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MR. VESUGAR: Mr. Chairman, I must accept your remarks on this subject. We opened today with some reference to Gilbert. I am constrained to say he could have written something very appropriate on the present circumstances when the enemy by the threat of riots, and so on, can get away with what a friend by decent behavior cannot get.

CHAIRMAN: I am very sympathetic with you, but I do not know what we can do about it. I think we have done everything we can.

MR. VESUGAR: I accept that.

CHAIRMAN: The whole Commission acted that way, and I was willing to go emotionally as far as we could and as the Commission would very properly want to go. The results of it, I think, have been in a sense good that these allocating boards and agencies have considered all this. They have been considering it from the point of view of Mr. Hoover, Mr. LaGuardia, and everybody concerned. Your representatives have had their day in court. In the papers, in the boards they have been represented and are still being represented, and your case has been thoroughly considered. I do not think there are any people in the world more sympathetic with

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your people than the American people. They are doing something about it right now in regard to China.

DR. EVATT: I understand your view is that the decision was not to restrict the policy--

CHAIRMAN: I went with it in the light it was to go to my Government.

DR. EVATT: In that issue it was not issued as a directive.

CHAIRMAN: It was a matter of record at the time I took it up with my Government and went and saw Mr. Hoover and did everything I could think of to see that the policy here was at least being considered by my Government, and it was reported promptly showing exactly what the allocations of food were. I think my Government has done everything it could to give you the full and complete information on the subject.

SIR CARL BERENDSEN: I want to make two points and nothing more.

CHAIRMAN: I like to hear you on the subject, because it enables me to answer you.

SIR CARL BERENDSEN: You have certainly taken full advantage of that ability. I want to make this clear, that there is nobody here endeavoring to criticize you or the Commission or General MacArthur. In the second place, how could anybody doubt that this was a decision of policy when it definitely stated it was.

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CHAIRMAN: With the reservation that I made at the time. Unfortunately, you were not here when we acted. You gave us the lead which we promptly accepted, much to your surprise, I am sure, because after you had made that complete statement we touch this off you added the fact that you wanted to make this statement, but you did not think anything was going to happen from it. You probably have forgotten that.

SIR CARL BERENDSEN: We don't do any good by carrying on this discussion.

CHAIRMAN: That is how I feel. The Commission did act, but as I said General MacArthur was in the picture as far as the Commission was concerned. It was the United States Government allocating the food subject to working with the United Kingdom and others that had the food.

Is there anything else on this subject, gentlemen?

CHAIRMAN; (To Secretary General) I think due to the lateness of the hour, you might tell them what it is, and it will be distributed.

SECRETARY GENERAL: We have a paper here which will be prepared and distributed at the earliest possible moment covering the procedure for the nomination of Allied personnel for service with the staff of the

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Supreme Commander for the Allied Powers. You remember the question was brought up while we were in Japan, and we now have a procedure worked out on that.

CHAIRMAN: And the press release?

SECRETARY GENERAL: For press release today:

I. The Far Eastern Commission today approved unanimously a policy statement with respect to aliens in Japan. This policy statement embodies minor changes in the basic directive from the United States Government by which the Supreme Commander for the Allied Powers has hitherto been governed.

II. The Commission considered a proposed request for consultation with the Supreme Commander for the Allied Powers on the subject of the recent tours of the Emperor through Japan. It was unanimously agreed that the Commission should take no action on this subject at present, pending consideration by the Commission of the basic question of democratic reform or abolition of the Emperor institution and that both matters be referred to Committee No. 3 for reconsideration and report.

III. The Chairman reported to the Commission today that procedures had been established where allied personnel might be nominated for service with the Staff of the Supreme Commander for the Allied Powers.

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CHAIRMAN: Is there any other question? It is now after one o'clock, so we will stand adjourned.

(Adjourned at 1:05 p.m.)

