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4. The relationship between the two Houses was not clearly set forth, and there was grave danger that the Upper House would have far too much power.

5. Universal adult suffrage had not been specified. It should be laid down that all Japanese above a certain age were entitled to vote; if there were an age differentiation for the two Houses, it should be set out in the Constitution.

6. The selection of the Prime Minister had not been made a matter for the lower House exclusively.

7. The position of the judiciary was not clear. Grounds of impeachment and recall were not set out. Sir Frederic Eggleston had described the clauses on the judiciary as "the chief blot on the constitution".

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

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

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

1. The bi-cameral system was not described in sufficient detail.

2. There was no provision for the confirmation of judges by the Diet.

3. A provision should be included for approval by the Diet of nominations of all ministers.

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4. The question of a regency was not clear.

5. The age of electors had not been clearly specified.

6. No clear provisions existed for the expulsion of Diet members.

ADMIRAL RAMISHVILI said that he had not received final instructions from his Government with respect to its views on the constitution, and therefore he reserved the position of his Government on the draft.

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

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

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

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

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

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

1. The drafting of the document was unsatisfactory.

2. Provisions with respect to the House of Councillors were vague.

3. There was ambiguity with respect to the freedom of Japanese to criticize the Tenno system.

4. The draft is obscure as to the effect of a failure by the Emperor to exercise his powers, in particular in respect of the promulgation of laws.

5. Universal adult suffrage was not provided for.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADMIRAL RAMISHVILI urged that the document be discussed at once.

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

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

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

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

MAJOR PLIMSOLL seconded this amendment.

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

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

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

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

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

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

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

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

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

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

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

ITEM 9 - OTHER BUSINESS

a. CONSULTATION WITH THE SUPREME COMMANDER ON EXTRAORDINARY TAX LAWS

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

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following message from the Supreme Commander:

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

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

ITEM 10 - PRESS RELEASE

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

The meeting adjourned at 12:50 P.M.

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FAR EASTERN COMMISSION

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

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Dr. G. S. Patterson (Canada)

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

Mr. Francis Lacoste (France)

The Honorable Sir Girja Shankar Bajpai (India)

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

His Excellency Sir Carl Berendsen (New Zealand)

His Excellency Carlos P. Romulo (Philippines)

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

Sir George Sansom (United Kingdom)

Secretary General

Mr. Nelson T. Johnson

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GENERAL MCCOY opened the meeting at 10:45 A.M.

GENERAL MCCOY announced that he had just had the pleasure of receiving the credentials of General Romulo as the representative of the Free and Independent Republic of the Philippines, with the rank of Ambassador. He added that General Romulo had recently spent two weeks in Japan where he had conferred with the Supreme Commander and members of the staff of the Supreme Commander. He expressed the hope that early arrangements might be made for General Romulo to give the Commission the benefit of his recent contact with the situation in Japan.

SIR GIRJA BAJPAI expressed the consensus of the Commission in felicitating General Romulo on his assumption of the rank of Ambassador and congratulating the Philippines upon its new position as an independent state.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 25th MEETING

ADMIRAL RAMISHVILI requested that the first sentence of the last paragraph on page 4 be amended to read as follows: "ADMIRAL RAMISHVILI said that it was ~~the position of his Government~~ his opinion that no final decision could be made on the constitution until the Upper House had approved the document and the resultant final form of the constitution was available."

ADMIRAL RAMISHVILI requested that the first paragraph on page 5 be amended as follows: "ADMIRAL RAMISHVILI said that he had not received final instructions from his Government with respect to its views on the constitution~~.~~, and therefore he reserved the position of his Government on the draft."

SIR CARL BERENDSEN requested that sub-paragraph 4 in the first paragraph on page 6 be stricken and the following substituion made therefor: "4. The draft is obscure as to the effect of a failure by the emperor to exercise his powers, in particular in respect of the promulgation of laws."

MR. LACOSTE requested that the sentence beginning in the second line of page 2 be amended as follows: "He suggested that the International Committee be informed that the Far Eastern Commission would perhaps reconsider its decision in this matter if some evidence were ~~later~~ found to substantiate the claim."

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MR. LACOSTE requested that the first sentence in the last paragraph on page 7 be amended as follows: "MR. LACOSTE said that, in view of the opinions expressed, he desired to make it clear that the position of his Government was not one of unqualified endorsement of the present draft constitution, but rather that his Government felt the draft to be a compromise which was on the whole not inconsistent with the ~~Potsdam Declaration and~~ Commission policy."

DR. KOO requested that the last sentence on page 5 be amended as follows: "He pointed out that the constitution in its present form did not specify such important matters of constitutional character as the method of election of members of the Diet or the qualifications of electors of Diet members."

THE COMMISSION unanimously approved the minutes of its 25th meeting with the above-requested corrections.

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

ADMIRAL RAMISHVILI said that he was not yet prepared to express the view of his Government with respect to FEC-011/18.

THE COMMISSION unanimously agreed to postpone consideration of FEC-011/18.

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

GENERAL MCCOY asked whether copies of the Japanese text of the constitution had arrived from Tokyo. MR. JOHNSON replied that four copies had been received and that additional copies were being prepared for distribution to the delegations.

GENERAL MCCOY said that apparently the discussion of the constitution in the House of Peers had been concerned mainly with possible drafting changes.

GENERAL MCCOY stated that his Government considered that the constitution in its present form achieved the objectives of the Potsdam Declaration and of the Far Eastern Commission as embodied in previous policy decisions. In the opinion of his Government the constitution would supply a foundation for a democratic form of Government in Japan, and therefore the United States Government was satisfied with the constitution in its present form.

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ADMIRAL RAMISHVILI said that he had received instructions from his Government with respect to the draft constitution, and he presented the following formal statement:

"After careful and exhaustive study of the draft of the Japanese Constitution from the angle of its conformity with the Potsdam Declaration and FEC-031/19 the Soviet government considers that the below mentioned amendments must be included in the Constitution:

1. The Sovereign power of the people should be defined in the constitution more precisely and clearly. The provision to the effect that 'sovereign power resides with the people' should constitute a separate Article and have no connection with the definition of the role of the Emperor.

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

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

4. The Article concerning regency should be worded in the sense that regency is established on the principle of the free expression of will of the people with whom the sovereign power resides. Such principle of establishing the regency is in compliance with the spirit of the Potsdam Declaration and also with the decision of the Far Eastern Commission on 'Basic Principles of a New Japanese Constitution,' in which it is stated that 'the Japanese people should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines.'

5. The Soviet Delegation does not insist on the uni-cameral system, provided the House of Councillors has no predominance over the House of Representatives."

GENERAL ROMULO presented the following formal statement:

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

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

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

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

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

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

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

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

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

SIR GEORGE SANSOM said that his Government found no inconsistency between the draft constitution in its present form and the Potsdam Declaration or previous Commission policy. His Government was therefore ready to express general approval of the draft constitution, with a reservation as to specific assurance that Article 88 of the draft constitution would be interpreted to mean that all imperial property, including the imperial estates, was subject to the control of the Diet. This general approval was given, he added, subject to reconsideration in the light of any substantial amendments that might be made to the constitution by the House of Peers.

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SIR GIRJA BAJPAI said that he was awaiting instructions from his Government with respect to the draft constitution. He remarked that the delay in receipt of such instructions was undoubtedly attributable to the organizational problems of the newly elected Indian Government. He said that he did not wish the absence of instructions from his Government to delay any immediate action that might be contemplated by the Commission. He merely desired to reserve the right to communicate the views of his Government when they had been received.

DR. KOO said that he was not yet prepared to state his Government's position with respect to the draft constitution.

ADMIRAL RAMISHVILI said that, although certain of the amendments he had just proposed had previously been discussed by Committee No. 3, he desired that they be reconsidered either by the Commission itself or by Committee No. 3.

ADMIRAL RAMISHVILI said that he would like to hear from the other representatives as to their Governments' positions with respect to the draft constitution. GENERAL MCCOY replied that most representatives had recorded their Governments' positions at the last meeting of the Commission. He also referred to the public statement on the meaning of democracy by Dr. Evatt which had been reported in Life magazine, and added that the draft constitution complied with the statement made by Dr. Evatt. MAJOR PLIMSOLL said that the statement by Dr. Evatt should be regarded as background for the position of the Australian Government, and that the Australian position was as he had stated at the last meeting of the Commission.

SIR GIRJA BAJPAI referred to the motion (page 10, Minutes, 25th FEC Meeting) by Sir Carl Berendsen to the effect that the Commission consider the questions of approval of the draft constitution and provisions for the review of the constitution at the present meeting, with a view to reaching a decision on both subjects. He said that he felt that no representative would delay approval of the draft constitution because of minor imperfections if a provision for review were adopted. He felt that there was general recognition that even a virtually perfect document would have to be reviewed after it had been in operation for some period of time.

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20 September 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF TWENTY-SIXTH MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the Australian representative, of page 5 of the Minutes of the twenty-sixth meeting of the Far Eastern Commission.

2. All representatives are requested to substitute the attached page for page 5 of the Minutes of the twenty-sixth meeting of the Far Eastern Commission.

NELSON T. JOHNSON
Secretary General

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SIR GIRJA BAJPAI said that he was awaiting instructions from his Government with respect to the draft constitution. He remarked that the delay in receipt of such instructions was undoubtedly attributable to the organizational problems of the newly elected Indian Government. He said that he did not wish the absence of instructions from his Government to delay any immediate action that might be contemplated by the Commission. He merely desired to reserve the right to communicate the views of his Government when they had been received.

DR. KOO said that he was not yet prepared to state his Government's position with respect to the draft constitution.

ADMIRAL RAMISHVILI said that, although certain of the amendments he had just proposed had previously been discussed by Committee No. 3, he desired that they be reconsidered either by the Commission itself or by Committee No. 3.

ADMIRAL RAMISHVILI said that he would like to hear from the other representatives as to their Governments' positions with respect to the draft constitution. GENERAL MCCOY replied that most representatives had recorded their Governments' positions at the last meeting of the Commission. He also referred to the public statement on the meaning of democracy by Dr. Evatt which had been reported in Life magazine, and added that the draft constitution complied with the statement made by Dr. Evatt. MAJOR PLIMSOLL said that the Chairman was referring to a magazine article in general terms which was not intended as an official pronouncement on the Japanese constitution. He said the views of the Australian Government on the Japanese constitution were those expressed at the Far Eastern Commission, and he drew attention to his own statement in the minutes of the last meeting.

SIR GIRJA BAJPAI referred to the motion (page 10, Minutes, 25th FEC Meeting) by Sir Carl Berendsen to the effect that the Commission consider the questions of approval of the draft constitution and provisions for the review of the constitution at the present meeting, with a view to reaching a decision on both subjects. He said that he felt that no representative would delay approval of the draft constitution because of minor imperfections if a provision for review were adopted. He felt that there was general recognition that even a virtually perfect document would have to be reviewed after it had been in operation for some period of time.

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THE COMMISSION unanimously agreed to refer the Soviet proposals (FEC-087/5) to Committee No. 3 for urgent consideration and report to the Commission at a special meeting on Saturday, September 21, 1946 at 10:30 A.M.

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

SIR CARL BERENDSEN referred to the minutes of the last meeting (page 9) and said that his motion for the amendment of the second paragraph of FEC-031/36 was now before the Commission.

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

SIR CARL BERENDSEN asked whether General McCoy did not also feel that the Far Eastern Commission might take similar action if proposed implementing legislation was not in conformity with previous policy decisions of the Commission. GENERAL MCCOY replied that he thought this was so. He pointed out that the preparation of policy decisions, as distinguished from the redrafting of proposed implementing legislation, was the proper action of the Commission.

GENERAL MCCOY stated that his Government felt that it would be desirable if the Far Eastern Commission did not act upon the review paper until after the new Japanese constitution had been promulgated. Such deferment of action upon FEC-031/36, he said, would be entirely without prejudice to the right of the Commission to review the constitution at an appropriate time and to require that the situation with respect to the constitution should be reviewed by the Diet. Asked by General Romulo and Major Plimsoll for the reasons for this position, GENERAL MCCOY referred to the minutes of the last meeting (page 8) where he had said that "The United States Government had expressed agreement on the principle of review, but could not at this time

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agree to the first paragraph of FEC-031/36. He said that his Government considered that passage of the document at this time, during consideration of the draft constitution by the Diet, would be harmful to the situation in Japan. He said that his Government would be ready to discuss this paper after the Commission had given its final decision on the constitution."

SIR GIRJA BAJPAI moved and GENERAL ROMULO seconded the motion that the Commission adjourn until 10:30 A.M., Saturday, September 21, at which time consideration of the constitution, together with the review provision and the report by Committee No. 3 on the amendments to the constitution proposed by the Soviet representative, might be resumed. The motion was carried unanimously.

The meeting adjourned at 12:45 P.M.

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Minutes of
27th FEC Meeting

FAR EASTERN COMMISSION

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

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Dr. George S. Patterson (Canada)

Dr. S. H. Tan (China)

Mr. Paul Guerin (France)

Mr. Jamshed Vesugar (India)

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

His Excellency Sir Carl Berendsen (New Zealand)

Mr. Leonides S. Virata (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

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AMENDMENT OF AGENDA

At the request of General McCoy, THE COMMISSION unanimously agreed to consider item 4, Provisions for the Review of a New Japanese Constitution (FEC-031/36), as the second item on its agenda.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 26TH MEETING OF THE FAR EASTERN COMMISSION

THE COMMISSION unanimously approved the minutes of its twenty-sixth meeting.

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

GENERAL MCCOY said that the position of his Government was that the first paragraph of FEC-031/36 should be amended to read as follows:

> "The new Constitution, as the legal successor of the present Constitution and embodying changes made as a result of consideration and policy decision of the Far Eastern Commission shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph."

He explained thet the phrase "by the following paragraph" had reference to the second paragraph of FEC-031/36, without the amendment proposed by Sir Carl Berendsen on 12 September (Minutes, 25th FEC Meeting, page 9). As so amended,he said, his Government was prepared to accept the paper, provided that the Commission would subsequently consider the time and manner of issuance of the policy decision embodied in the paper. His Government was not prepared to accept Sir Carl Berendsen's amendment, which he would have to oppose.

SIR CARL BERENDSEN stated that in that case he would, with the consent of his seconder,withdraw his proposal of 12 September to amend the second paragraph of FEC-031/36. Major Plimsoll, who had seconded the proposal, concurred.

GENERAL MCCOY moved, and MAJOR PLIMSOLL seconded the motion, that FEC-031/36 be adopted, with the amendment of the first paragraph as he had proposed above.

ADMIRAL RAMISHVILI said that his Government approved of FEC-031/36 without amendment. He was not in a position to agree to the amendment proposed by General McCoy, and would have to seek further

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instructions from his Government. It was his personal opinion that his Government would not favor the proposed amendment. He felt that this new wording contained the implication that the Commission was giving its approval to a Constitution which had already been adopted, and he contrasted this with the original wording of the first paragraph of the document, which he felt contained an implied agreement on the part of the Commission further to consider proposed changes in the draft constitution. This difference in meaning was most clearly apparent, he thought, in the use of the words "embodying changes made" in the United States proposal, as contrasted with the words "with such changes as may be required" in the original document.

GENERAL McCOY asked whether the objections foreseen by Admiral Ramishvili might be met by amending the phrase in question to read "embodying changes made or which may be made." ADMIRAL RAMISHVILI replied that while this would seem to remove the main objection, he was nevertheless obliged to seek further instructions from his Government.

ADMIRAL RAMISHVILI asked concerning the United States view as to whether FEC-031/36 should be adopted before or after adoption of the Japanese constitution. He felt that if the paper were approved after adoption of the constitution, the inclusion of the words "or which may be made" would be superfluous. GENERAL McCOY said that the second paragraph of the paper also provided for continuing jurisdiction and review by the Commission.

SIR CARL BERENDSEN said that he was prepared to accept the amendment proposed by General McCoy. He wondered whether Admiral Ramishvili would not consider that he could support the proposal, which was similar in substance to the one he was prepared to support.

ADMIRAL RAMISHVILI said that since, even though the proposal were adopted immediately, the Commission would subsequently have to consider the time and manner of issuance of the policy decision, he felt that his request for time to seek instructions from his Government did not jeopardize the ultimate effect of adoption of the policy.

