japanese Ministry of Finance has stated that during the war there was a difference of opinion between the Ministry for Greater East Asia and the Ministry of Finance of the Japanese Government as to which country, Japan or Thailand, was the actual owner of the earmarked gold. The Ministry of Greater East Asia claimed that the gold belonged to Thailand at the time of earmark; the Ministry of Finance claimed that the gold belonged to Japan until it was delivered to Thailand either upon delivery in Japan to a representative of Thailand or delivery in Thailand. It was further stated that during one shipment of gold from Japan to Thailand there were several conferences between the two ministries in an attempt to determine which country would suffer the loss if the gold were lost, but the conferences were not concluded upon notification of the safe arrival of the shipment of gold.

Insurance

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Insurance and transportation charges in connection with the shipment of the gold were borne by the Japanese.

*was it a
part of
the earmarking?*

Another indication that the Japanese may not have regarded earmarking as conveying title, appears to be reflected by the fact that on various occasions during the war, the Japanese refused to ship earmarked gold either to French Indo-China or Siam "because of the hazards of transportation," despite provisions in the earmarking agreements that the gold would be shipped on ~~the~~ request. ~~of Siam~~. The Yokohama Specie Bank, which was acting as the agent of Siam in securing the earmarking of the gold by the Bank of Japan was, under the terms of the agreement, required to secure the permission of the Japanese Government prior to actual shipment of the earmarked gold. The Japanese Government promised to give this permission on the request of Siam, but did not always do so ostensibly because of "hazards of transportation". Had the Japanese earmarked the gold in good faith and considered that earmarking conveyed title, they certainly would not have been concerned over its possible loss in shipment. (There is, of course, the possibility that had Japan won the war, the gold would never have been turned over to Siam and French Indo-China). Apparently, the Japanese Ministry of Finance regarded the act of earmarking merely as an encumbrance upon its stocks of gold, somewhat as appropriated funds in the United States are encumbered (or earmarked) for certain purposes and may not be expended for other purposes.

*Is it a gold
loan guarantee?*

Another consideration which seems to bear on the position the U.S. should take in this matter, is whether the U.S. Treasury would purchase the gold in question if, despite the earmarking performed by Japan, its release to French Indo-China and Siam were denied either:

- (a) by unilateral directive of the United States; or
- (b) by policy directive of the Far Eastern Commission.

? It is suggested that the Treasury Department be requested to pass on this question since the gold would be of little immediate economic benefit to Japan if it could not be used to acquire foreign exchange to aid in financing trade programs in Japan.

Conclusion

The opinion of the Legal Adviser is requested on the two questions raised in the second paragraph of this memorandum in the light of the considerations and facts set forth herein, and such other considerations as may be deemed appropriate. The Legal Adviser's opinion would also be helpful on the question of what would be the implications, from a standpoint of a possible precedent in international law, if the United States should for policy reasons take a position against the release of the gold to French Indo-China and Siam on the grounds that the transactions underlying the earmarking were detrimental to the interests of the Allies in time of war. ~~As~~ As a possible alternative solution, what would be the legal implications of the U.S. taking the position within the FEC that, whereas the status of the gold is in doubt, it should, on grounds of equity, be divided among the former Japanese-occupied countries, including Siam?

OE:RBParke:mw



THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

~~OST~~
~~JAH~~
WUB
KPH
(SEA)

American Embassy,
Bangkok, Siam,
April 18, 1949.

Personal and Confidential

My dear Ken:

I was happy to receive your letter of March 21st which contained some rather encouraging news concerning the gold in Tokyo, earmarked for Siam. I am very glad indeed that you pushed this matter all the way to the Secretary's desk because I am sure, as I wrote you before, that it will require action at that high level to induce SCAP to relinquish the gold. About two weeks ago I received a long letter from Sebald in which he outlined SCAP's thinking on this subject. He enumerated the various reasons and arguments put forth by SCAP why the gold could not be returned to Siam and said rather plainly that SCAP was, of course, not concerned with the political aspects of this problem. I might say that I had written Sebald and stressed how damaging it would be to our relations with Siam, if we were the ones to block the return of this gold. The Siamese would feel that we had literally robbed them of what they believe is rightfully theirs and this feeling would be heightened if, as seems to be SCAP's intention, this gold were used to defray occupation costs in Japan. I am afraid it would be an impossible task to explain in an intelligible fashion to the Siamese just why we blocked the return of the gold and then took it, ourselves. About the only way we could soften such a blow would be to turn around and offer the Siamese a substantial loan, but, of course, that would not completely mollify them since they would still be faced with the necessity of repaying such a loan.