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FAR EASTERN COMMISSION

Transcript of Fifteenth Meeting of the Far Eastern Commission

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

Wednesday, 12 June 1946

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FAR EASTERN COMMISSION

Transcript of Fifteenth Meeting of the Far Eastern Commission Held in Main Conference Room, 2516 Massachusetts Avenue, N. W. Wednesday, 12 June 1946

REPRESENTATIVES PRESENT

Major General Frank R. McCoy, Chairman	(United States)
Major J. Plimsoll	(Australia)
Mr. R. E. Collins	(Canada)
Mr. Timothy Tien-Tseh Mar	(China)
His Excellency Paul E. Naggiar	(France)
Mr. R. R. Saksena	(India)
Dr. A. D. A. de Kat Angelina	(Netherlands)
Mr. J. S. Reid	(New Zealand)
Dr. Melquiades J. Gamboa	(Philippines)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)
Sir George Sansom	(U.K.)

SECRETARY-GENERAL

Mr. Nelson T. Johnson

Reporter: E. Koontz, Department of State

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(The meeting convened at 10:15 a.m.)

CHAIRMAN: Good morning, gentlemen.

General, will you come over and sit by me?

(Major Gen. J. H. Hilldring took the Secretary-General's place at the conference table).

The session is open and before proceeding to the items on the agenda I want to ask the delegates to remain for a brief period after the formal session for a general policy talk. I asked you to come at this earlier time for that reason and I hope that in the course of our normal procedure that we can finish quickly enough to have a free and easy time together around the table for that purpose.

ITEM 1 - APPROVAL OF THE MINUTES OF THE FOURTEENTH MEETING

In the normal course, I would ask your approval of the minutes of the last meeting -- the fourteenth. The paper is now before you. Are there any comments or corrections? If not, I will assume -- oh, pardon me, Mr. Ambassador.

MR. NAGGIAR: I don't know if this is the proper time to raise this small question. I wish to attract your attention to Item 6 of the report -- "Procedure for Nomination of Allied Personnel for Service with the Staff of the Supreme Commander of the Allied Powers." The document, I believe, was presented to us as a

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proposed document and at the last meeting we took no action on this document. I wonder if you think this is the proper time for me to discuss this problem or should I discuss it later.

CHAIRMAN: I think I'd like that to come up under Other Business, if you please. This is just a matter of formal record of the presentation of the paper, and the substance of it, I think, we had better discuss later. If there are no other comments, the minutes of the last meeting stand approved.

ITEM 2 - INTERIM REPARATION REMOVALS: IRON & STEEL INDUSTRY; THERMAL ELECTRIC POWER; SODA ASH, CHLORINE, & CAUSTIC SODA INDUSTRY (FEC-059/13)

The next paper, FEC-059/13, was unanimously approved by the Steering Committee at its meeting of June 11. With the approval of this paper, all industries in the Pauley Report to the President will be treated on an interim basis by the Commission. The Committee on Reparations is also considering other industries not included in the Report; for example, privately owned munitions plants, on which the committee has prepared recommendations, now pending before the Steering Committee. Is there any comment on that paper or is it in such form, with unanimous approval of the Steering Committee, that we can pass on after making

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it a matter of unanimous approval by the Commission?

MAJOR PLIMSOLL: I move the adoption of the paper, Mr. Chairman.

MR. SAKSENA: I second it, sir.

CHAIRMAN: Is there any discussion on the paper itself; otherwise, I will look for your approval and assume that I have it. It is a matter of record and so ordered.

ITEM 3 - <u>POSTAL COMMUNICATION WITH JAPAN</u> (FEC-071)

I believe that at present the only post communications are by postal card. This, I take it, is a matter of the next step and has been forwarded by the Steering Committee for the information of the Commission without recommendation. That seems to be simply an indication of what the American Government intends to do in its administrative capacity and the paper is now before you for any comment or discussion or consideration that the Commission may wish to give it.