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GENERAL MCCOY said that there appeared to be general agreement on the review provision contained in the second paragraph of FEC-031/36. Therefore he hoped that those Governments which had made passage of such a provision a condition precedent to their approval of the constitution, might now feel justified in expressing such approval.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-031/36.

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

MR. VESUGAR said that it was the view of his Government that the responsibility for definite approval of the constitution was not that of the Far Eastern Commission. He said that such approval was the responsibility of the Japanese Government, and had been made its responsibility under Article 10 of the Potsdam Declaration. He said that under Article III, 3 of the Terms of Reference of the Commission it was apparent that only in the case of directives dealing with fundamental changes in the Japanese constitutional structure or in the Japanese Government as a whole was the attainment of agreement in the Commission necessary. It was, therefore, the view of his Government that the proper function of the Commission was not to approve the constitution but to insure that nothing contrary to the controlling documents appeared in the constitution.

DR. TAN presented the following statement:

> "In view of the fact that Item 2 of the Agenda has a time element and that it is difficult to find a constitution in the world which may be regarded as being perfect as the fundamental law of any land naturally requires years of development and actual application to practical situations before its defects or inadequacies can be revealed, my Government is inclined to accept the Draft Constitution for Japan, although it is quite apparent that it contains many provisions which warrant improvement. We therefore desire to qualify our acceptance with the following reservations and observations.
>
> "(1) The Chinese Delegation desires to reserve its position on the matter of implementation of legislation. As it has been generally recognized by members of this Commission, the present Draft Constitution leaves many vital matters to be determined by subsequent legislation. These include such matters as the qualifications of electors and of members of both Houses (Article 44), matters pertaining to the election of members of both Houses, electoral districts, and the method of voting (Article 47), the Joint Committee of the two Houses of the Diet (Article 40), and the Imperial House Law (Article 2)

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4 October 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF TWENTY-SEVENTH MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the Indian representative, of page 3 of the minutes of the twenty-seventh meeting.

2. All representatives are requested to substitute the attached page for page 3 of the minutes of the twenty-seventh meeting.

NELSON T. JOHNSON
Secretary General

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GENERAL MCCOY said that there appeared to be general agreement on the review provision contained in the second paragraph of FEC-031/36. Therefore he hoped that those Governments which had made passage of such a provision a condition precedent to their approval of the constitution, might now feel justified in expressing such approval.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-031/36.

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

MR. VESUGAR said that it was the view of his Government that the responsibility for definite approval of the constitution was not that of the Far Eastern Commission. He said that such approval was the responsibility of the Japanese Government, and had been made its responsibility under Article 10 of the Potsdam Declaration. He said that under Article III, 3 of the Terms of Reference of the Commission it was apparent that only in the case of directives dealing with fundamental changes in the Japanese constitutional structure or in the Japanese Government as a whole was the agreement of the Commission necessary. It was, therefore, the view of his Government that the proper function of the Commission was not to approve the constitution but to insure that nothing contrary to the controlling documents appeared in the constitution.

DR. TAN presented the following statement:

> "In view of the fact that Item 2 of the Agenda has a time element and that it is difficult to find a constitution in the world which may be regarded as being perfect as the fundamental law of any land naturally requires years of development and actual application to practical situations before its defects or inadequacies can be revealed, my Government is inclined to accept the Draft Constitution for Japan, although it is quite apparent that it contains many provisions which warrant improvement. We therefore desire to qualify our acceptance with the following reservations and observations.
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> "(1) The Chinese Delegation desires to reserve its position on the matter of implementation of legislation. As it has been generally recognized by members of this Commission, the present Draft Constitution leaves many vital matters to be determined by subsequent legislation. These include such matters as the qualifications of electors and of members of both Houses (Article 44), matters pertaining to the election of members of both Houses, electoral districts, and the method of voting (Article 47), the Joint Committee of the two Houses of the Diet (Article 40), and the Imperial House Law (Article 2)

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"It will be recalled that my Delegation has had occasion to bring the matter to the attention of Committee 3 and proposed that such implementing legislation should be passed upon by the Commission before they are adopted by the Diet. This proposal was adopted in a modified form by Committee 3 and further amended by the Steering Committee as contained in paragraph b of the Attached List of FEC-087/3, which paragraph in part reads as follows: 'The Committee considers, therefore, that as such matters are to be left for determination in subsequent legislation, drafts of such legislation should be made available for the Far Eastern Commission as soon as these drafts are submitted to the Diet.' This paper is still awaiting the approval of the Commission. The Chinese Delegation, however is pleased to note that the consensus of opinion of the Commission is in favor of its adoption.

"It is the understanding of the Chinese Delegation that the words 'shall be made available' as used in the Report of Committee 3 as revised by the Steering Committee, denote that implementing laws will be made available to the Far Eastern Commission in such a manner as will give it opportunities to study and scrutinize them.

"(2) The second reservation which my Delegation desires to make has to do with Article 9 of the Draft Constitution. The Chinese Delegation notes that this Article has been so revised by the House of Representatives of Japan that it is capable of an interpretation which might permit the maintenance by Japan of land, sea and air forces for purposes other than those specified in the first paragraph of that Article.

"The question therefore arises, in the first place, as to the intention underlying the revision, and in the second place, whether, as a matter of policy, Japan should be allowed to maintain land, sea and air forces for purposes other than those enumerated in the first paragraph of Article 9. These points should be clarified. I would welcome it if the Chairman or other colleagues at this table would throw some light on these points.

"The Chinese Delegation should like to request that the Chairman wire General MacArthur inquiring into the underlying cause as to why this Article has been so modified.

"As to the question of policy whether Japan should be allowed to maintain an armed force or not, we deem it appropriate that the matter should be thoroughly discussed. It is taken for granted that Japan should have a 'police force' capable of maintaining law and order, but a 'police force', as the term is generally understood, would not be called 'armed force'. If Japan should be allowed to maintain an armed force, we should be prepared that there is a probability that such armed force will some day be used for all other purposes than those mentioned in the first paragraph of Article 9. Japan, for instance, may use it for purposes 'short of war', and label its armed actions as acts of 'self defense'. This term 'self defense', has a legal connotation and should be interpreted according to generally accepted usages in international law, but the term has been abused so much in recent years, and in view of the possible implications of this Article, we cannot but feel great misgivings.

"It is my understanding that the question of Article 9 has been referred by Committee 3 to Committee 7. The Chinese Delegation reserves its right to state its views in due course in the appropriate committees and in the Commission."

GENERAL MCCOY called attention to the information with respect to Article 88 on imperial property (FEC-087/7), and expressed the hope that this information from the Supreme Commander constituted an adequate answer to the reservation make by the United Kingdom

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representative at a previous meeting with respect to this point.

SIR GEORGE SANSOM said that on the assumption that the term "Imperial household" meant "Imperial house," the amendment, by removing any exception in respect to hereditary property and its income did much to dispose of the fear he had previously expressed that considerable sums might remain at the disposal of the Imperial house and might be used to finance activities beyond the control of the Diet. However, he continued, he was still not fully satisfied that the new clause had the desired meaning. He wondered whether it gave an assurance that the use of both the capital and the revenue of former Imperial property would be under the control of the Diet. The new clause did not say so specifically; it merely said that the property of the Imperial house would be transferred to the state. He desired assurance that, when the transfer was made, former Imperial property would be treated in the same way as all other state property, such as state-owned lands and buildings; that is, that it would come under the control of the Diet and that its administration would be subject to the usual scrutiny and audit.

SIR GEORGE SANSOM asked whether other representatives shared the doubts he had expressed with respect to Article 88. MAJOR PLIMSOLL replied that his Government entertained the same doubts raised by the United Kingdom Government.

DR. PATTERSON said that he was not prepared to state his Government's view with respect to the specific doubts, but it was his personal opinion that the matter should be clarified before any definitive action on the part of the Commission.

SIR GEORGE SANSOM said that he was prepared to remove his reservation with respect to Article 88 in view of the fact that the desired audit was probably provided under Article 90 of the draft constitution and since his doubts were not shared by a majority of other representatives, and on condition of the continuing power of review of the Constitution which was desired by a majority of its members.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-087/1.

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

At the request of General McCoy, MR. BORTON, speaking as the United States member of Committee No. 3, reported that the United States position on FEC-087/6 with respect to the provision that all ministers of state, including the prime minister, should be civilians, had been reserved. He said that this provision had been embodied in FEC-031/19, Basic Principles for a New Japanese Constitution, in order to prevent Japanese militarists from again exercising control of Japan. This provision now seemed unnecessary, he continued, in view of the fact that, under the draft constitution, members of the cabinet were responsible to the prime minister and the Diet. However, he added, since Article 9, as amended in the Diet was ambiguous it was the United States view that the Supreme Commander should be asked concerning the reasons for the change and concerning the interpretation of the Article as now written.

DR. TAN presented the following formal statement:

> "The proposal that all ministers should be civilians is closely related to Article 9 of the Draft Constitution. If Japan is going to have an armed force, it may be necessary to put in such a provision. If Japan is to have no armed force at all, perhaps it is not necessary; the question then becomes a question of drafting and not a question of substance. According to strict interpretation of Article 9 as it now stands, Japan may have an armed force for all purposes other than those enumerated in paragraph 1 of that Article. As we are aware, 'war' in the legal sense is very different from war in a material sense. History in the last two decades has revealed that there were instances where wars in a material sense existed while it was not recognized that there was war in the legal sense. In our civil society it usually takes two parties to make a quarrel, but in the field of international relations, one state alone may create a state of war.
>
> "In the last two decades, we have seen many instances involving large-scale armed actions of an aggressive character and they were euphemistically called 'acts short of war', or 'measures of self defense', as I have just explained. If Japan is to have an armed force, it is difficult to guarantee that Japan will not resort to armed activities against her neighbors and call them acts short of war or measures of self defense as she did before. In view of the lessons given to us by modern history and particularly of our experience with Japan, I have great apprehensions about this Article. I therefore reiterate my request that the Chairman be good enough to wire SCAP inquiring into the underlying motive for the change of this Article to its present form."

DR. PATTERSON said that it was probable that no difference existed among the representatives on the Commission as to the desirability of a provision that all cabinet ministers shoud be civilians. This unanimity was evidenced, he said, by the fact that

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the provision had been agreed in the paper on basic principles for a new Japanese constitution. It was conceivable, he said, that some military officers might have responsibility in the new Government and the provision in question would insure their non-admittance to the cabinet. He said that in the future reactionary elements in Japan might succeed in having Article 9 eliminated from the Constitution and in that event it would be valuable for the Japanese people to have to face the decision either to retain or eliminate another specific provision that cabinet members must be civilians.

MAJOR PLIMSOLL said that the principle that all cabinet members should be civilians had been unanimously accepted by the Commission in its basic principles, and pointed out that it was also contained in the directives from the United States Government to the Supreme Commander of 17 October 1945 and 7 January 1946. MAJOR PLIMSOLL added that, when he stated the views of his Government on the new Constitution on 12 September, he expressed disquiet at Article 9 because, since the Article forbade the maintenance of armed forces, it had been impossible for the Commission to insist on the inclusion of an additional provision that all Cabinet Ministers should be civilians. He had expressed at that time the view that the Japanese would never take Article 9 seriously and that they would seize the first opportunity to amend or abolish it. In that case it would once again be possible for the Japanese to lapse into their bad old ways, under which the Ministers for the Army and the Navy were always serving officers and possibly once more liable to recall at the whim of the services. The Commission was now given an opportunity to correct this position since the Japanese text had been found to be ambiguous and not to forbid the maintenance of forces.

MAJOR PLIMSOLL said the suggestion of Mr. Borton did not go quite far enough. He suggested that not only should the Supreme Commander be informed of the position in regard to the Japanese text and asked for the reasons for the change in Article 9, but he should also be informed that members of the Commission felt strongly that there should be a provision in the Constitution that all Ministers should be civilians and that the Commission would welcome

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a change to that effect.

ADMIRAL RAMISHVILI said that Article 9 in its present form provided an opportunity for Japanese militarists to revive an army, and to deceive the Japanese people by assuring them that such activity was permissible under the Constitution. Since the article was so ambiguous as to lead to the possible consequences he foresaw, he urged that the provision that all ministers be civilians be adopted, as well as the other provisions in FEC-087/6.

DR. DE KAT said that he felt it would be sufficient at this time simply to inquire of the Supreme Commander as to the reasons for the change which had been made in Article 9.

SIR GEORGE SANSOM said he had no doubts that the Japanese text of Article 9 was ambiguous.

SIR CARL BERENDSEN said that the difficulty with respect to the interpretation of Article 9 was an example of many provisions in the constitution concerning which there was doubt as to the interpretations. In this case, he said, the ambiguity and the grave importance of interpretation were evident to all. He doubted the significance of any interpretation of the provision that might be obtained from the Supreme Commander at this time. Of greater and crucial importance was the meaning the provision would have for the Japanese in the future. The proper concern of the Commission at present was whether the constitution did in fact comply with the commission's previous policy decisions.

MAJOR PLIMSOLL moved and MR. GUERIN seconded the motion that the Commission authorize the Chairman, with the assistance of Committee No. 3, to consult with the Supreme Commander and inform him that the Japanese text of Article 9 was ambiguous, that members of the Commission felt strongly that all cabinet ministers should be civilians, and that the Commission would welcome the inclusion in the draft constitution of a provision to that effect.

ADMIRAL RAMISHVILI said that, while he did not object to an informal query on the part of the United States representative concerning an explanation from the Supreme Commander of the reasons for the change in Article 9, he could not participate in a formal decision on the part of the Commission to express doubt on a matter

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so obvious and factual as the absence of a certain provision from the draft Constitution.

GENERAL MCCOY said that since the proposed communication to the Supreme Commander was much more than a request for information it could not appropriately be handled informally by the United States representative. He said he would support Major Plimsoll's motion.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-087/6.

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

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

ITEM 6 - RESTITUTION OF LOOTED PROPERTY (FEC-011/18)

ADMIRAL RAMISHVILI said that he was not yet prepared to state the position of his Government on FEC-011/18).

THE COMMISSION unanimously agreed to postpone further consideration of FEC-011/18.

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

ADMIRAL RAMISHVILI said that he was not yet prepared to state the position of his Government on this matter.

THE COMMISSION unanimously agreed to postpone further consideration of the subject.

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

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

ITEM 9 - OTHER BUSINESS

There was no other business.

ITEM 10 - PRESS RELEASE

THE COMMISSION unanimously agreed that no statement concerning the present meeting should be released to the press.

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Minutes of
28th FEC Mtg.

FAR EASTERN COMMISSION

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

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Dr. George S. Patterson (Canada)

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

Mr. Francis Lacoste (France)

Mr. Jamshed Vesugar (India)

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

His Excellency Sir Carl Berendsen (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

Secretary General

Mr. Nelson T. Johnson

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GENERAL MCCOY opened the meeting at 3:30 P.M. He said that he regretted the inconvenience caused representatives resulting from the short notice of the present meeting, but he felt that the importance of the communication received that morning from the Supreme Commander (FEC-087/8) warranted his calling a meeting at the earliest possible moment.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 27th MEETING

MR. VESUGAR suggested that the third sentence of the third paragraph on page 3 of the minutes of the 27th FEC Meeting be amended as follows:

> "He said that under Article III, 3 of the Terms of Reference of the Commission it was apparent that only in the case of directives dealing with fundamental changes in the Japanese constitutional structure or in the Japanese Government as a whole was the ~~attainment of~~ agreement of the Commission necessary."

THE COMMISSION unanimously approved the minutes of its 27th meeting with the amendment suggested by Mr. Vesugar.

ITEM 2 - AMENDMENTS TO THE CONSTITUTION (FEC-087/8)

MAJOR PLIMSOLL expressed great satisfaction with the communication from the Supreme Commander. He said that he felt it would be agreed by all members that the two amendments mentioned therein greatly improved the draft constitution. He said that both the United States Government and the Supreme Commander deserved the thanks of the Far Eastern Commission for the expeditious manner in which these changes had been effected.