I sent off an airgram the other day reporting that Doll, the British Financial Adviser to the Siamese Government was about to proceed to England on home leave and that he informed me that he had been charged by the Siamese Government with persuading the British Treasury officials to support the Siamese requests for the return of this gold if and when the matter comes before the FEC. From what I know of the British attitude on this question, it appears that the British Foreign Office officials are disposed to support the Siamese claim, but that the Treasury officials take a dim view of the gold being returned to Siam. The latter would apparently very much prefer to see the gold thrown into the general reparations kitty from which they might derive some benefit when the kitty is divided up.

Kenneth P. Landon, Esquire,
Assistant Chief,
Division of Southeast Asian Affairs,
Department of State,
Washington.

File Landon

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Personal and Confidential

I was very much interested in the information you gave concerning the proposals for aid to Siam under Point IV. That is indeed an achievement, to give so much emphasis and importance to Siam. If as much as two million dollars is actually allocated for expenditure on Siam, I think we can make very good use of this sum. I agree with you that the training aspect of Point IV aid is very important although I must say that after seeing so many young Siamese return from studying abroad and the difficulty they have, firstly, in finding jobs which they regard as satisfactory and secondly in readjusting themselves to life in Siam, I am beginning to wonder if it is not equally important to send qualified teachers and instructors to Siam to train the young men and women of this country without unduly upsetting their mode of life or actually removing them from their local environment. I think, however, that the proportion of trainees to American experts or teachers suggested in your letter is about right. With reference to technical experts and teachers which should be sent to Siam, I think we need to be careful to maintain a balanced ratio so that we will have neither too many technical experts nor a disproportionate number of teachers or cultural representatives. Any advance information you can give us regarding the mechanics and workings of assistance to be extended under Point IV would be very helpful. Is Point IV aid likely to be covered by new legislation or will it be extended under the provisions of the existing Smith-Mundt Act? Furthermore, what relationship will there be between Point IV aid and the Fullbright Act? One point I should like to urge is that any aid given to Siam, whether under Point IV or in a military way, be given publicity by the Department. I would very much like to see the Department issue one or more statements when aid is assured. I feel a statement or statements by the Department very important from both the political and psychological points of view. I think if we expect, or if we hope Siam will prove to be somewhat of a bastion against Communism; and if we hope to see the Siamese make an effort to contain Communism, it is important that we issue a statement describing what aid is being specifically extended to Siam. We can of course give wide distribution to such a statement or statements here in Siam and I think it would make a very definite impression upon the people, would give them a feeling that they are not standing alone, and would encourage them to resist Communism. I do hope, therefore, that you will bear this particular point in mind and see to it that whatever aid is extended be made the subject of a special and separate little Department statement.

With reference to the political situation, I feel as you do, that further trouble is to be expected. The Phibun government, and more particularly the Kach coup group, is making every effort to round up and intimidate Pridi and his followers, but whether they will succeed to the extent of discouraging the Pridi group from making any further attempt

to seize

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Personal and Confidential

to seize control, is problematical; but I think the greatest uneasiness is caused by the continued bad feeling between the Navy and the Army, or rather, the Kach group of the Army here in Bangkok. There is no question that the Navy is very sore over Phibun's failure thus far to carry out any of the "understandings" reached between the Navy and the Army during the recent trouble. This uneasiness is reflected in most conversations with the Siamese who follow political developments. They all talk in terms of further trouble, and of course the astrologers are busy fixing new dates for new coups d'etat. I have been doing what I can in a personal and friendly way to urge the absolute necessity of political factions getting together and proposing the establishment of a real coalition government. I do not see any other possibility of real political stability being achieved since no one faction seems to be strong enough to maintain itself in power for any length of time. I am inclined to think that such a coalition might be formed if Phibun can get rid of Kach and his boys, but this latter group is so firmly entrenched, and Phibun owes so much to them, that there appears to be less and less likelihood of Phibun's being able to oust Kach. The political prospects, at least in the immediate future, are therefore none too bright, and it is the sort of situation which the Communists know well how to exploit if they choose to do so. However, the people continue to enjoy a reasonable measure of prosperity and Siam continues to be, relatively speaking, one of the most stable countries in SEA. Furthermore, there is no question that the Siamese people are basically non-Communistic. I feel, therefore, that we should not hold back the giving of technical and other aid if such is made available, but I think we should watch the situation carefully to see that such aid is not misused.

We are getting you a copy of the "New Guide to Bangkok" which will be forwarded to you in the pouch. How kind of you to send me a copy of your most recent book; I shall most certainly read it and know in advance that it will be well worth reading. You say nothing about the remarkable Landon family but I take it that they are all well and busily engaged in literary or other worthwhile pursuits.