SIR GEORGE SANSOM: Mr. Chairman, it seems to me that as far as the document is printed matter it is persumably a matter of administration. I wonder if we can't possibly send parcels to Japan. There might, I think, be a question there as to whether parcels -- food or other things going to Japan -- might be put in a position more favorable. I don't really know

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what the position is.

CHAIRMAN: Mr. Dickover, will you state what you know about it.

MR. DICKOVER: It was a recent act by Congress which authorized the sending of relief parcels to Germany and Japan and it is proposed to implement that policy, which is American policy passed by Congress, at the same time they start this post card service.

CHAIRMAN: (To Sir George Sansom) I take it it is your idea that that might be made use of to interfere with our policy as to the viable economy in Japan.

SIR GEORGE SANSOM: I did think that with parcels going either way it might become a matter of policy, but I'm not quite sure about it -- I merely put the question. Otherwise, it seems to me, as this paper suggests, rather a matter of administration than policy.

CHAIRMAN: Possibly the Commission through its Secretary-General could keep in touch with what the United States Government is doing in improvising this law and the administrative details that might be issued from time to time and bring it to the attention of the Commission -- keeping it informed to see if the Commission or any member wishes to take up the question of policy concerned. It is hard to tell where policy would

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come in until we know what my government is going to do about it.

SIR GEORGE SANSOM: That's true.

CHAIRMAN: Possibly, if there are suggestions that anybody has I might refer them on the part of the Commission to the American Government for information or interest before we proceed to formulating any policy on the subject. Although evidentally somebody in the American Government thought that we might be concerned and might want to take some policy action sometime, it is a new subject to all of us, I think. I haven't even considered it before. Have any of you thought of it before?

MR. NAGGIAR: Mr. Chairman, it seems to me perhaps the Commission could consider that the matter is to be left in the hands of the United States Government with just expressing the view that as soon as circumstances permit the normal delivery of mail will be considered later on; that that might be useful. Of course, it is for the United States Government to see to it what can be done.

CHAIRMAN: Possibly we could handle this paper for the moment in instructing the Secretary-General to find out for us just what the American Government

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is doing in its administrative capacity and bring to the attention of the Commission anything that he finds pertinent or anything that any member of the Commission finds after they are informed of the action of the American Government. Would that be agreeable to the Commission? We will keep it on our what might be called "continuing agenda", not bring it up every meeting, but we will ask the Secretary-General to keep us informed of the particulars so that we can be conscious of the fact that it is still before us.

MR. SAKSENA: Mr. Chairman, I am presuming that that mail service will be a two-way service and that those in Japan will also be able to write people outside.

CHAIRMAN: A two-way service, yes.

(Continued on page 8).

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ITEM 4 - STATEMENT BY THE U.S.S.R. REPRESENTATIVE ON THE COMPOSITION OF THE NEW JAPANESE GOVERNMENT (FEC-070)

CHAIRMAN: Item 4 is an important statement by the U.S.S.R. representative on the composition of the new Japanese Government, FEC-070. Admiral, will you present the view of your government.

REAR ADM. RAMISHVILI: Mr. Chairman, the view of my government is presented in this paper. Shall I read it for the members?

CHAIRMAN: I don't think there's any need of reading it unless you wish to.

REAR ADM. RAMISHVILI: Perhaps the gentlemen would like to ask some questions and we can discuss these questions.

CHAIRMAN: This is an important paper and it has implications both from the point-of-view of interpretation of our terms of reference and that of counsel in Japan, and also it basically has certain psychological interest and intention that will need most careful consideration.

Do I understand, Admiral, that you wish to have this paper made a matter of record in the Commission, or do you wish it referred to the appropriate committee for consideration?

REAR ADM. RAMISHVILI: It's up to the Commission.

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CHKIRMAN: You want it discussed by the Commission?

REAR ADM. RAMISHVILI: Either discuss it here or refer it to the committee. We would accept the majority opinion to send this paper to the appropriate committee if somebody moves it.