GENERAL MCCOY said that he would like to associate himself, together with other representatives, in the satisfaction expressed by Major Plimsoll.

ADMIRAL RAMISHVILI agreed with the satisfaction which had been expressed. He said that he considered it necessary to distinguish between an expression of confidence in the Supreme Commander and such an expression with respect to the implementing organs of the Japanese Government. He drew attention to the fact that the Supreme Commander had "persuaded the Japanese Government" to accept certain amendments to the constitution. He wondered whether this in itself would guarantee passage by the Diet of these amendments. He inquired whether the Commission should pass policy decisions with respect to the amendments in question. ADMIRAL RAMISHVILI referred to the second paragraph of the

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communication from the Supreme Commander wherein the Supreme Commander had stated that he "would seek no further modifications so long as there is no legislative change in the principles embodied in the draft as it now stands." He asked as to the effect of this statement on consideration by the Commission of additional amendments.

GENERAL MCCOY said that any doubts entertained by Admiral Ramishvili with respect to the acceptance of the amendments by the Diet would be resolved when the final draft was available. With respect to the second question raised by Admiral Ramishvili, GENERAL MCCOY said that the statement by the Supreme Commander did not mean that the Commission was precluded from consideration of additional amendments.

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

DR. KOO presented the following formal statement:

"At the last meeting of the Commission, the acting Chinese representative made a statement announcing the view of the Chinese Government with reference to the draft constitution and making a reservation on certain points.

"The first point related to the matter of Implementing Legislation. In the opinion of my Government, such matters pertaining to the qualification and election of the members of both Houses, matters of electoral districts, the method of voting, the joint committee of the two Houses of the Diet, and the Imperial House Law are all of a character having an important bearing on the nature and spirit of the whole constitution.

"My Government assumes that these matters will be dealt with in a way that will not in any way contravene either the principles of the Potsdam Declaration or the policy decisions of this Commission. In view of the general consensus among members of the Commission regarding the importance of such implementing legislation, and in view of the fact that a report drafted by Committee 3 and revised by the Steering Committee is now before the Commission providing that drafts of such legislation should be made available to this Commission as soon as they are submitted to the Diet, my Government, trusting that that report will be adopted by the Commission, will not insist upon the reservation on this point.

"It is the understanding of the Chinese Delegation that the words "shall be made available" as used in the report of Committee 3 as revised by the Steering Committee, denote that implementing laws will be made available to the Far Eastern Commission in such a manner as will give it opportunity to study and scrutinize them.

"The second point related to the wording of Article 9 of the draft constitution, which, as it stands, contains implications which could not be acceptable to us. Japan in the past repeatedly used her armed force for aggressions against her neighbors and denied at the same time that she was making war upon them. It should, therefore, be clearly understood that the Commission, in letting this Article stand, intends in no way to overlook the possible danger of Japan again misusing her armed forces for any war-like or aggressive acts any more than for war itself.

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"Of course, the Chinese Delegation realizes that it may be more proper to provide for safeguards and precautions against this abuse in the ultimate peace treaty with Japan and in any arrangements to be concluded amongst the principal United Nations to enforce the disarmament and control of Japan. But in order not to encourage any misinterpretation on the part of the Japanese Diet and people, the Chinese Delegation considers it important that this point should be brought out clearly.

"The Chinese representative, however, notes with satisfaction that the message just received from the Supreme Commander for the Allied Powers reports, among other things, that a provision has been pledged to be made in the Draft Constitution that the prime minister and all ministers of state shall be civilians. This provision when made will to some extent serve to preclude the objectionable implications to which I have just referred. The Chinese Government, however, shares the view that the early adoption of the draft constitution by the Japanese Diet, in accordance with the principles of the Potsdam Declaration and the policy decisions of this Commission, is highly desirable.

"It therefore does not wish to raise any objection to the draft text as it stands although, obviously, in its opinion, there is plenty of room for improvement. It hopes, however, that the points which have been raised will be carefully noted in the general interest of the United Nations with the further understanding that when the draft constitution as a whole has passed the Diet, another opportunity will be given to the Commission to pass upon the final draft."

THE COMMISSION unanimously agreed to postpone further consideration of FEC-087/1.

ITEM 4 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/36 and -031/39)

ADMIRAL RAMISHVILI said that he was not prepared to state the position of his Government on FEC-031/39.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-031/36 and FEC-031/39.

ITEM 5 - STATEMENT BY COMMITTEE NO. 3: CONSTITUTIONAL AND LEGAL REFORM, ON FEC-087/5, SOVIET PROPOSALS CONCERNING THE DRAFT CONSTITUTION (FEC-087/6)

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

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

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

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"The Sovereign power of the people should be defined in the constitution more precisely and clearly. The provision to the effect that 'soverign power resides with the people' should constitute a separate Article and have no connection with the definition of the role of the Emperor."

The motion lapsed for lack of a second.

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

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

The motion lapsed for lack of a second.

DR. KOO moved and MAJOR PLIMSOLL seconded the motion that the principle in paragraph 2 of FEC-087/5 that "All the ministers should be civilians" be adopted, in the light of the favorable report on this point by Committee No. 3.

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

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

The motion by Dr. Koo was carried unanimously.

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

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

The motion lapsed for lack of a second.

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

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"The Article concerning regency should be worded in the sense that regency is established on the principle of the free expression of will of the people with whom the sovereign power resides. Such principle of establishing the regency is in compliance with the spirit of the Potsdam Declaration and also with the decision of the Far Eastern Commission on 'Basic Principles of a New Japanese Constitution,' in which it is stated that 'the Japanese people should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines.'"

The motion lapsed for lack of a second.

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

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

The motion was carried unanimously.

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

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

ADMIRAL RAMISHVILI presented the following formal statement:

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

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

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

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

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

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

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

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

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

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

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

ITEM 6 - REPORT BY COMMITTEE NO. 3 ON ITS STUDY OF THE DRAFT CONSTITUTION (FEC-087/3)

SIR CARL BERENDSEN said that he felt this report by Committee No. 3 had served its purpose. Although convinced that no representative could express complete satisfaction with the draft constitution, he was nevertheless also convinced that further discussion of this paper would be useless.

THE COMMISSION unanimously agreed to table FEC-087/3.

ITEM 7 - TERMS OF REFERENCE FOR THE INTER-ALLIED TRADE BOARD FOR JAPAN (FEC-089)

GENERAL MCCOY said that he was prepared to approve FEC-089, and presented the following statement concerning his Government's interpretation of the document:

"1. The United States Government will in general accept recommendations of the Inter-Allied Trade Board for Japan made in accordance with its terms of reference. Exceptions will be made only in cases when in the view of the United States Government acceptance of a recommendation would be inconsistent with the attainment of the objectives of the occupation.

"2. The United States Government notes the last sentence of paragraph 3 which requires that recommendations of the Board involving matters of policy be approved by the Far Eastern Commission. Since all actions of the Board are recommendations to the United States Government the United States Government is not, by this provision, precluded from taking action on matters of urgency pending consideration by the FEC. This position is in line with the Terms of Reference of the Far Eastern Commission which permit the United States Government to issue interim directives in cases of emergency, subject to subsequent review by the Far Eastern Commission."

MR. RODRIGUEZ said that in the absence of General Romulo and the lack of instructions from his Government, he was not prepared to vote on FEC-089 at present.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-089, pending receipt of instructions by the Philippine representative.

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ITEM 8 - RESTITUTION OF LOOTED PROPERTY (FEC-011/18)

ADMIRAL RAMISHVILI said that he was not yet prepared to state the position of his Government on FEC-011/18.

THE COMMISSION unanimously agreed to postpone consideration of FEC-011/18.

ITEM 9 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081, -081/1 and -081/2)

THE COMMISSION unanimously agreed to postpone consideration of this subject.

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

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

ITEM 11 - OTHER BUSINESS

There was no other business.

ITEM 12 - PRESS RELEASE

THE COMMISSION unanimously agreed that no statement concerning the present meeting should be released to the press.

The meeting adjourned at 5:25 P.M.

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FAR EASTERN COMMISSION

Minutes of the Twenty-Ninth Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
10:30 A.M., 10 October 1946

REPRESENTATIVES PRESENT

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

His Excellency Norman J. O. Makin (Australia)

Dr. George S. Patterson (Canada)

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

Mr. Francis Lacoste (France)

The Honorable Sir Girja Shankar Bajpai (India)

His Excellency Dr. A. Loudon (Netherlands)

His Excellency Sir Carl Berendsen (New Zealand)

His Excellency Carlos P. Romulo (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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

GENERAL McCOY extended congratulations to the Chinese delegation on this Chinese national holiday, which commemorated the thirty-fifth anniversary of the founding of the Chinese Republic.

GENERAL McCOY welcomed His Excellency Norman J.O. Makin, the first Ambassador of Australia to the United States. SIR CARL BERENDSEN, SIR GIRJA BAJPAI, and GENERAL ROMULO added their felicitations to the general welcome extended by the Chairman.

GENERAL McCOY welcomed Lt. General Schilling of the Netherlands He recalled that General Schilling had been imprisoned by the Japanese during part of the war, but that after his liberation and a subsequent period of service in Java he had served as head of the Netherlands Military Mission in Tokyo and was now en route to the Netherlands for his first visit home in eleven years.

ITEM 1 - APPROVAL OF THE MINUTES OF THE 28th MEETING

THE COMMISSION unanimously approved the minutes of its 28th meeting.

ITEM 2 - TERMS OF REFERENCE FOR THE INTER-ALLIED TRADE BOARD FOR JAPAN (FEC-089)

GENERAL ROMULO presented the following formal statement:

> "My government is in favor of the establishment of the Inter-Allied Trade Board within the framework of the Potsdam objectives and FEC policies as proposed in SC-035/9. My government supports any measure that will help to place the Japanese people in a position where they can contribute, at the earliest possible time, to supply the war devastated areas with urgent necessities, provided such measure does not endanger military security and conforms to the basic policies established by this Commission."

GENERAL ROMULO moved and MR. LACOSTE seconded the motion that FEC-089 be approved. The motion was carried unanimously.

MR. JOHNSON said that, although it was recognized that the Inter-Allied Trade Board would not be an FEC body, the Secretary General of the Far Eastern Commission nevertheless would, as a convenience, be ready to provide the Inter-Allied Trade Board with a meeting place and to furnish the Board the usual Secretariat facilities, if desired.

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ITEM 3 - INTERIM REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

ADMIRAL RAMISHVILI suggested that the first sentence of FEC-059/24 be amended as follows:

> "Within categories of industrial capacity declared available for removal as reparations, approved by the Far Eastern Commission in the interim reparations removals program, specific plants and establishments designated for transfer to claimants should include those auxiliary facilities which operate as an integral part of the plant or establishment and whose output or use serves directly and is necessary to the operation of the primary capacity of such specific plant or establishment to be removed, except where such auxiliary facilities are themselves covered by separate reparations removal programs or retention programs."

He said that the purpose of this amendment was to make perfectly clear that the document should be considered part of the interim reparations removals program.

MAJOR PLIMSOLL, speaking as Chairman of Committee No. 1, said that the intention of that Committee had been that the substance of FEC-059/24 should be accepted in connection not only with the interim reparations removals program, but also in connection with the entire future reparations program. The Committee had considered it of fundamental importance to insure that designation of specific plants and establishments for transfer should include all auxiliary facilities which operated as integral parts of such plants or establishments so that recipient countries would obtain a plant that was workable. However, the Commission might agree to adopt FEC-059/24 now with the amendment proposed by the Soviet representative, but in doing so the Commission should understand that it would probably have to adopt an additional document later which would lay down the principle in question for the entire reparations program as well as for the interim removals program.

DR. KOO said that he agreed with the principle that the auxiliary facilities of plants designated for transfer should accom pany those plants. He said that he could not accept the Soviet amendment, since it was the Chinese position that the principle regarding auxiliary facilities must apply to the entire reparations program. He pointed out that the applicability of this principle to the entire program had been originally proposed by the Soviet membe

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of Committee No. 1 and that this proposal had been recorded in the minutes of the meeting of that Committee on 21 September. He expressed the hope that it would not be thought necessary to reconsider at the Commission level this provision which had been unanimously adopted by Committee No. 1.

ADMIRAL RAMISHVILI suggested that the document be retained on the agenda of the Commission with the understanding that informal negotiations on the points in question would take place before the next meeting. THE COMMISSION agreed to adopt the suggestion of the Soviet representative and retain FEC-059/24 on the Commission agenda

ITEM 4 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081, /1,/2)

At the request of General McCoy, GENERAL HILLDRING explained that bilateral negotiations between the United States and Soviet Governments had continued for several weeks on the proposed reparations conference. Although progress had been made, considerable areas of disagreement still existed. He said that some delay to these negotiations had been caused by the absence of the Soviet Ambassador. Ambassador Novikov had only just returned from the Paris Peace Conference, and General Hilldring hoped to confer with him very soon. He emphasized the urgency which his Government attached to this matter and he expressed the hope that within two weeks the United States-Soviet negotiations would be successfully concluded and that agreement to hold the conference immediately would have been reached. He said that it was the intention of his Government to raise the matter for final vote at the meeting two weeks away. If an unfavorable vote resulted, his Government would present additional proposals.

GENERAL ROMULO presented the following formal statement:

> "I desire to express my satisfaction over the resumption of our consideration of the paper, FEC-081, embodying the proposed United States plan for a reparations conference. I recall that this paper was submitted to the Far Eastern Commission on July 25, 1946 and that on the first of August I submitted my statement to the Commission making of record the full agreement of the Government of the Republic of the Philippines with the proposed plan for calling a reparations conference. I also recall that most of the countries represented in this Commission voiced their concurrence with such a plan.

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"Since then two months have elapsed and final agreement has not yet been reached. In the meantime, most of the plants, machinery, and equipment which are to be removed for reparations are lying idle in Japan and doubtless even with the best of attention are gradually deteriorating. Also, the war devastated countries that are to receive these reparations equipment are still waiting and cannot proceed with their plans to install and operate such equipment as an essential phase of their economic rehabilitation.

"It should be noted, of course, that during all this time certain steps have been taken in the different committees of the Far Eastern Commission to facilitate the work of the reparations conference. Discussions have advanced on the paper fixing the level of economic life of postwar Japan as substantially that prevailing in the period 1928-1930. Considerable progress has also been made in the determination of assured capacity levels in certain important industries, notably the primary and secondary war industries and the war-supporting industries. Almost general agreement has been reached on the criteria that will govern the selection of specific plants and facilities for removal or retention in Japan and in the selection of accessory plants and facilities which will be included in industrial plants designated for removal. Preliminary discussion has started concerning the manner of distributing the reparations pool among the claimant countries. With this preparatory work undertaken thus far, the time is ripe to finally establish the reparations pool and determine the shares of the different claimants as well as the procedure of allocating such reparations assets among the claimant countries.

"My Government is deeply concerned over the whole questior and is anxious that the reparations conference be called without further delay. Among the war devastated countries in Asia, the Philippines is one of the few countries that has had no recourse to direct seizures or awards of enemy industrial equipment as partial compensation for its tremendous losses. This is only one reason why we now renew our support of the American plan for the holding of a Reparations Conference."

SIR CARL BERENDSEN agreed that it was urgently necessary to hold the proposed conference on reparations and voiced approval of the course proposed by General Hilldring.

DR. KOO said that he appreciated the spirit in which the suggestion of General Hilldring had been offered. He expressed the grave concern of his Government concerning any delay with respect to the allocation of reparations. He pointed out that no amount of reparations that might conceivably become available could compensat the Chinese people for the hardship and suffering that they had endured during 14 years of invasion and war. Nevertheless, he addec the efficacy of whatever reparations his Government was to receive was as much dependent on the promptness of its delivery as on its quantity, since any further delay meant further deterioration of reparations goods and equipment. He said that although he was reluctant to accept any further delay in the consideration of the

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urgent problems of reparations, he could agree to do so if it were clearly understood that no extension of time would be considered beyond the two weeks proposed by General Hilldring. Should there be a further extension, he added, his Government would be compelled to present some type of emergency proposal.

DR. KOO urged that steps be taken to implement the interim program already agreed upon. He said that the further deterioration of equipment earmarked for interim reparations removals might be obviated by proceeding at once with the carrying out of this program pending final agreement on the over-all reparations settlement.