As ever,

T-2.

May 9, 1949

PERSONAL AND
CONFIDENTIAL

Dear Ed:

It was a pleasure to receive your letter and to have your views on various matters. Thanks a great deal also for sending me the Guide Book to Bangkok. I assume that the cost was deducted from the dwindling remnants of my funds there. If you will let me know when they are exhausted I will send some more to have on deposit.

Lacy came back with an alarming picture of your health and I have decided to write you posthaste to inquire about your health. I would especially like to know whether you feel you need an operation, in which case you would doubtless prefer to have it in the USA. In view of the fact that Jimmy Scott is gunning for your job, I would prefer to keep the health angle as much in the quiet as possible. I believe it could be arranged for us to call you home on consultation at any time you feel the need of health leave or especially for an operation. With the situation developing as it is in China and with the drift of Communists into Burma and possibly into Indochina and Siam, it would require little imagination on our part to enable us to justify a period of consultation. Although it means a great deal to us all to know that you are representing US interests in Siam, I am sure no one wants you to hang on grimly in ill health. As Confucious say, "Live dog better than dead lion". Please keep me informed and let me know of your needs and I will do the best by you that I can.

The Siamese Ambassador is standing poised with a note from his Government to present some day this week to the Secretary, in which he will request that the US withdraw

from

Ambassador Edwin F. Stanton,
American Embassy,
Bangkok.

Ed - Stanton

PERSONAL AND
CONFIDENTIAL

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from its joint trust relationship with the British over enemy assets, leaving Siam responsible for those assets pending final decision by international negotiation. As far as we are concerned in the Department it seems a good move. The agents of the Siamese Government report that the British are not opposed to the idea and are also looking into it. You might check with Thompson to discover his views on the matter. Incidentally, what are your own?

I have just finished providing material to be used this week or next on the Hill in regard to military aid on a reimbursable basis for Siam. That is the only basis on which we can hope to secure it under present conditions unless Siam's position becomes desperate. British aid which was proffered to Siam, you may recall, was also on a reimbursable basis. I have had a very difficult time keeping Siam in the picture militarily even on this basis. Many of our military and high political officers have been inclined to cut Siam out.

You asked about the Landon family in your last letter. Peggy, our eldest, is still sold on the idea of marriage after almost six months of it. Her husband expects to begin his dental school studies next fall, and one of these days I hope we will all be able to have gold teeth with a dentist in the family. Bill, our eldest son, has one more year of college and then he hopes to go into some sort of chemical industry. He has that eager look in his eye which means an engagement ring, so I presume we will shortly have two of them married. Carol at 16 is a sophomore in high school and is starting with her first formals. Along with her interest in boys she also has an interest in rats, having a box full of them which she is breeding, selling the offspring at 40¢ apiece. Fortunately, we have a number of bathrooms because she keeps them in one of the bathtubs so that they cannot escape. On a hot night I envy the life of a rat. Kip, our youngest, is no longer a baby, he thinks, and will start school in the fall at six. We are sending him to the Cathedral School. Margaret is hoping to finish the book version of Never Dies the Dream, which is currently appearing in McCall's. She has to have the final manuscript in the hands of the publisher by May 16 or else the book will not be published this fall in time for the Christmas sales. We need those sales. Our principal family diversion is gardening, and at present our rock garden has about 270 varieties of rock garden plants, many of which are evergreens.

Now tell us about you and Josie and yours. Please remember me to Stone and the others who may remember me.

Sincerely yours,

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CONFIDENTIAL

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P.S.

I am glad to have your comments in regard to the Point IV Program. I notice that you agree with me in the balance ratio between trainees and foreign technical experts. You ask whether Point IV aid will be covered by new legislation. Yes, it will. There is no adequate legislation to provide for the extensive number of projects presently contemplated. The Smith-Mundt Act is only a stepping stone along the way. That is my understanding of it. At present the over-all programs for Middle and Far Eastern countries are drafted and ready to be presented to Congress. There is no direct relationship between Point IV aid and the Fullbright Act. Consequently, although no Fullbright Agreement has been reached by Siam we can go ahead with Point IV aid as soon as the new legislation is passed. In regard to publicity, I am not certain. One reason being that the President has been very emphatic in desiring that as much of this aid as possible be channeled through UN. I think, however, that we can certainly pass the word around in some fashion to let people know that the US is the principal agent in providing the money and most of the experts. For Siam we have drafted one of the finest programs east of India, and I think you will be very pleased with it when you see it.

K.P.L.