CHAIRMAN: I take it that at any rate whatever we do you would like to have it discussed, if possible?

REAR ADM. RAMISHVILI: Mr. Chairman, the question is presented to the Commission for whatever it prefers. Whatever the decision is we would agree. You could discuss it in here to express the opinion of members and then send this paper to the appropriate committee -- whatever you wish. We don't have any anticipating opinion on the decision to be made.

CHAIRMAN: Well, it's an important paper.

REAR ADM. RAMISHVILI: Very important, Mr. Chairman. Yes. We just received it yesterday.

CHAIRMAN: The paper is now before you for your consideration.

REAR ADM. RAMISHVILI: Maybe members of the Commission did not have time to study it and they want more time.

CHAIRMAN: Sir George, do you find any of your friends there? (FEC-070).

SIR GEORGE SANSOM: I do -- one or two or the gentlemen. Mr. Chairman, the first question that

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occurs to me on reading this document is on page 1 it is stated here that there are three ministers who are active members of the various associations. It occurs to me to inquire whether there isn't something in the case of these people, some exceptional circumstance, which made it desirable in the eyes of the Supreme Commander to make use of some exceptions. This, I would have thought, was a question of fact which we ought to ascertain first.

CHAIRMAN: In other words, under the ruling laid down in the directive which was used as a basic paper here by the Soviet representative there inevitably was an exception made for these three men. I wonder has anybody in looking over the minutes -- Mr. Farley, you seem to be our scrutinizer for the minutes of that Council, have you noticed whether or not it was brought up there in the Council in Japan?

MR. FARLEY: Mr. Chairman, there was a rather full investigation and report consequently made by, I think, Mr. Acheson or members of the Staff of the Supreme Commander to the Allied Council on the subject of purge and the implementation, but those three individuals whether they were mentioned by name, I don't believe they were, Mr. Chairman.

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CHAIRMAN: Was that on a request of some member of the Council that statement was made, or was it on the initiative --

MR. FARLEY: It was at the request originally of one of the Council members and it was the report made by General Whitney at, I think, the second meeting of the Council, which report hasn't been made available to the Commission.

DR. de KAT: Mr. Chairman, I have here the minutes of the second meeting of the Allied Council before me and here it is said by General Whitney "As I said before, the complete compliance with the purge directive would not be complete until about the end of June, as that is the timetable which has been set up for complete action on it." So I mean until the end of June the purge directive would not be complete and we have discussed this matter already in the Constitutional Committee two or three times and knowing this we have already decided not to continue the discussion of this matter until we have a report after the completion of the purge directive. I think that is the procedure which we might also well accept here. We have already been discussing this matter in the Constitutional Committee, so if you refer it to our committee I could tell you that we have already decided to wait until we get a report.

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MR. SAKSENA: Mr. Chairman, it seems to me that this paper raises two issues. The first issue is one of principle and that is as to whether the Supreme Commander was justified in bringing about this without prior consultation with his body.

The Soviet seemed to hold that under Section III, item 3, of the Terms of Reference he was not entitled to bring about any change in the Japanese Government without prior consultation with the Far Eastern Commission. That's the f irst issue.

The second issue is, so far as I can see, that certain members of the Japanese Government should have been removed from holding office in the Japanese Government on account of the purge directive which the Supreme Commander himself had issued.

Now it seems to me, Mr. Chairman, that so far as the question of the first important issue of principle is concerned we have to decide exactly what was intended at the time of the Moscow Agreement in regard to the scope of consultation with the Far Eastern Commission. The issue is not quite clear and not entirely free from doubt, but it seems to me that the idea probably was that consultation with the Far Eastern Commission was mandatory only that the Supreme Commander himself decided to remove the Japanese

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Government and that if the Japanese Government was disestablished purely as an evolutionary process through the normal democratic processes of election or re-election that no interference was required. But this is a matter of principle, Mr. Chairman, on which I think we will probably have to take some time to consider.