DR. LOUDON agreed that the convocation of a reparations conference was a question of urgency. He concurred in the suggestions by General Hilldring and expressed the hope that the reparations conference would commence its deliberations very soon.

MR. MAKIN said that he had been deeply impressed by the remarks of Dr. Koo. He hoped that decisive action on the reparations conference would not be delayed more than two weeks. He agreed that such delay was serious not only because of the deterioration of reparations goods but also because it prevented the rehabilitation of war-ravaged areas.

MR. LACOSTE desired to associate himself with the statements which had been made, favoring speedy action on the question of a reparations conference.

SIR GIRJA BAJPAI said that his Government desired speedy agreement on Japanese reparations, not merely to gain possession of whatever might be the Indian share, but also to see needs met to some degree in countries like China and the Philippines which had to an even greater degree than India suffered devastation directly attributable to Japanese aggression.

SIR GEORGE SANSOM said that without dwelling on the sacrifice and suffering undergone by the people of the United Kingdom, he would simply point out that the reparations settlement had been an urgent consideration at the time of the inception of the Commission and was obviously infinitely more urgent at the present time.

DR. PATTERSON said that he desired to reaffirm the Canadian

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position taken immediately after the proposed United States plan for a reparations conference, to the effect that the conference should take place as soon as possible.

ADMIRAL RAMISHVILI said that he fully appreciated the points of view just expressed. Throughout the negotiations with the United States Government it had been the Soviet desire to exhaust every possibility to reach an agreement which would form a basis for the convocation of the reparations conference and would accelerate the work of that conference. He was glad that the United States-Soviet negotiations had been officially reported by General Hilldring to the Commission. He appreciated the suggestion for the granting of an additional two weeks in which to continue these negotiations, and he again assured the Commission that the Soviet Government would exhaust every possibility to reach the requested agreement.

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

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

ITEM 6 - THE SELECTION OF PLANTS FOR REPARATIONS REMOVALS, DESTRUCTION OR RETENTION IN JAPAN (FEC-091)

GENERAL MCCOY proposed that paragraph 4 of FEC-091 be amended as follows:

"4. Property of nationals of Members of the United Nations will be treated in a supplementary paper. In the meantime such property should not be selected for reparations removals, assured retention, or destruction for security purposes."

SIR GIRJA BAJPAI asked concerning the reasons for the amendment proposed by the United States. At the request of General McCoy, MR. MARTIN explained that it had been the intent of the Steering Committee at its last meeting to refer the subject of property of nationals of Members of the United Nations, as treated in SC-041/4, back to Committee No. 6 for preparation of a detailed policy statement. Pending preparation of such a statement, the Steering Committee had desired to forestall action by the Supreme Commander in connection with such property. He said that since the Supreme Commander, acting under present and forthcoming directives, might select property not only for reparations removals but also for assured retention or for destruction for security purposes, the United States Government had thought it advisable also to include the two latter types of selection in paragraph 4, in order to keep such property from consideration under any heading.

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SIR GIRJA BAJPAI said that the meaning of the United States amendment was not clear to him. If property of nationals of Members of the United Nations was not to be selected for reparations or for destruction, then apparently its retention was being assured.

MR. MARTIN said that no decision had been reached on the permanent disposition of such property, and consequently the matter had been referred back to Committee No. 6. In the meantime, property of United Nations nationals should not be selected for any one of the three alternatives. He suggested that the United States amendment might be further clarified by the addition of the word "for" preceding "assured" and preceding "destruction." DR. PATTERSON suggeste that the meaning of the amendment as Mr. Martin had explained might be clarified by changing "assured retention" to "permanent retentior

ADMIRAL RAMISHVILI said that he had not yet received instructions as to the official position of his Government on FEC-091. However, it was the opinion of his delegation that any war industry, regardless of its ownership, should be available for reparations. Since paragraph 4, in its present form, either with or without the amendment proposed by the United States representative, would exclude any war industries not owned by Japanese, he could not approve the paragraph. He said that although he must maintain a general reservation on the entire document, he thought the paper would be acceptable to his Government if paragraph 4 were deleted and the words "to whomever they belong" were added to paragraph 3.

THE COMMISSION unanimously agreed to refer FEC-091 to Committee No. 6 for reconsideration in the light of the foregoing discussion.

MR. LACOSTE, speaking as Chairman of Committee No. 6, said that it would be impossible to present the report of that Committee in less than a fortnight, since the Committee could not effectively co sider the paper until late the following week because of the absenc of the Soviet member.

ITEM 7 - INTERIM REPARATIONS REMOVALS: STEEL ROLLING INDUSTRY (FEC-059/20)

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/20.

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ITEM 8 - RESTITUTION OF LOOTED PROPERTY (FEC-011/18)

THE COMMISSION unanimously approved FEC-011/18.

ITEM 9 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/36,-031/39)

GENERAL MCCOY requested permission to postpone consideration of these two documents pending informal consultation by him with the Australian and Soviet representatives.

THE COMMISSION unanimously agreed to postpone consideration of FEC-031/36 and -031/39.

ITEM 10 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10)

GENERAL MCCOY presented the following formal statement:

"As you were informed in FEC-087/10, the new Japanese constitution, as amended by the House of Peers, was approved by the House of Representatives on October 7. This completes the legislative phase of the adoption of a new constitution by Japan, the remaining phases consisting of consideration by the Privy Council and promulgation by the Emperor. Consideration by the Privy Council is expected to be only perfunctory. The date of promulgation is still uncertain. As you know, the Supreme Commander stated that promulgation would not take place prior to October 20, but that he would report the date when fixed.

"When the various governments represented on this Commission expressed their opinions in regard to the draft constitution as passed by the House of Representatives some weeks ago, all of the governments made reservations to the effect that, if amendments of substance were made by the House of Peers, adequate opportunity must be given for careful consideration of those amendments by the Commission. As you know, substantial amendments were made by the House of Peers. As these amendments are in accord with previous policy decisions of the Far Eastern Commission and with the Potsdam Declaration, they are acceptable to the United States Government, which assumes that they are also acceptable to the other governments represented on the Commission, and consequently that no further action on the constitution at this time is required of the Commission."

SIR CARL BERENDSEN said that he thought general agreement within the Commission probably existed with reference to the statement just presented by General McCoy.

SIR CARL BERENDSEN said that he did not clearly understand the use of the term "public officials" in Article XV of FEC-087/10. It was his understanding that this term did not include elected representatives of the people, and he wondered, therefore, whether the phrase adequately guarded the intention of the Commission that the representatives of the people must be elected.

GENERAL MCCOY replied that since the Commission would eventually prepare a policy on review of the constitution, he did not think that the question raised by Sir Carl need lead to any real difficulty.

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DR. LOUDON said that if the phrase "public officials" included elected representatives of the people, it was difficult to understand the provision for their dismissal in the first part of the Article.

THE COMMISSION unanimously agreed to retain FEC-087/10 on its agenda for consideration following receipt of the Japanese text of the amendments.

ITEM 11 - OTHER BUSINESS

a. FACILITATION OF THE WORK OF THE COMMISSION

GENERAL MCCOY stated that he had been interested in noting, in reading the minutes of the 32nd meeting of the Steering Committee, that there had been discussion of possible measures to facilitate the work of the Commission. He said that he had called the attention of his Government to the record of this discussion and hoped that this action by him would result in more expeditious treatment of Commission business by the United States Government.

b. REPORT ON THE ACCOMPLISHMENTS OF THE COMMISSION

GENERAL MCCOY said that the Secretariat had prepared a summary of the work of the Commission from its beginning to date. This report would soon be available to all representatives.

ITEM 12 - PRESS RELEASE

THE COMMISSION unanimously approved the following press release:

"His Excellency Norman J.O. Makin, first Australian Ambassador to the United States, attended the meeting of the Commission in the capacity of Australian representative. Mr. Makin was wartime Minister of Navy and Munitions.

"Lt. General Schilling of the Netherlands Army visited the meeting of the Far Eastern Commission, and was warmly welcomed by the Chairman and members. General Schilling was captured during the war and held captive in the same prison camp in Manchuria as was General Wainwright. After liberation, he became head of the Netherlands Military Mission in Tokyo.

"The Commission approved the Terms of Reference of an Inter-Allied Trade Board for Japan and an amendment to FEC policy on restitution of looted property. The text of these documents will be released after it has been received by the Supreme Commander for the Allied Powers."

The meeting adjourned at 12:40 P.M.

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FAR EASTERN COMMISSION

Minutes of the Thirtieth Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
10:30 A.M., 17 October 1946

REPRESENTATIVES PRESENT

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

His Excellency Norman J.O. Makin (Australia)

Dr. George S. Patterson (Canada)

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

Mr. Francis Lacoste (France)

Mr. Jamshed Vesugar (India)

His Excellency Dr. A. Loudon (Netherlands)

His Excellency Sir Carl Berendsen (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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ITEM 1 - APPROVAL OF THE MINUTES OF THE 29th MEETING

THE COMMISSION unanimously approved the minutes of its 29th meeting.

ITEM 2 - REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

At the request of the Chairman, MAJOR PLIMSOLL reported that, in accordance with the suggestion of the Soviet representative at the last meeting (page 3, minutes, 29th FEC Meeting), informal negotiations had taken place, with the Chinese, Soviet and Australian representatives participating. Progress had been made, but final agreement awaited receipt of instructions by the Soviet representative. It was hoped that the result of the informal negotiations might be reported at the next meeting of the Commission.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/24.

ITEM 3 - INTERIM REPARATIONS REMOVALS: STEEL ROLLING INDUSTRY (FEC-059/20)

GENERAL MCCOY said that he was not yet prepared to state the views of his Government on FEC-059/20. The views of the Supreme Commander on the subject were being obtained, and it was expected that a document embodying the official United States position would be circulated before the next meeting of the Commission.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/20.

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

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

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

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

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

GENERAL MCCOY presented the following formal statement:

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

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

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

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

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

ITEM 5 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10)

THE COMMISSION unanimously agreed to postpone consideration of FEC-087/10.

ITEM 6 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

THE COMMISSION unanimously agreed to postpone consideration of this subject.

ITEM 7 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

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

ITEM 8 - SUMMARY REPORT ON THE ACTIVITIES OF THE FAR EASTERN COMMISSION (FEC-093)

GENERAL MCCOY invited the attention of representatives to the summary report on the activities of the Commission. In connection with the general question of the Commission's accomplishments, he renewed his request for any suggestions that representatives might have for the betterment of the work of the Commission. He praised the patience and spirit of cooperation which had marked the approach of all representatives to the difficult problem of the constitution, and which had made possible a solution generally acceptable to all. Reparations, the second great problem confronting the Commission, must now be dealt with and he felt that here again a satisfactory outcome might be expected if representatives would again act with their usual spirit of cooperation.

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ITEM 9 - OTHER BUSINESS

a. RESIGNATION OF MR. FARLEY

SIR CARL BERENDSEN expressed his personal regret at the departure of Mr. Farley. He said that he had, as Chairman of the Steering Committee, been in particularly close association with Mr. Farley and that he desired to record his appreciation for the excellent contribution made by Mr. Farley to the functioning of the Commission. He moved, and DR. PATTERSON seconded the motion, that a vote of thanks by the Commission be incorporated in the minutes. The motion was carried unanimously.

b. DIPLOMATIC STATUS OF THE FAR EASTERN COMMISSION

MR. LACOSTE said that some members of delegations to the Commission were not attached to the embassy staffs of their respective Governments. Consequently, they did not enjoy the usual diplomatic immunities and privileges and, indeed, they were not vested with the dignity appropriate to their assignment. He asked whether the Chairman might undertake to correct the situation.

MR. JOHNSON pointed out that when this question had been raised previously with the United States Government, the Acting Secretary of State had explained (FEC-073/3) that it was impossible to include the Commission under Public Law 291. The Acting Secretary of State had, however, suggested that the respective Governments might include their representatives on the Far Eastern Commission in their diplomatic missions. MR. LACOSTE replied that this suggestion would not be practicable in the case of Ambassador Naggiar, who could not be included on the staff of the French Diplomatic Mission.

ADMIRAL RAMISHVILI referred to the final sentence of the communication from the Acting Secretary of State, which read, "If, however, the Far Eastern Commission finds that the effective performance of its duties is impaired because it has not been so designated, I shall be glad to receive further information from you and to give consideration to any possible means by which any impediments to its work may be removed." This statement, he said, made it feasible to raise the question with the United States Government again.

GENERAL MCCOY requested that the representatives give their reasons for not designating all their representatives on the Commission as members of their diplomatic missions.

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MR. LOUDON pointed out that although all members of delegations to the Commission did not enjoy diplomatic immunity, arrangements could undoubtedly be made for them to enjoy such diplomatic privileges as exemption from import duties. With respect to the effect on such members of traffic violations, he thought that arrangements might be made whereby the Department of State would issue special tags for the automobiles of such members and create a semi-diplomatic category of individuals.

MR. LACOSTE suggested that special identification cards might also be issued to those members of delegations to the Commission who were not regular members of diplomatic staffs, and that a special listing of such individuals might be included in the Department of State Diplomatic List.

MR. JOHNSON said that he would again communicate with the Office of the Secretary of State and apprise him of the sense of the foregoing discussion.

c. REMARKS BY SENATOR COLLINGS

MR. JOHNSON said that he took great pleasure in presenting Senator J.S. Collings of Australia, who was a personal friend of his, a member of the Australian Senate, and a Cabinet Minister of Australia where at present he held the post of Vice-President of the Executive Council.

SENATOR COLLINGS addressed the Commission as follows:

"Mr. Johnson, gentlemen, when I understood that I would be allowed as an alien in a foreign country to attend your meeting here today, I certainly didn't understand that it would be my responsibility to say anything at all here, particularly in response to just another issue of kindness from my friend, Mr. Nelson Johnson, of whose courtesy and good will I have already had quite extensive experience. I should just like to say that I left Australia with a good many expressions of good will and it was suggested that I should prove, probably because of my somewhat longer life and varied experience, a pleasant kind of ambassador for Australia. I have been here for some time now and I am not quite sure whether I shall not leave here as an ambassador for America rather than the way I came here, as an ambassador for Australia. Anyhow, I should like to say that we have had some experience in my country with the gentlemen that the U.S.A. has sent to represent them in Canberra where our national capital and national government are located, and also from all those other countries that I can see represented at the table here this morning. That makes it exceedingly interesting to me to have been here amongst you today because I have always visualized here in my more than half a century of life in Australia that some day we should have there the representatives of all the great nations of the world. We can't, of course, have them now--not all of them--because of various complications which intervene. But those we have had have always been particularly welcome, and this morning amongst you all here I don't feel exactly like a stranger. Thank you again, gentlemen."

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d. ABSENCE OF REPRESENTATIVES AT UNITED NATIONS GENERAL ASSEMBLY

SIR CARL BERENDSEN, MR. MAKIN and DR. KOO stated that they would be absent from many of the forthcoming meetings of the Far Eastern Commission due to their attendance at the General Assembly of the United Nations in New York. ADMIRAL RAMISHVILI said that Ambassador Novikov would also attend the General Assembly of the United Nations. MR. LACOSTE said that Ambassador Naggiar, who was returning to the United States, would also attend the General Assembly of the United Nations.

The meeting adjourned at 11:30 A.M.

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FAR EASTERN COMMISSION

Minutes of the Thirty-First Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
10:30 A.M., 24 October 1946

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Mr. R. E. Collins (Canada)

Dr. S. H. Tan (China)

Mr. Francis Lacoste (France)

The Honorable Sir Girja Shankar Bajpai (India)

His Excellency Dr. A. Loudon (Netherlands)

Colonel G. R. Powles (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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

ITEM 1 - APPROVAL OF THE MINUTES OF THE 30th MEETING

THE COMMISSION unanimously approved the minutes of its 30th meeting.

ITEM 2 - REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

GENERAL McCOY suggested that, since informal negotiations among the Chinese, Soviet and Australian members had not yet been completed, consideration of FEC-059/24 be postponed.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/24.

ITEM 3 - INTERIM REPARATIONS REMOVALS: STEEL ROLLING INDUSTRY (FEC-059/20)

GENERAL McCOY said that the official United States position on FEC-059/20 was soon to be circulated, and that the proposals therein would entail consideration by Committee No. 1. He therefore suggested that the question be referred to that Committee for reconsideration in the light of the United States position.

THE COMMISSION unanimously agreed to refer FEC-059/20 to Committee No. 1 for consideration in conjunction with the United States proposals to be circulated as FEC-059/25.

ITEM 4 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10)

GENERAL McCOY suggested that since the Japanese text of the constitution had not yet been received, the Commission defer further consideration of the subject.

THE COMMISSION unanimously agreed to postpone further consideration of the Japanese constitution.

ITEM 5 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

GENERAL McCOY requested General Hilldring who had participated in the diplomatic negotiations with the Soviet representative on this matter, to report to the Commission on the present status of the United States proposal for a reparations conference.

GENERAL HILLDRING thanked the Commission for an opportunity again to participate in its deliberations. He referred to FEC-081/3 which he said had been prepared to apprise the Commission of the course of negotiations between the United States and Soviet Governments. He

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requested that the following corrections be made in the document:

(1) Page 3, paragraph 5, fourth line from end, change "urge" to "ask."

(2) Page 5, insert a period at end of the first line and delete remainder of sentence.

GENERAL HILLDRING said that although, in the course of bilateral negotiations, many of the original differences in the respective positions of the United States and Soviet Governments had been reconciled, a final agreement on the question had not been reached. He cordially thanked the Soviet representative, Admiral Ramishvili, for the spirit of cooperation in which the negotiations had been conducted.

GENERAL HILLDRING said that his Government was deeply appreciative of the patience of the Commission in awaiting the outcome of the U.S.-U.S.S.R. negotiations. The United States Government now felt that it could not longer ask the Far Eastern Commission to delay in making a decision on the question of a reparations conference.

ADMIRAL RAMISHVILI stated that the U.S.-U.S.S.R. negotiations were not on the agenda of the Far Eastern Commission and were not properly a subject for discussion by the Commission. He presented the following formal statement:

"As is known the position of the U.S.S.R. regarding the conference within the framework of the Far Eastern Commission was that before the opening of the conference there should have been reached an agreement through diplomatic procedure as long as the question of external assets lies outside the jurisdication of the Far Eastern Commission. Since these negotiations have not brought, for the time being, the desired results, we continue to keep our position; therefore the government of the U.S.S.R. does not consider it possible to give its consent on the convocation of the reparations conference or to participate in the work of such conference."

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GENERAL McCOY said that although he was disappointed by the failure to reconcile all differences in the respective positions of the United States and Soviet Governments on the question of a reparations conference, he did not feel that the Commission should admit failure in its endeavor to prepare a formula by which collective effort on this question might proceed. Important differences of opinion had developed before on other questions, he pointed out, but, due to the patience and cooperation of representatives ultimate agreement had always been reached. He felt sure that once again the cooperation of representatives could be relied upon to produce a plan whereby collective effort might be continued and eventual agreement achieved. He realized that a decision by the Commission on reparations was urgently needed by the Supreme Commander and that therefore the question was one of urgency. He said that the Terms of Reference of the Commission had always previously contained a method whereby difficulties might be resolved and he suggested that representatives again examine the Terms of Reference for guidance in this present difficulty.

SIR GIRJA BAJPAI said that he was sure that all representatives shared the hope expressed by General McCoy for the attainment of a workable agreement in this matter. He said that although the U.S.-U.S.S.R negotiations might not be an appropriate subject for consideration by the Commission, they must nevertheless be taken into account by the other member Governments since they were relevant to the previous agreement by these member Governments to participate in the proposed reparations conference.

GENERAL McCOY referred to the fact that it had often proved useful to refer questions involving strong differences in governmental positions to small ad hoc subcommittees. He suggested that in the present case such a small committee might work toward agreement while the general question was being referred to member Governments.

DR. LOUDON inquired whether the Far Eastern Commission need do more than express its views as to the desirability of convoking a conference on reparations. He felt that the Terms of Reference of

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31 October 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF THIRTY-FIRST MEETING

Note by the Secretary General

1. The attached page is a revision, embodying changes requested by the Indian representative, of page 3 of the minutes of the thirty-first meeting of the Far Eastern Commission. The revision was unanimously approved by the Commission at its thirty-second meeting, 31 October 1946.

2. All representatives are requested to substitute the attached page for page 3 of the minutes of the thirty-first meeting of the Far Eastern Commission.

NELSON T. JOHNSON
Secretary General

Corrigendum--Minutes
31st FEC Mtg.

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GENERAL MCCOY said that although he was disappointed by the failure to reconcile all differences in the respective positions of the United States and Soviet Governments on the question of a reparations conference, he did not feel that the Commission should admit failure in its endeavor to prepare a formula by which collective effort on this question might proceed. Important differences of opinion had developed before on other questions, he pointed out, but, due to the patience and cooperation of representatives ultimate agreement had always been reached. He felt sure that once again the cooperation of representatives could be relied upon to produce a plan whereby collective effort might be continued and eventual agreement achieved. He realized that a decision by the Commission on reparations was urgently needed by the Supreme Commander and that therefore the question was one of urgency. He said that the Terms of Reference of the Commission had always previously contained a method whereby difficulties might be resolved and he suggested that representatives again examine the Terms of Reference for guidance in this present difficulty.

SIR GIRJA BAJPAI said that he was sure that all representatives shared the hope expressed by General McCoy for the attainment of a workable agreement in this matter. He said that although the U.S.-U.S.S.R. negotiations might not be an appropriate subject for consideration by the Commission, they must nevertheless be taken into account by the other member Governments since they were relevant to the question of participation by these member Governments in the proposed reparations conference.

GENERAL MCCOY referred to the fact that it had often proved useful to refer questions involving strong differences in governmental positions to small ad hoc subcommittees. He suggested that in the present case such a small committee might work toward agreement while the general question was being referred to member Governments.

DR. LOUDON inquired whether the Far Eastern Commission need do more than express its views as to the desirability of convoking a conference on reparations. He felt that the Terms of Reference of

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the proposed conference were not within the pruview of the Far Eastern Commission, the preparation of such Terms of Reference was not strictly a matter concerning the occupation of Japan. He suggested that some type of preparatory commission be set up to discuss the scope and function of a reparations conference.

SIR GIRJA BAJPAI referred to the provision in FEC-081/3 for shares of reparations to be determined on a broad political basis. He said it was not clear to him how shares of reparations might be so determined, and he inquired as to the meaning of the provision. ADMIRAL RAMISHVILI replied that, although he did not consider a discussion of the substance of FEC-081/3 appropriate, he interpreted the provision in question to mean that, in the allocation of preparations, political factors and implications should be taken into consideration. SIR GEORGE SANSOM added that the provision had originally been suggested by his Government and had been designed to insure the inclusion of considerations other than purely statistical computations in a basis for the allocation of reparation shares.

COLONEL POWLES said that his Government would be reluctant to accept any solution of this vital matter which would bear the aspect of a last resort and would remove the question of Japanese reparatio from the province of the Far Eastern Commission. He urged that every possibility be exhausted in the attempt to reach an agreement which would provide for deliberation of the subject under the sponsorship of the Far Eastern Commission. He felt that the suggest ion be General McCoy for the appointment of an ad hoc subcommittee to continue consideration of the subject was extremely valuable, and that in essence the suggestion by Dr. Loudon for the establishment of a preparatory commission was similar to General McCoy's proposal. Some body should be established, he said, to consider possible Terms of Reference for the proposed reparations conference

SIR GIRJA BAJPAI said that he favored any method of procedure which would produce an agreed solution to the problem. He referred to the two porposals which had been made and expressed a fear that a preparatory commission such as Dr. Loudon had suggested would

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accomplish little, since its probable size would cause it to be an unwieldy and time-consuming body. He felt that the appointment of a small ad hoc subcommittee of the Commission, as suggested by General McCoy, was a practicable proposal, and one that he was prepared to support.

Following a brief recess called to allow consultation among representatives and their advisors, GENERAL McCOY requested that further consideration of the proposal for a reparations conference be postponed until the next meeting.

THE COMMISSION unanimously agreed to postpone further consideration of the subject of a proposed reparations conference until its next meeting.

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

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

ITEM 7 - OTHER BUSINESS

There was no other business.

ITEM 8 - PRESS RELEASE

THE COMMISSION unanimously agreed that no statement of the foregoing proceedings be released to the press.

The meeting adjourned at 11:45 A.M.

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FAR EASTERN COMMISSION

Minutes of the Thirty-Second Meeting of the Far Eastern Commission
Held in Main Conference Room, 2516 Massachusetts Avenue, N. W.
10:30 A.M., 31 October 1946

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Mr. R. E. Collins (Canada)

Dr. S. H. Tan (China)

His Excellency Paul Emile Naggiar (France)

The Honorable Sir Girja Shankar Bajpai (India)

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

Colonel G. R. Powles (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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ITEM 1 - APPROVAL OF THE MINUTES OF THE 31st MEETING

SIR GIRJA BAJPAI requested that the last sentence of the second paragraph on page 3 of the minutes of the 31st Commission meeting be amended as follows:

"He said that although the U.S.-U.S.S.R. negotiations might not be an appropriate subject for consideration by the Commission, they must nevertheless be taken into account by the other member Governments since they were relevant to the ~~previous agreement to participate~~ question of participation by these member Governments in the proposed reparations conference."

THE COMMISSION unanimously approved the minutes of its 31st meeting with the amendment requested by Sir Girja Bajpai.

ITEM 2 - REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

ADMIRAL RAMISHVILI said that he had not yet received instructions from his Government with respect to FEC-059/24.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/24.

ITEM 3 - THE SELECTION OF PLANTS FOR REPARATIONS REMOVALS, DESTRUCTION OR RETENTION IN JAPAN (FEC-091/2)

ADMIRAL RAMISHVILI said that the Soviet position with respect to selection of plants and equipment for removal was that all war industries located in Japan must be destroyed. He said that to leave any war industry in Japan, regardless of its ownership, was to gamble with the possibility of again having such industry turned against the Allied powers by the Japanese. He emphasized that no exception should be made to the rule that all such equipment be destroyed, since equipment owned by nationals of Members of the United Nations had been of aid to the Japanese in their conduct of the war.

He proposed that FEC-091/2 be amended by the substitution of the following for paragraph 4:

"In carrying out the selection of particular plants, machinery and equipment for reparations removals the following order of removal should be exercised:

"1. Plants and equipment owned by the Japanese Government, the 'Zaibatzu' concerns and other big industrial and financial concerns and companies.

"2. Plants and equipment owned by other Japanese nationals and by nationals of the countries--allies of Japan.

"3. Plants and equipment owned by nationals of the neutral countries.

"4. Plants and equipment owned by nationals of members of the United Nations."

THE COMMISSION unanimously agreed to refer the amendment proposed by Admiral Ramishvili, together with FEC-091/2, to Committee No. 6 for further consideration, with the understanding that the Committee would prepare its report in time for consideration by the Commission at its next regular meeting.

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ITEM 4 - REDUCTION OF JAPANESE INDUSTRIAL WAR POTENTIAL (FEC-084/1)

ADMIRAL RAMISHVILI suggested that FEC-084/1 be retained on the Commission agenda until the report of Committee No. 6 on FEC-091/2 had been received.

THE COMMISSION unanimously agreed to postpone consideration of FEC-084/1 until the report from Committee No. 6 on FEC-091/2 had been received.

ITEM 5 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION (FEC-031/41)

MAJOR PLIMSOLL recalled that the statement of policy (FEC-031/40) on the review of the Japanese constitution had been adopted by the Commission on 17 October with the understanding that after the Commission had received the views of the Supreme Commander on publication, the Commission would then discuss the time and manner of publication. Furthermore, he continued, it had been agreed that the views expressed at the meeting of the Commission on 17 October should be forwarded to the Supreme Commander and he referred to the views of the Australian representative, Mr. Makin, as recorded in the minutes of the 30th meeting on 17 October, to the effect that, "To delay announcement might lay the Commission open to the charge by the Japanese that it had broken faith by not declaring to them the existence of the review provision, particularly since the Japanese were planning elaborate ceremonies to celebrate the new constitution," and also that, "...the Supreme Commander should be consulted on the question of publication. He [Mr. Makin] urged, however, that such announcement take place as soon as possible and that it not be delayed later than the date of promulgation of the constitution."

MAJOR PLIMSOLL pointed out that the constitution was to be promulgated on 3 November and that therefore the present meeting of the Commission afforded the last opportunity before promulgation for the Commission to decide on the question of publication. He emphasized that the question of publication was not simply an occupation problem but that it was related to the larger question of the faith and the intention of each of the Allied powers. MAJOR PLIMSOLL mentioned several ways in which the Supreme Commander could publish the review provision. One method might be for the Supreme Commander to apprize Premier Yoshida informally of the provision. However, he considered that this informal method was open to numerous objections since in two years, when the policy paper would come into effect, Yoshida might well have been succeeded by a premier of very different political complexion, who might not regard any undertaking given privately by Yoshida as binding on his successor. A second method

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of informing the Japanese of the review provision would be to notify them in two years that at that time they would have to hold a special session of the Diet to consider the constitution, after which the Far Eastern Commission would review it. This method, he thought, would lay the Allied powers open to the charge by the Japanese of a breach of faith. The Japanese could well argue two years from the present that a resolution or decision by the Far Eastern Commission taken now but not communicated to them would not be binding upon them. No one could foresee what the Japanese situation might be in two years and the ability to influence them by informal methods might have substantially decreased.

A third method by which the Japanese could be informed of the review provision, MAJOR PLIMSOLL continued, and the one which he advocated, would be to tell the Japanese by the time of promulgation that the Commission had passed the resolution in question. He recognized that this method might have certain temporary disadvantages but he thought that it nevertheless was a straightforward and honest way and provided a course which would avoid entanglement of the Commission in long-term difficulties. He felt that the Supreme Commander was fully capable of minimizing whatever unpalatable aspects there might be, from the Japanese standpoint, in the announcement of the review provision at the time of promulgation.

In summation, MAJOR PLIMSOLL emphasized the importance of this matter to the furtherance of faith between the Japanese and the Allied powers. Although Major Plimsoll understood that the Supreme Commander had not yet replied concerning the publication of the review provision, he assumed that good reasons existed for this delay and therfore his remarks should not be interpreted as adverse criticism of the Supreme Commander. He asked for an expression of opinion from other representatives regarding the general principle of publication.

GENERAL MCCOY said that he regretted that no reply had been received from the Supreme Commander. He assured the representatives that the delay was not the fault of the Supreme Commander. He pointed out that the United States Government had preferred not to adopt the provision for review of the constitution but that it had been willing to compromise its view and adopt the paper with the reservation that the Commission would subsequently, after obtaining the views of the Supreme Commander, consider the time and the manner of issuance

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of the policy decision embodied in the paper. The Commission had agreed to this proviso and had authorized the Chairman to consult with the Supreme Commander in order to obtain his views.

COLONEL POWLES expressed agreement with the remarks made by Major Plimsoll. He felt that when the work of the Far Eastern Commission should be reviewed in subsequent years, the decision with regard to review of the constitution would probably rank as one of the most important decisions made by the Commission. Therefore, he said, it was important that representatives exercise to the fullest their sense of individual and collective responsibility in deciding the best method for publication of this decision, since, in his opinion, it was not a matter which solely concerned the occupying authorities.

MR. COLLINS said that he presumed that all representatives were aware of the difficulty of the present position of the Commission on this matter and were also aware of the desirability of having an expression of opinion on the subject from the Supreme Commander before any decision was taken. He agreed that, from the standpoint of the Commission in discharging its responsibility to keep faith with the Japanese, the time of promulgation was the most appropriate time for publication of the policy. He asked whether it was likely that the views of the Supreme Commander would be received in time to have a special Commission meeting on this subject the following day.

GENERAL MCCOY said that he realized the pertinence of the expressions by the Australian and New Zealand representatives and he said that he would ask the United States Government to communicate immediately to the Supreme Commander not only the substance of these views but also the actual expressions as stated by Major Plimsoll and as endorsed by Colonel Powles. If an immediate reply were received, he said, he would call a special meeting of the Commission to consider it.