As regards to the other question as to whether these men should have been allowed to stay on the Japanese Cabinet this is, as pointed out by Sir George, more or less a question of fact, and I think we should be justified in asking the Supreme Commander as to why in view of the purge directive which he has issued he has allowed these men to remain as members of the Japanese Cabinet.

Beyond doing what I have indicated I do not see that we can usefully proceed to take any action on the paper which has been submitted by the Soviet representative.

CHAIRMAN: Are there any other comments? Mr. Ambassador.

MR. MAGGIAR: I quite agree with the comments that have just come from India on the Soviet paper. There are two points in this paper: There is the

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point of fact -- I agree with our Indian colleague that perhaps we may ask our Supreme Commander the reason why the purge has not been made yet. That fact is for the Supreme Commander to know and he will know better than we do here.

In regard to the problem of principle, it is a very important matter and I considered the matter so important because I have made a complete study of the message or statement from the Supreme Commander that has been presented to us as expressing a view of the power of the Commission and we had this paper on the table at our last meeting. It is really a very important problem of principle. We have to know, it seems to me, this Commission and our Governments, what is really the power of this Commission in formulating policy. If we have the power to formulate policies we are entitled that those policies be extended by the proper channel -- I mean with terms of reference. Of course, at the root of the whole problem of principle, as our Indian colleague just said, there is the Moscow Conference.

It is not for power that we are not a party in the discussion. It must be decided what is really the meaning of the terms of reference by the

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three governments that were part of the Moscow Conference. It is for them to decide what they meant. It seems that we are absolutely powerless here in the Commission to decide this very difficult problem of principle, and, anyhow, taking into account the paper just brought to us by our Soviet colleague and the statement just presented to us by the Supreme Commander -- we had this paper at the last meeting -- I will have to ask instructions from my government regarding the present Soviet proposal. I suggest that we keep this paper in mind and perhaps we may send it to the proper committee for study. But for the time being, I have no power to make any definite suggestion on this paper.

I would suggest that my remark on the point of principle not having been raised by this paper but by some other of our discussion be put on record, and I would like my remark noted about the exact meaning of the terms of reference as they have been established in the Moscow Agreement -- that I considered this meaning has to be made clearer to us by the three parties of the Moscow Conference, and not by the Commission itself.

CHAIRMAN: Now wouldn't that point of yours be covered if the Commission acted as a Commission on its interpretation of the Moscow Agreement and the terms

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of reference and there would be no objection, let's say, from the powers that made it?

MR. NAGGIAR: Yes.

CHAIRMAN: It might be a way of our interpreting --

MR. NAGGIAR: Yes, if the three delegates representing the Moscow Agreement agreed on the interpretation of the terms of reference we will have a kind of unanimous view on them, I think. That would be very important and very useful. But what I mean is up to now it seems to me they are in no agreement. If you don't reach agreement here among the three powers and even the four powers -- four delegates have veto power -- then I don't know how the Commission could reach agreement here.

CHAIRMAN: Well, we have shown that we can agree on most matters of procedure. I would feel that in the normal course of our considering these important questions from time to time, having the Commission itself take action first through its committees, I would sense that in most things affecting procedure that the Commission would agree. In that way we would get not only the views of those notimmediately a party to that Agreement -- they would become a party and advise and suggest effectively. At any rate, these basic questions do come up and I think it is an important paper of the

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Soviet representative. I am glad to have your consideration and I know the Soviet representative will like continued here discussion of the report. It is important to the committee to have these discussions and opinions when the paper goes to the appropriate committee. So we will take time for anybody to express their opinion or to clear the outlook on any point that may occur in this preliminary consideration.