SIR GEORGE SANSOM referred to the delay in hearing from the Supreme Commander and said that he personally found it difficult, in the absence of the views of the Supreme Commander, to reach a decision as to the proper time and manner of publication. He agreed that the matter was not solely a question of occupation policy, but that it distinctly bore upon the capacity, the competence, the authority, and the good faith of the Far Eastern Commission.

SIR GEORGE SANSOM called attention to the fact that the Commission had not yet received the Japanese text of the constitution as approved by the Diet.

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Because of the fact that he had received letters from the United Kingdom Liaison Mission dealing with specific points of interpretation, he thought that the Japanese text should have reached the Commission by this time.

In reply to a question from General McCoy, MR. BORTON explained that a message from Tokyo received ten days ago had conveyed the information that the Japanese text was being sent by special courier. He suggested that further communication with Tokyo as to the cause of delay be initiated.

COLONEL POWLES noted that differences existed between the various translations circulated to the Commission, particularly with respect to Article XV. Such differences, he said, showed the urgency of obtaining the Japanese text of the constitution.

DR. TAN handed to the Secretary General a copy of the Japanese text published in the Japanese newspaper JIJI Shimbun, for 9 October 1946, which he said might be reproduced and made available to representatives. (Subsequently circulated as MI-003/5.)

MR. NAGGIAR suggested that, if it proved to be impossible to obtain the opinion of the Supreme Commander before the date of promulgation of the constitution, the Chairman might inform the press of the policy decision on review. He thought that it might be agreed that if the Supreme Commander's views were not received by a certain time, the information might be released at that time by the Chairman.

GENERAL MCCOY said that since the review itself would not take place for two years, he felt that the only matter of urgency in this matter was the question of time of publication. He repeated that the views expressed by the representatives would be transmitted to the Supreme Commander and, in reply to a question from Mr. Naggiar, he gave his assurance that the Supreme Commander's reply would be received in time for consideration by the Commission before promulgation of the constitution.

SIR GIRJA BAJPAI said that although he was conscious of the necessity of taking into consideration the opinions of the Supreme Commander, this particular issue was one that should not be determined by the individual judgment of any one person. The decision for the review of the constitution in two years was not merely procedural or adjectival, but rather was a substantive decision and as such should properly be made known to the people concerned simultaneously with the other provisions of the constitution. He felt that the Commission

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would run a very real risk of being accused of bad faith if the announcement of the decision regarding the review provision were made after the constitution itself had been promulgated. He urged that the Commission, while having in mind the consideration that was due the Supreme Commander because of the difficulties involved in the conduct of the occupation, should also have in mind the maintenance of its own reputation for good faith.

ADMIRAL RAMISHVILI said that he agreed with the view of Major Plimsoll that the Commission's decision with respect to the review provision should be published as soon as possible. He endorsed the reasons for early publication which had been enumerated by Sir Girja Bajpai. In his opinion the over-all effects of publication at the time of promulgation of the constitution would not be harmful.

GENERAL MCCOY pointed out that, because of delays in reaching agreement on the adoption of the review provision, the actual time remaining to the Supreme Commander for an expression of views following adoption of the policy by the Commission had been very short. GENERAL MCCOY thought that such delays as had occurred in reaching agreement on this subject were characteristic of matters requiring the agreement of eleven Governments, and he observed that while the viewpoints that representatives had just expressed were perfectly reasonable, it was not always practicable to anticipate quick action in the conduct of such international negotiations.

THE COMMISSION unanimously agreed to postpone consideration of FEC-031/41, with the understanding that a special meeting would be called to consider the views of the Supreme Commander on publication of the policy, if such views were transmitted to the Commission before promulgation of the constitution.

ITEM 6 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10)

THE COMMISSION unanimously agreed to postpone consideration of FEC-087/1 and FEC-087/10.

ITEM 7 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

THE COMMISSION unanimously agreed to postpone consideration of this subject.

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

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

ITEM 9 - OTHER BUSINESS

There was no other business.

ITEM 10- PRESS RELEASE

THE COMMISSION unanimously agreed that no statement of the foregoing proceedings be released to the press.

The meeting adjourned at 11:35 A.M.

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4 November 1946

FAR EASTERN COMMISSION

CORRIGENDUM

TO

MINUTES OF THIRTY-SECOND MEETING

Note by the Secretary General

1. The attached pages are revisions embodying changes requested by the U.S. and Soviet representatives, of pages 5 and 6 respectively of the minutes of the 32nd meeting of the Far Eastern Commission.

2. All representatives are requested to substitute the attached pages for pages 5and 6 of the Minutes of the thirty-second meeting of the Far Eastern Commission.

NELSON T. JOHNSON
Secretary General

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Because of the fact that he had received letters from the United Kingdom Liaison Mission dealing with specific points of interpretation, he thought that the Japanese text should have reached the Commission by this time.

In reply to a question from General McCoy, MR. BORTON explained that a message from Tokyo received ten days ago had conveyed the information that the Japanese text was being sent by special courier. He suggested that further communication with Tokyo as to the cause of delay be initiated.

COLONEL POWLES noted that differences existed between the various translations circulated to the Commission, particularly with respect to Article XV. Such differences, he said, showed the urgency of obtaining the Japanese text of the constitution.

DR. TAN handed to the Secretary General a copy of the Japanese text published in the Japanese newspaper JIJI Shimbun, for 9 October 1946, which he said might be reproduced and made available to representatives. (Subsequently circulated as MI-003/5.)

MR. NAGGIAR suggested that, if it proved to be impossible to obtain the opinion of the Supreme Commander before the date of promulgation of the constitution, the Chairman might inform the press of the policy decision on review. He thought that it might be agreed that if the Supreme Commander's views were not received by a certain time, the information might be released at that time by the Chairman.

GENERAL MCCOY said that since the review itself would not take place for two years, he felt that the only matter of urgency in this matter was the question of time of publication. He repeated that the views expressed by the representatives would be transmitted to the Supreme Commander and, in reply to a question from Mr. Naggiar, he gave his assurance that the Supreme Commander would make known his views as to publication of the review provision.

SIR GIRJA BAJPAI said that although he was conscious of the necessity of taking into consideration the opinions of the Supreme Commander, this particular issue was one that should not be determined by the individual judgment of any one person. The decision for the review of the constitution in two years was not merely procedural or adjectival, but rather was a substantive decision and as such should properly be made known to the people concerned simultaneously with the other provisions of the constitution. He felt that the Commission

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would run a very real risk of being accused of bad faith if the announcement of the decision regarding the review provision were made after the constitution itself had been promulgated. He urged that the Commission, while having in mind the consideration that was due the Supreme Commander because of the difficulties involved in the conduct of the occupation, should also have in mind the maintenance of its own reputation for good faith.

ADMIRAL RAMISHVILI said that, although he had not requested a decision of his Government on this particular subject, nevertheless, since the view had been expressed that the opinion of members of the Far Eastern Commission would be helpful, he could state that he personally agreed with the view of Major Plimsoll that the Commission's decision with respect to the review provision should be published as soon as possible. He endorsed the reasons for early publication which had been enumerated by Sir Girja Bajpai. In his opinion the over-all effects of publication at the time of promulgation of the constitution would not be harmful.

GENERAL MCCOY pointed out that, because of delays in reaching agreement on the adoption of the review provision, the actual time remaining to the Supreme Commander for an expression of views following adoption of the policy by the Commission had been very short. GENERAL MCCOY thought that such delays as had occurred in reaching agreement on this subject were characteristic of matters requiring the agreement of eleven Governments, and he observed that while the viewpoints that representatives had just expressed were perfectly reasonable, it was not always practicable to anticipate quick action in the conduct of such international negotiations.

THE COMMISSION unanimously agreed to postpone consideration of FEC-031/41, with the understanding that a special meeting would be called to consider the views of the Supreme Commander on publication of the policy, if such views were transmitted to the Commission before promulgation of the constitution.

ITEM 6 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10)

THE COMMISSION unanimously agreed to postpone consideration of FEC-087/1 and FEC-087/10.

ITEM 7 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

THE COMMISSION unanimously agreed to postpone consideration of this subject

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

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

ITEM 9 - OTHER BUSINESS

There was no other business.

ITEM 10 -PRESS RELEASE

THE COMMISSION unanimously agreed that no statement of the foregoing proceedings be released to the press.

The meeting adjourned at 11:35 A.M.

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FAR EASTERN COMMISSION

Minutes of the Thirty-Third Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
3:00 P.M., 1 November 1946

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Mr. R. E. Collins (Canada)

Dr. S. H. Tan (China)

Mr. Paul Guerin (France)

Mr. Jamshed Vesugar (India)

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

Colonel G. R. Powles (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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GENERAL MCCOY opened the meeting at 3:00 P.M.

ITEM 1 - PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION: REPLY OF THE SUPREME COMMANDER FOR THE ALLIED POWERS TO CONSULTATION (FEC-031/42)

GENERAL MCCOY presented the views of his Government regarding the time and place of issuance of the policy decision providing for review of the Japanese constitution. He said that the United States Government had agreed to the review provision with the understanding that the Commission at some subsequent time, after having obtained the views of the Supreme Commander, would consider the time and manner of issuance of the policy decision. This understanding had been agreed to by all representatives and the Chairman had been authorized to consult the Supreme Commander for the purpose of obtaining the views of the latter (Minutes, 30th FEC Mtg., pp. 2 and 3). He recalled that at the 32nd meeting of the Commission, various representatives had advanced considerations in favor of publication of the review provision before or at the time of promulgation of the constitution. The Commission now had before it (FEC-031/42) certain views of the Supreme Commander to the effect that publication of the policy decision at this time would be harmful to the common interests of the nations represented on the Commission.

GENERAL MCCOY said that his Government had carefully considered the expressions from representatives who had favored immediate publication of the policy decision and had balanced them against the views presented by the Supreme Commander. Since the Supreme Commander was in a particularly favorable position from which to judge the effect of publication upon the Japanese and upon the attainment of common objectives, the United States Government had concluded that its proper course should be to support the recommendation by the Supreme Commander that publication of the policy decision be delayed.

MAJOR PLIMSOLL referred to what seemed to be the opinion of the Supreme Commander, that the policy decision should never be published. This opinion, MAJOR PLIMSOLL felt, could be deduced from the final paragraph of the reply from the Supreme Commander:

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

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MAJOR PLIMSOLL continued that the Supreme Commander seemed to go even further and to consider that the policy decision itself should never have been adopted by the Commission; the Supreme Commander seemed to hope that within the next year or two, the Commission might consider the Japanese situation to be such that review of the constitution was not required, either by the Diet or by the Commission. Such an opinion, MAJOR PLIMSOLL observed, was directly opposed to one of the basic ideas held by the Commission which had been to inform the Japanese now that the Commission would judge the constitution by the way in which it operated during the next two years and that the Japanese, too, should be on the lookout for flaws in the operation of the constitution, with the knowledge that it would be debated by the Diet.

MAJOR PLIMSOLL enumerated certain dangers which he considered inherent in a delay of publication. First among these dangers was the one stressed by Sir Girja Bajpai at the meeting of the Commission the day before, that to let the Japanese feel that the Commission had no objections or reservations concerning the constitution would in the future give them justification for directing at the Commission a charge of breach of faith. This, in the long run, would make more difficulty for the Supreme Commander in the conduct of the occupation than would immediate announcement of the review provision to the Japanese. A second danger was that of leakage to the press and public concerning the existence and nature of the policy decision. Too many people connected with the Commission and the staff of the Supreme Commander knew of this decision for it to be kept secret indefinitely. Furthermore, if the implementation of the directive were raised in the Allied Council for Japan, even at a special closed meeting, word would leak out. A third difficulty in postponing publication lay in explaining to the world the role of the Far Eastern Commission. The importance of the constitution made it unrealistic to expect to persuade the press or public that the Commission had given no consideration to the subject. Indeed, the Commission had already announced that it had enunciated basic principles for the constitution, and accordingly the Japanese would want to know what had been the view of the Commission. To publicize the review provision now, he said, would give some information to the Japanese people and would also preserve the fiction that the Commission had not intervened in the adoption of the constitution, since this policy simply guaranteed to the Japanese an additional opportunity to express their popular will in accordance with the Potsdam Declaration.

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The worst consequence of postponement of publication of the review provision, MAJOR PLIMSOLL continued, was the difficulties which would plague the Commission for the next two years. Various situations might well arise in which the actions of the Commission, the Supreme Commander, and possibly those of the Japanese Government would be determined by this decision, of which the Japanese people would know nothing. The Commission should realize that sooner or later the decision would be made public, if not within the next two years, then ultimately in the course of the publication of historical records, when the fact of delay would perhaps be interpreted to mean admission of doubt on the part of the Commission as to the wisdom or legitimacy of the policy. MAJOR PLIMSOLL concluded by repeating his argument of the day before, that this was not simply a matter concerning the efficiency of the occupation, but also involved the relations to the Japanese of each Government represented on the Commission.

SIR GEORGE SANSOM expressed surprise that the Supreme Commander had not advanced more cogent reasons for his dismissal of the Commission decision and his characterization of the Commission's purpose as "obscure." He thought that there might be very good arguments against publicity and did not wish to prejudge the question. An obvious reason for postponement and one weightier than any the Supreme Commander had relied on, which he might have used, was the dampening effect on public enthusiasm which might be expected if the announcement were made at the time of promulgation. The reply of the Supreme Commander seemed to be simply an elaborate categorical statement that release of the review provision would be wrong, rather than an enumeration of reasons for his position.

With reference to specific points in the reply from the Supreme Commander, SIR GEORGE SANSOM said that he could not understand why the Supreme Commander felt that the purpose underlying the Commission's suggestion of immediate publication was obscure. Furthermore, he could not agree with the Supreme Commander's statement that the Commission's proposal was unrealistic because of its failure to recognize that by its very terms the constitution was constantly before the Diet. It certainly was the view of the United Kingdom Government, he said, that the constitution did contain ample provision for review, but it was necessary, he thought, to recognize a difference between provisions in the constitution and the steps taken to give those provisions effect.

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COLONEL POWLES gave his endorsement to the statements of Major Plimsoll and Sir George Sansom. He felt that the situation was directly attributable to the unsatisfactory nature of liaison between the Commission and the Supreme Commander. This situation had been mentioned several times by Sir Carl Berendsen and Sir Carl had offered suggestions for improvement in the situation. However, none of these suggestions had been adopted. In the course of discussion of the matter of liaison, assurances had been given that all Commission papers and minutes were forwarded to the Supreme Commander for his information. However, COLONEL POWLES continued, the contents of this reply from the Supreme Commander made it obvious that he was not aware of the course taken by deliberations of the Commission. Certain arguments advanced in FEC-031/42 had already been raised and disposed of during the consideration of the review provision by the Commission and by its Committee on Constitutional and Legal Reform.

COLONEL POWLES pointed out that the use of the word "publicity" in FEC-031/42 made it apparent that the Supreme Commander regarded publicity as being necessarily public announcement. The Supreme Commander displayed no awareness of the various methods considered by the Commission for communicating to the Japanese the decision regarding review. Furthermore, the United States reservation itself did not use the word "publicity" but rather the phrase "time and manner of issuance." These numerous misunderstandings, COLONEL POWLES said, left unanswered the question of what the Supreme Commander intended with regard to communicating the review provision to the Japanese people and he therefore felt that further immediate communication with the Supreme Commander was advisable. Although the advantage of publication of the review provision at the time of promulgation had been lost, and although, in his opinion, this would have been the best time for publication, other feasible occasions would arise, and it was therefore necessary that the Commission do everything possible to assure an appreciation and understanding on the part of the Supreme Commander of the course of its deliberations and the reasons for that course.

GENERAL MCCOY agreed that the expressions of the representatives with respect to the reasons for their positions should be communicated to the Supreme Commander. He remarked that heretofore it had always proved most helpful when the Supreme Commander was informed of the views of representatives.