I have noticed in watching the implementation of that purge directive by the Supreme Commander that through the last, oh, almost five months now he has defined certain action with reference to individuals to the best advantage. For instance, if he had started right in with that broad inclusion of the purge it would have practically disrupted the whole administration of Japan, and I'm quite conscious of the fact that one of the reasons for our having more or less successful occupation there has been in effective timing of the broad principles and directives to the Japanes Government, so that there wasn't complete breakdown of the government or wiping out of all those in responsible positions. It has been a gradual and, therefore, effective way of handling and I hope no grief for these three men. I don't know them at all or what their background is other than that I would

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assume that the Soviet representative has something of the past of their membership in those classes of society which really forced the issue during the war and before the war, no doubt. I am like Sir George I find very often in considering it out there that my friends are very much involved and, of course, in our background we dealt with these same men, and it is very hard at this distance and with the lack of knowledge of what's happened behind the curtain there during the war to be sure of even the men we had personally high regard for. In fact, I've change my opinion quite radically since I've been out there about a good many of them.

Is there any suggestion or motion for reference of this statement where it will get full consideration from every point-of-view?

MAJOR PLIMSOLL: Mr. Chairman, I move that it be referred to the Constitutional Committee. There's another point that I don't think we need include in the motion. I think it would be useful if the American member could obtain information on these people, not on General MacArthur's reasons.

CHAIRMAN: Yes. I feel that that could be done and we could work out the best way of handling that.

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MAJOR PLIMSOLL: I think probably if you take the matter up yourself with the State Department today there would be no delay on the matter. If we wait until the committee meets it is a long while.

CHAIRMAN: I will do that at once. I will inform the Supreme Commander of the wishes of the Commission and that the matter has been referred to the committee for due consideration and in the meantime we will have this part of it before us.

DR. GAMBOA: Mr. Chairman, I'm not sure that it is the Committee on Constitution which should deal with this. Is it not the Committee on Democratic Tendencies?

CHAIRMAN: Well, I will be willing to consider. Does the Admiral wish to state which committee he would like to have it referred to?

REAR ADM. RAMISHVILI: Maybe it would be more appropriate, if such were the decision of the Commission, to send this paper to the Committee on Reform.

MAJOR PLIMSOLL: I should have said Committee on Reform, Mr. Chairman.

REAR ADM. RAMISHVILI: This is not a question purely of constitution.

CHAIRMAN: There are a number of things involved -- legal interpretation. That will probably get due

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consideration in the Steering Committee as well as in Committee No. 4.

MAJOR PLIMSOLL: I think Committee No. 4 would be more appropriate.

MR. MAGGIAR: I second the motion, but with this remark: I would like very much, if it is possible, that we get either at the Commission or at the Steering Committee or Committee No. 4 a legal statement from the United States Government about its interpretation.

CHAIRMAN: I had that in mind.

MR. MAGGIAR: Because we are discussing this and the question of principle I mentioned -- We will see that there is a very high problem of principle involved and we are discussing the terms of our terms of reference with some of us inclined to give them the wrong meaning. There are from the very beginning three governments involved in the problem of the signing of the Moscow Declaration and if we can have a legal statement from the United States Government of the interpretation of the terms of reference, then perhaps we might give a legal point-of-view, and the Soviet and British point-of-view, and any other government's legal view of the Commission's terms of reference. So perhaps we might have a basis for our discussion of the higher principles involved.

CHAIRMAN: I will be prepared to present the

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the American point-of-view promptly.

SIR GEORGE SANSOM: May I ask, Mr. Chairman, whether the French Ambassador is speaking with respect to some particular clause?

MR. NAGGIAR: I am speaking especially of the main function of the Commission, which is formulating policies, and what do we mean by formulating policies, and what is the extent of our power of formulating policies.

CHAIRMAN: I haven't brought this up heretofore myself in the sense of getting legal interpretations because I felt it was wise in a Commission of this sort where we acted so personally and informally that it would be well to let the thing develop until we had a basis of experience in our procedure and our own informal interpretation of the terms of reference feeling that we then have a groundwork of our own interpretations that would be very helpful in reaching a basic interpretation such as this calls for. I think you are right in saying the time has come.