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MR. COLLINS said that the Supreme Commander's reply seemed to contain some misapprehension as to the purpose of the review provision. He said that FEC-031/42 made it apparent that in the mind of the Supreme Commander the emphasis lay on the part of the Far Eastern Commission with respect to review, whereas the original intent with regard to the provision had been to provide an opportunity for the Japanese to review the constitution in the light of experience gained from its operation. He thought that inclusion of the provision for review by the Far Eastern Commission should not be considered the important aspect of the review policy, and that if the Supreme Commander realized this he would be able to find a manner of communication of the policy to the Japanese which would not carry with it an implication or an appearance of forcing anything upon them. The Japanese Government might refer to the provision in the course of promulgation ceremonies. However, if it were found impossible to publicize the decision at the time of promulgation, he thought that the occasion of the convocation of the extraordinary session of the Diet to consider implementing legislation might serve as a suitable one for announcement of the policy.

MR. VESUGAR said that since the time of promulgation was so near it was probable that all representatives would have to accept the fact that nothing could be done to announce the policy decision of the Commission at that time. He said that it appeared obvious from FEC-031/42 that the Supreme Commander was not cognizant of the deliberation that went into each policy decision by the Commission. More important, however, was the fact that the Japanese people were not aware of the attitude of the Commission toward their future welfare. He thought that part of the misunderstanding that now existed stemmed from the condensed and intermittent character of the record of the Commission's activities which went to the Supreme Commander. He therefore suggested that Committee No. 3 prepare a record containing all material relevant to the policy decision on review, and that this record be forwarded to the Supreme Commander so that the entire background on this matter might become clear to him. He felt that if the Commission viewpoint were so presented to the Supreme Commander, the latter would himself appreciate the necessity of apprising the Japanese people at an early date of the review provision and he would also be impressed with the fact that the decision had been taken with the interest of the Japanese themselves in mind.

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MR. GUERIN said that he desired to associate the view of the French delegation with the views expressed, particularly with those of the Canadian representative, and those of the United Kingdom representative regarding the form and content of the Supreme Commander's reply. He felt that if the Supreme Commander would take advantage of the time of promulgation to present the idea of the review provision, the purpose would be well served of preparing the Japanese mind and Japanese public opinion for review of the constitution. The actual content of the policy decision could be publicized later by whatever means the Supreme Commander might choose, or the declaration by the Supreme Commander might be raised at a press conference of the Chairman, where the opinion of the Commission could be expressed without necessarily releasing at this stage the text of the policy decision.

GENERAL MCCOY inquired whether the views which had been expressed might be met by instructing Committee No. 3 to present to the Chairman a resume of such views in a form suitable for use as a request for consultation with the Supreme Commander.

MR. VESUGAR said that he felt that if the Supreme Commander would, in connection with the ceremonies at the time of promulgation, give some brief indication of the existence of the review provision the preparation of a report by Committee No. 3 could be taken up later.

MR. COLLINS remarked that the preparation of a report by the Constitutional Committee would require several days, and he wondered whether such preparation might be delayed until the comments of the Supreme Commander on the views of the Commission as expressed at the meeting of the previous day had been received.

Following a brief recess for the purpose of consultation, GENERAL MCCOY said that his Government deemed it impracticable to attempt any action leading to announcement of the review provision at the time of promulgation. The United States Government had been informed that the Supreme Commander was not himself participating in the promulgation ceremonies. As Chairman of the Commission, he continued, he had been impressed by the positions taken by the representatives on this question and he expressed full agreement with the desire to apprise General MacArthur in full of the expressions that had been made and of the background of Commission decisions. He said that he would be glad to present to the Supreme Commander the report which he hoped would be prepared by Committee No. 3 at an early date.

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THE COMMISSION unanimously agreed that Committee No. 3 should prepare a report on the subject of review of the constitution in accordance with the foregoing discussion.

ITEM 2 - OTHER BUSINESS

There was no other business.

The meeting adjourned at 4:30 P.M.

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RESTRICTED

Minutes--34th FEC Mtg.

14 November 1946

FAR EASTERN COMMISSION

Minutes of the Thirty-Fourth Meeting of the Far Eastern Commission
Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W.
10:30 A.M., 14 November 1946

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Mr. R. E. Collins (Canada)

Dr. S. H. Tan (China)

Mr. Francis Lacoste (France)

The Honorable Sir Girja Shankar Bajpai (India)

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

Colonel G. R. Powles (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARY GENERAL

Mr. Nelson T. Johnson

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ITEM 1 - APPROVAL OF THE MINUTES OF THE 32nd AND 33rd MEETINGS

THE COMMISSION unanimously approved the minutes of its 32nd and 33rd meetings.

ITEM 2 - PRINCIPLES FOR JAPANESE TRADE UNIONS (FEC-045/2)

MAJOR PLIMSOLL, speaking as a member of Committee No. 4, reported that FEC-045/2, with the exception of paragraph 7, had been approved unanimously by the members of Committee No. 4. The latest amendment proposed by the United Kingdom member of the Steering Committee had placed the restrictive phrase, "where practicable and while not interfering with their normal operations" at the beginning of paragraph 7, thereby making it applicable to both provisions of the paragraph; namely, participation in the process of democratization of Japan, and encouragement to participate in measures taken to achieve the objectives of the occupation. The original version of the paragraph had made the restrictive phrase applicable only to the second of these provisions.

The view of Committee No. 4 had been, MAJOR PLIMSOLL continued, that trade union participation in democratization and in measures taken to achieve the objectives of the occupation was desirable, so long as it did not interfere with the primary functions of trade unions, such as collective bargaining and the protection of workers' rights in general. He, himself, felt that the present form of paragraph 7 was an exhortation to unions to participate in the activities in question where practicable and that the phraseology did not give undue power to the Supreme Commander or to the Japanese Government to interfere with trade union activity; it was a statement of principle rather than an order.

ADMIRAL RAMISHVILI said that the major question involved was that of participation by trade unions in the democratization of Japan. It seemed to him that the principle was clearly stated in paragraph 1 that trade unions should participate in this process. He said that conceivably the Commission might draft a policy which would either force trade unions to participate in democratization or prohibit them from participating. Neither alternative was desirable, he thought. The desirable object was rather a policy whereby the decision as to participation in the democratization of Japan would be left to the trade unions themselves, without either compulsion or prohibition by any outside authority. ADMIRAL RAMISHVILI said that he personally shared the view that such participation by trade unions should not interfere with their normal operations. However,

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he added, the present form of paragraph 7 afforded a possibility that restrictions might be imposed by some authority outside trade unions. He felt that further consideration by the originating committee would result in a redraft of paragraph 7 which would satisfy all representatives.

COLONEL POWLES said that although he did not consider the amendment of paragraph 7 a matter of major concern, he felt that it introduced an element of inconsistency in the document. For this reason, he favored the original version of paragraph 7 and approved the statement made by the United States member of the Steering Committee with reference to interpretation of the paragraph (see cover page, FEC-045/2). He felt that confusion with regard to the amendment arose from the fact that the very organization and existence of trade unions constituted an important part of the process of democratization. "Normal operations" of trade unions, he observed, constituted in themselves an important part of the democratization of Japan. He pointed out that at no time during the formulation of paragraph 7 had it been suggested that unions should neglect what might be termed their normal operations in order to take part in political activity. He agreed with Admiral Ramishvili's statement that participation by trade unions in the process of democratization was covered by paragraph 1. He therefore suggested that all objections might be met by amending paragraph 7 to read: "Where practicable and while not interfering with their normal operations trade unions and their officials should ~~take an active part in the process of democratization of Japan and should~~ be encouraged to participate in measures taken to achieve the objectives of the occupation, such as elimination of militaristic and monopolistic practices and the democratic reconstruction and development of a peaceful Japan."

MR. RODRIGUEZ said that the inclusion of the qualifying phrase at the beginning of paragraph 7 unduly weakened the intent of Committee No. 4 to provide for participation by trade unions in the democratization of Japan and in the achievement of the objectives of the occupation. He agreed with Colonel Powles' view that the organization and functioning of trade unions was itself a contribution to the democratization of Japan. He did not feel that paragraph 7 in its original form would divert trade unions from their primary objectives, particularly in the light of the United States statement on interpretation of this paragraph, which, he felt, constituted a sufficient safeguard against abuse of the provision of the paragraph.

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SIR GEORGE SANSOM suggested that the United Kingdom, U.S.S.R., New Zealand and Philippine representatives be instructed to redraft paragraph 7 in a form which would reconcile their divergent views.

In reply to a question from General McCoy, COLONEL POWLES said that he would be willing to approve the paper in its present form, so long as his views were recorded in the minutes.

ADMIRAL RAMISHVILI said that he could not at present remove his reservation on the subject, and that he favored the suggestion by Sir George Sansom of a further attempt to redraft paragraph 7 in a form acceptable to all representatives.

SIR GIRJA BAJPAI moved and MR. COLLINS seconded the motion that paragraph 7 be referred to an ad hoc subcommittee consisting of the United Kingdom, Soviet, New Zealand and Philippine representatives for consideration and report.

The motion was carried unanimously.

ITEM 3 - REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

ADMIRAL RAMISHVILI said that he was not yet prepared to state his Government's position with respect to FEC-059/24.

THE COMMISSION unanimously agreed to postpone consideration of FEC-059/24.

ITEM 4 - DRAFT CONSTITUTION (FEC-087/1); AMENDMENT AND ADOPTION OF THE DRAFT CONSTITUTION BY THE JAPANESE DIET (FEC-087/10, -/12, -/13)

COLONEL POWLES asked whether any of the representatives familiar with Japanese were prepared to comment on the proper interpretation of Article XV.

SIR GEORGE SANSOM said that with regard to Article XV (old Article XIV) the new paragraph 1 following the second paragraph should be translated as follows: "The election of public officials through the universal suffrage of all persons of full age shall be guaranteed."

COLONEL POWLES asked whether the Japanese phrase for "public officials" could be interpreted to mean members of the Diet. SIR GEORGE SANSOM replied that he thought it could be so interpreted since it literally meant "those carrying out public functions."

SIR GEORGE SANSOM said that a more exact translation of one paragraph of Article LIX (penultimate paragraph, page 1, FEC-087/10) was as follows: "The provisions of the foregoing paragraph shall not prevent the House of Representatives from requiring as provided by law the calling of a joint meeting of both Houses."

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ITEM 5 - REDUCTION OF JAPANESE INDUSTRIAL WAR POTENTIAL (FEC-084/1)

SIR GEORGE SANSOM and GENERAL MCCOY distributed copies of amendments to FEC-084/1 proposed by their respective Governments (subsequently circulated as FEC-084/2).

GENERAL MCCOY suggested that since further consideration of FEC-084/1 awaited a report on the paper on selection of plants for reparations removals, destruction or retention in Japan (FEC-091 series), the United Kingdom and United States proposals might also be held in abeyance until the paper itself was considered by the Commission.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-084/1, together with the amendments proposed by the United Kingdom and United States representatives.

ITEM 6 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

THE COMMISSION unanimously agreed to postpone consideration of this subject.

ITEM 7 - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

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

ITEM 8 - OTHER BUSINESS

There was no other business.

ITEM 9 - PRESS RELEASE

THE COMMISSION unanimously agreed that no statement of the foregoing proceedings be released to the press.

The meeting adjourned at 11:30 A.M.

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FAR EASTERN COMMISSION

Minutes of the Thirty-Fifth Meeting of the Far Eastern Commission Held in the Main Conference Room, 2516 Massachusetts Avenue, N.W. 10:30 A.M., 21 November 1946

REPRESENTATIVES PRESENT

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

Major J. Plimsoll (Australia)

Mr. R. E. Collins (Canada)

Dr. S. H. Tan (China)

Mr. Francis Lacoste (France)

Mr. Jamshed Vesugar (India)

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

Colonel G. R. Powles (New Zealand)

Mr. F. C. Rodriguez (Philippines)

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

Sir George Sansom (United Kingdom)

SECRETARIAT

Mr. Nelson T. Johnson

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RESTRICTED

ITEM 1 - APPROVAL OF THE MINUTES OF THE 34TH MEETING

THE COMMISSION unanimously approved the minutes of its thirty-fourth meeting.

ITEM 2 - REPARATIONS REMOVALS: ACCESSORY PLANTS AND FACILITIES (FEC-059/24)

ADMIRAL RAMISHVILI moved and MAJOR PLIMSOLL seconded the motion that FEC-059/24 be referred to Committee No. 1 for reconsideration. The motion was carried unanimously.

ITEM 3 - PRINCIPLES FOR JAPANESE TRADE UNIONS (FEC-045/2)

SIR GEORGE SANSOM, speaking as the Chairman of the *ad hoc* subcommittee appointed at the last meeting of the Commission to consider paragraph 7 of FEC-045/2, reported that the subcommittee had met and had considered two alternative revisions of paragraph 7 (subsequently circulated as FEC-045/4). The subcommittee had been unable to agree unanimously on either of these proposals.

GENERAL MCCOY said that the United States Government was prepared to approve either of the proposals.

ADMIRAL RAMISHVILI said that both proposals had been communicated to his Government, but that he had not received instructions as to which would be acceptable to it. He asked that further consideration of the matter be postponed to allow time for the receipt of such instructions.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-045/2.

ITEM 4 - OFFICIAL JAPANESE AND ENGLISH TEXTS OF THE CONSTITUTION (FEC-087/14, -087/15)

DR. TAN pointed out that the designation for the Emperor used in the title of Chapter 1 of the Constitution was "Tenno", which carried the connotation of "divine" or "heavenly" emperor. It had been traditional for Japanese to use this special word to refer only to their own Emperor and to use a different word in referring to emperors of other countries. He considered the retention of this practice not consistent with the changes in the substance of the Constitution.

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SIR GEORGE SANSOM agreed that, since the Emperor had officially divested himself of pretension to divinity, the word "Tenno" should not have been used, but rather some other expression, like "Kotei", which would not have borne the undesirable connotation.

GENERAL MCCOY thought that the inconsistency in designation of the Emperor which had been pointed out might well be recorded for consideration at the time of review of the Constitution if desirable.

THE COMMISSION unanimously agreed to postpone further consideration of FEC-087/14 and FEC-087/15.

ITEM 5 - PROVISION FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION: STATEMENT BY THE UNITED STATES GOVERNMENT (FEC-031/45)

ITEM 6 - ISSUANCE OF THE POLICY DECISION ON REVIEW OF THE JAPANESE CONSTITUTION (FEC-099)

MAJOR PLIMSOLL said that he considered the views of the Supreme Commander as set forth in FEC-031/45 disappointing to those who believed that the policy decision of the Commission concerning review of the constitution should be published in Japan as soon as possible. He thought that the Supreme Commander had not taken into account all the reasons adduced by members of the Commission for early publication. As an example, he referred to paragraph 1b of FEC-031/45 and said that, as had previously been pointed out by representatives of the Far Eastern Commission, the mere existence of the right of review on the part of the Japanese people was not synonymous with insuring that such right would be exercised within a specified period of time.

MAJOR PLIMSOLL said that he did not believe the Supreme Commander had given due consideration to the danger of leakage of the policy decision. He feared a repetition of the experience of the Allied powers in Italy, where, during the year following the surrender of Italy, a series of rumors concerning the Italian monarchy and surrender terms had proved embarrassing both to the Italian Government and to the Allied powers.

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He also pointed out that there had been leakage concerning confidential discussions between the United States and certain Commission representatives with respect to Japanese reparations; this leakage had been extremely embarrassing to certain member Governments on the Commission. He felt that since approximately 4,000 people, counting the Foreign Offices of member governments, and officers on the Supreme Commander's staff, knew of the Commission decision on review, it must be expected that leakage on this subject, too, would be inevitable.

MAJOR PLIMSOLL said that while the Supreme Commander was quite properly concerned with his problems as the occupation authority, it must be remembered that the Commission representatives had responsibilities of a somewhat different nature to both the Japanese people and to their own people. The question of whether postponement of publication of the review provision would lay the Commission open to the charge of a breach of faith had previously been discussed in the Commission. In this connection, MAJOR PLIMSOLL thought the Supreme Commander had misinterpreted the intention of the Commission in adopting the decision. The Supreme Commander had said that publication might be viewed as an expression of lack of confidence by the member Governments. MAJOR PLIMSOLL said that while the adoption of the review policy was indeed an expression of doubts on the part of many Commission representatives with respect to the capabilities of the Japanese at this time to adopt freely a democratic constitution, it was an attempt to ensure that the Japanese themselves would have a chance to correct, in the light of experience, any shortcomings which emerged.

Concerning representatives' responsibilities to their own people, MAJOR PLIMSOLL said that the people of Allied countries had a right to be informed of the Commission's decisions. He said that in any country having the parliamentary form of executive, debate might take place at any time concerning the country's relations with Japan and the action that had been

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taken with respect to the Constitution. No government, he thought, could very well maintain the fiction that the Commission had ignored the question of the Japanese constitution, and he felt that a Government would be justified, regardless of the Commission's decision as to publicity, in announcing under pressure of parliamentary debate its position to the effect that the constitution was not unacceptable, provided it was subject to review; a government might feel that the considerations of its own national policy outweighed the considerations of the occupation as outlined by General MacArthur.

MAJOR PLIMSOLL said that in his opinion the views of the Supreme Commander betrayed a tendency to emphasize official relations between the Commission and the Japanese Government and Prime Minister. There was no evidence of understanding that the Commission was dealing not only with the Japanese Prime Minister and Government but also with the Japanese people. There should be clarification, he thought, that in the Supreme Commander's dealings with the Prime Minister of Japan the latter was placed in the role of representative of the Japanese people rather than an individual. It was quite inadequate if Yoshida was to be the sole repository of Allied policy and if even the rest of the Cabinet were to be kept in ignorance. It was important to create a state of affairs in which Japanese officials would not act as autocrats but as representatives in a democracy.

With reference to the United States proposals in paragraph II of FEC-031/45, MAJOR PLIMSOLL said that b was not acceptable. He did not think the Far Eastern Commission or any of its member Governments could delegate to the Supreme Commander all discretion as to the time and manner of public announcement of one of its policy decisions. With respect to a, MAJOR PLIMSOLL said that he was prepared to accept it if it were regarded as a policy decision and amended to read as follows: "The Supreme Commander for the Allied Powers should formally advise the

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Japanese Government of the terms of the policy decision contained in FEC-031/41," with the understanding that such a decision did not prejudice the question of public announcement.

COLONEL POWLES endorsed the views expressed by Major Plimsoll. He referred to the fact that the Commission's policy decision on publication of the review provision had been taken on 17 October and that the views of the Supreme Commander on the matter were only now, more than a month later, before the Commission. He thought it was another indication of the extreme inadequacy of the liaison between the Commission and the Supreme Commander. He said that he realized that the Chairman and his advisors had done everything possible to make use of what was intrinsically an unsatisfactory mechanism for liaison, and that his criticism was directed at the inadequacy of the means available rather than at the efforts that had been made to use these means.

COLONEL POWLES said that he was prepared to accept paragraph II<u>a</u> of FEC-031/45, with the amendment suggested by Major Plimsoll. He also could not approve the suggestion contained in paragraph II<u>b</u>, that the time and manner of public announcement of the review provision were matters for the sole discretion of the Supreme Commander. He thought the Commission should be able to reach agreement on a revised version of paragraph II<u>a</u>, with the understanding that this agreement was without prejudice to a subsequent decision by the Commission concerning public announcement.

MR. COLLINS said that although he agreed with both Major Plimsoll and Colonel Powles, he was gratified to find that in spite of the Supreme Commander's doubts concerning announcement of the review provision, he had been willing to modify his position materially to meet the views of the Commission. He supported the amendment of paragraph II<u>a</u> proposed by Major Plimsoll.

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Following consultation with his advisors, GENERAL MCCOY said that, although it was likely that a formula for agreement could be reached, it was not probable that this could be done at the present meeting. He desired that other representatives express their views before remission of the papers to the Steering Committee.

MR. RODRIGUEZ said that the position of his Government was in agreement with that of the United States. He felt that two points were involved; namely, that of formal issuance to the Japanese Government, and that of publicity, both in Japan and in other places. Concerning issuance to the Japanese Government, he thought agreement could be attained easily, since the Supreme Commander had indicated his willingness to transmit the policy decision to the Prime Minister, who could be regarded as the representative of the Japanese Government.

MR. RODRIGUEZ said that with respect to the effect of publicity on the Japanese people, he felt that the judgment of the Supreme Commander should receive full consideration. The aim of the Supreme Commander as well as of the Far Eastern Commission, he observed, was to make a success of the occupation and to do everything possible to foster democratic tendencies in Japan. He did not think the Commission should take any action which, in the judgment of the Supreme Commander, might put obstacles in the way of the democratization of Japan.

MR. RODRIGUEZ said that although he was aware of the contention that delay in publication of the review provision might lay the Commission open to a charge of bad faith, he did not think this contention should be allowed to override the objections to publication advanced by the Supreme Commander. He did not feel that any bad faith was involved in a decision based on the motive of not obstructing the process of democratization in Japan.

For these reasons, MR. RODRIGUEZ said, he thought that the review provision should be transmitted to the Japanese

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Government, but that the time and manner of publication of the decision should be left to the discretion of the Supreme Commander and of the Japanese Government itself. Should it become necessary for representatives to inform their Governments of such a decision, they could very well report that they had not interposed any objection to the Japanese constitution, but had reserved the right to continue to scrutinize it in the light of its implementation by the Japanese people, and to review it as provided in the policy decision.

ADMIRAL RAMISHVILI said that the opinion of his Government was that in order to achieve the goals of the occupation and the democratization of Japan it was necessary to let the Japanese Government and the Japanese people know of the Commission's decision concerning review. He said that the amendment proposed by the Australian representative would be transmitted to his Government but that he felt it would not be satisfactory to his Government.

DE. DE KAT said that he shared the misgivings expressed by the Supreme Commander in FEC-031/45 as to the advisability of publication of the policy decision on review. He said that he was prepared to approve FEC-031/45, but thought it would be better to leave the decision as to time and manner of public announcement of the policy to the Chairman and the Supreme Commander.

SIR GEORGE SANSOM said that he was prepared to approve paragraph II<u>a</u> of FEC-031/45, if it were reworded in some such way as the following: "The United States Government should direct the Supreme Commander for the Allied Powers formally to advise the Government of Japan of the terms of the policy decision contained in FEC-031/41." He felt that paragraph II<u>b</u> should be omitted. He felt that at most the Supreme Commander might be given discretion as to the time and manner of public announcement of the decision in Japan, but that representatives on the Commission could not be bound to withhold public announcement anywhere until the Supreme Commander had approved.

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MR. VESUGAR said that he could approve paragraph IIa, with the amendment suggested by Major Plimsoll. He doubted that his Government would desire to be bound by the provisions of paragraph IIb which left the time and manner of public announcement entirely to the discretion of the Supreme Commander. He agreed with the contention that, with the number of people already aware of this policy decision, there was no guarantee that it could be kept secret for any considerable time. Furthermore, he said, it was not sufficient to inform member Governments; the people in these countries had a right to know what decisions had been taken by the Commission in regard to Japan. He agreed with General McCoy, however, that the right of people to know of this decision might be postponed until an opportune moment to announce it to the Japanese had arrived.

MR. VESUGAR said that all representatives were aware of the difficulties foreseen by the Supreme Commander if the Japanese should be informed of the review decision at this time. He thought that the fears of the Supreme Commander might be allayed by a statement which would accompany the decision to publicize to the effect that the decision was taken only out of a concern on the part of the Commission for the good of the Japanese themselves, and for making sure that everything possible was done to make Japan a self-governing, peaceful, prosperous and democratic nation.

MR. LACOSTE supported the positions taken by Major Plimsoll and Colonel Powles and the amendment proposed by Major Plimsoll. He emphasized the impossibility of keeping this policy decision secret very much longer.

DR. TAN said that he felt the Commission should at all times exhibit full confidence in the Supreme Commander. He suggested that the differing views of representatives might be met by a plan similar to the following:

1. Authorize the Supreme Commander to inform the Japanese Government of the review provision.

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2. Retain in the Commission discretion to decide when and how this decision should be publicly announced.

3. Retention of this discretion with the understanding that the Commission would again consult the Supreme Commander before exercising such discretion.

Following further consultation with his advisors, GENERAL MCCOY moved the following:

"a. The United States Government will request the Supreme Commander for the Allied Powers formally to advise the Prime Minister of Japan and his successors of the terms of the Policy decision contained in FEC-031/41.

b. The United States Government will inform the Supreme Commander for the Allied Powers that the time and manner of public announcement of this policy decision are matters which will be considered subsequently and in the light of further consultation with the Supreme Commander."

MR. RODRIGUEZ seconded General McCoy's motion. DR. DE KAT said that he was prepared to approve the United States motion.

ADMIRAL RAMISHVILI said that he was not in a position to approve the United States proposal without reference to his Government. He personally felt that his Government would not accept this version of paragraph II.

MAJOR PLIMSOLL said that he was not happy about the proposal. He felt that it was clear from the phrase, "advise the Prime Minister of Japan and his successors" that the Cabinet would not be advised of the policy decision. Therefore, for possibly the next two years, nobody but Yoshida and his successors would know officially about this basic decision. He therefore felt that the proposal did not constitute a contribution to the democratization of Japan.

GENERAL MCCOY said that the Prime Minister was not prohibited from informing the Cabinet and that he might, indeed, do so immediately. The effect of the provision, he pointed out, was to place responsibility upon the Prime Minister as well as upon the Supreme Commander for the decision as to the appropriate time to announce the policy decision.

COLONEL POWLES said that the inclusion of paragraph IIb was inconsistent if it was the intent to leave discretion as to the decision on publication to the Supreme Commander and

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the Prime Minister. Adoption of paragraph IIa alone, he added, would leave the right of the Commission unprejudiced and would leave the Supreme Commander and the Prime Minister free to agree on the time and manner of public announcement of the policy.

GENERAL MCCOY withdrew his motion for the amendment of paragraph II, and the Commission unanimously agreed to refer FEC-031/45 and FEC-099 to the Steering Committee for further consideration.

ITEM 7 - JAPANESE LEGISLATION TO IMPLEMENT THE CONSTITUTION (FEC-098)

MAJOR PLIMSOLL called attention to the fact that the Japanese Diet would meet the following Monday at a special session to consider implementing legislation. He said that during the discussions of the constitution by the Far Eastern Commission it had been evident that important points were not covered in detail in the constitution but were rather to be left to provisions of implementing legislation. He recalled that the Commission had been assured by its Chairman that it would be shown draft implementing legislation and given an opportunity to scrutinize it. A specific example of such assurance had been in connection with the disposition of property of the Imperial Household under provisions of the new Imperial Household Law. Furthermore, he said, the Commission had on 25 September passed a policy decision to the effect that it considered essential the continuing right to scrutinize implementing legislation to insure that the House of Councillors had no predominance over the House of Representatives.

MAJOR PLIMSOLL said that he had raised this matter not in any critical spirit but in order that some understanding might be reached to obviate the possibility that the Diet would meet and pass legislation before the Commission had an opportunity to consider it. He said that Dr. Blakeslee had informed the last meeting of the Steering Committee that, in his opinion, drafts of implementing legislation should be considered by the Commission, in much the same way as the Constitution, and that the Commission might make its views known to the Supreme Commander by means of

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consultative messages or policy decisions.

In general, MAJOR PLIMSOLL concluded, assurance was desired on two points; first, that the Commission would be given draft legislation in sufficient time to consider it before its passage by the Japanese Diet; and, second, that the deliberations of the Diet would not be unduly rushed with the result that the Commission would have no opportunity to make its views known.

GENERAL MCCOY said that he agreed with the statement made by Dr. Blakeslee at the last meeting of the Steering Committee. He said that the United States Government had been fully aware of the problem of obtaining draft implementing legislation as early as possible. An official had been sent to Japan to confer on this problem. This official had not yet returned.

GENERAL MCCOY referred to the assurance that had been given by the Supreme Commander in FEC-031/11 in the following language:

"For my part, the Commission may be assured that I as Supreme Commander will make available to it copies of all special and periodic reports covering the administration of Japan, and any other special information which it may from time to time specifically desire, and do everything else reasonable within my power to facilitate discharge of the Commission's responsibility in the over-all task to which the Allied nations jointly are committed."

Furthermore, GENERAL MCCOY continued, the Supreme Commander had forwarded in a letter dated 2 November 1946 a number of draft bills which had been requested by the United States Government and had again given assurances that additional draft bills would be furnished. GENERAL MCCOY said that a major cause of delay in furnishing draft legislation was scarcity of competent translators. He said that he was in full agreement that this legislation should be made available to the Commission as early as possible, and that he would do everything in his power to expedite the availability of such draft legislation to the Commission. With reference to Major Plimsoll's desire for assurance that the Diet would not take final action on any legislation until the Commission had had an opportunity to express its views, GENERAL MCCOY said that on this point the Supreme Commander would probably feel that there should be no interference from the Commission or from himself with the activities of the legislature, and for that reason, General McCoy himself felt that it was essential that draft legislation be obtained as expeditiously as possible.

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MR. COLLINS said that he understood the points of view of the Supreme Commander with respect to non-interference with the Japanese legislature. He said that the experience with the constitution had made it evident that the Commission could best make its views felt by acting before legislation was passed. Should the Commission be forced to take action after the Diet had passed a bill, its interference with the Japanese in the control over their affairs would seem drastic. It was therefore preferable, he thought, in the intersts of all concerned, that the Commission have an opportunity to scrutinize implementing legislation well in advance of its passage by the Diet.

ITEM 8 - REDUCTION OF JAPANESE INDUSTRIAL WAR POTENTIAL (FEC-084/1, -084/2)

MAJOR PLIMSOLL said that since it had been agreed to postpone consideration of FEC-084/1 and of the amendments thereto (FEC-084/2) until Committee No. 1 had reconsidered FEC-091/2, Selection of Plants for Reparations Removals, and since it now seemed doubtful that Committee No. 1 would reach early agreement on the latter paper, he would suggest that FEC-084/1 and FEC-084/2 be referred to Committee No. 2 with instructions to try to reach early agreement on some substitute for paragraph 7 and on the amendments proposed by the United Kingdom and United States concerning industrial explosives (FEC-084/2).

DR. TAN proposed the following amendments for the consideration of Committee No. 2:

Page 4, paragraph 5 b (1) - (p) The heavy electrical and mechanical industry.
(q) Optical and precision instrument industry

THE COMMISSION unanimously agreed to refer FEC-084/1, FEC-084/2, and the amendments proposed by the Chinese representative to Committee No. 2 as a matter for immediate consideration and early report.

ITEM 9 - PROPOSED UNITED STATES PLAN FOR REPARATIONS CONFERENCE (FEC-081 series)

THE COMMISSION unanimously agreed to postpone consideration of this subject.

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

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

ITEM 11 - OTHER BUSINESS

a. ANNOUNCEMENT BY SECRETARY GENERAL REGARDING DISTRIBUTION OF IDENTITY CARDS

MR. JOHNSON read the following announcement:

"1. At its seventeenth meeting on 27 June 1946 the Far Eastern Commission requested the United States Government to extend to it the privileges, exemptions and immunities of the International Organization Immunities Act (FEC-073/2). Because of certain provisions of this act the United States Government was not able to comply with this request, and the reply of the United States Government to this effect was circulated to the Commission on 6 August 1946 as FEC-073/3.

2. At the thirtieth meeting of the Far Eastern Commission on 17 October 1946 the question of diplomatic immunity for members of the Far Eastern Commission was again raised, and the Secretary General agreed to undertake further consultation with the United States Government in line with the suggestion of the United States in its previous reply that 'if the Far Eastern Commission finds that the effective performance of its duties is impaired' the United States Government would be glad to 'give consideration to any possible means by which any impediments to its work may be removed.' Specifically, the Secretary General was instructed to investigate: (a) the possibility of issuing special identity cards to members of the Far Eastern Commission who could not be attached to their own diplomatic staffs in Washington, and (b) the possibility of issuing a special sticker for vehicles driven by members of delegations to the Commission.

3. The United States Government has now forwarded to the Secretary General for distribution special identity cards for all officers and officials of delegations on the Far Eastern Commission who are not otherwise designated as members of diplomatic missions, and these cards may be obtained upon request in the Office of the Deputy Secretary General. The possibility of issuing special automobile stickers is still being investigated by the Secretary General."