MR. NAGGIAR: You are quite right, Mr. Chairman, but at the same time this Moscow Declaration gives some precise wording about our power, but there are other functions. There are the functions of the United States Government, there are the functions of the Supreme

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Commander, and the function of the Allied Council, so we may, if we work together, come to some sort of an agreement on the extent and the exact meaning of our power, but we have to know what the United States Government thinks, too, of its own power. We had a paper from General MacArthur the other day giving us some information on the way he thinks he has power and the discretion he considered he was entitled to use in a very important matter. It is a very complicated function. There are at least four powers -- the Commission, the United States Government, the Allied Council, and the Supreme Commander.

CHAIRMAN: There is now a motion to the effect that this very important paper be referred to Committee No. 4 for its consideration and coupled with the remark or the note from the French Ambassador as to the presentation to the committee of the legal opinion of the American Government on the question. Of course, that will involve, naturally, all the governments concerned.

MR. MAGGIAR: Of course.

REAR ADM. RAMISHVILI: Mr. Chairman, since this question is about to be referred to Committee No. 4, but was slightly discussed here, I would like to know whether the Commission considers that the question of the Japanese Government is a political question. Certainly, it belongs to the terms of reference of the

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Commission. This is a question which should be discussed in the Commission. Now if we refer this important question to Committee No. 4 I doubt that they can discuss this question in Committee No. 4.

CHAIRMAN: It would come in the natural order of events to the Steering Committee and finally in this Commission when we get the report from the committee.

REAR ADM. RAMISHVILI: Mr. Chairman, I'm trying to find out whether the fact that this question is discussed here now, and accepted in the agenda of the Far Eastern Commission, and referred to Committee No. 4 -- whether this fact is the recognition from the Commission that this question belongs to the Far Eastern Commission and that it is the right of the Far Eastern Commission to consider this question. This is the jurisdiction of the Commission -- the fact that we are discussing this question. The question of Japanese Government -- the main issue in any government, in any country, is the government and if we remove the Far Eastern Commission as a body which will make the policy of this question I doubt whether we will have many questions of policy here. I would think this is a big policy question. This is the main question which we have before us here. Excuse me, Mr. Chairman, for my bad English.

But shall we consider the fact that we discuss this question here and refer it to Committee No. 4 for working

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and to make some recommendation to the Steering Committee and to the Commission -- shall we consider that very same fact as a recognition from the Far Eastern Commission, as we are represented now, that this question belongs to the jurisdiction of the Far Eastern Commission, or do we send this paper to Committee No. 4 for the purpose of just discussing this question. I don't think that we can discuss this question here and send the paper to Committee No. 4 for discussion of the substance of the paper.

CHAIRMAN: I would take it that this is not a question for our decision -- on your point -- or for the Commission until it has been properly cleared and the governments concerned obtain their policy papers for study. I take it that you wish to commit the Commission on the principles laid down in this paper now without full consideration. I would not feel that the committee should be instructed or bound by anything beyond the discussion that we have now had or that might occur on the subject. In other words, we are not binding the committee from finding a certain way. We are giving it perfect fxedom for full consideration of a very important paper and basically principle, and policy, and interpretation.

DR. GAMBOA: Mr. Chairman, it seems to me that the paper submitted by the Soviet delegate properly

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belongs to Committee No. 4. The question raised by the French Ambassador regarding jurisdiction in the matter of policy, I think, belongs either to the Commission itself or to the Steering Committee. I don't think that properly belongs to Committee No. 4.

CHAIRMAN: Well, we were conscious of that fact and there will be --

DR. GAMBOA: Could we separate the two questions referring this to Committee No. 4 and the question raised by the French Ambassador to the Steering Committee?

CHAIRMAN: It will naturally come before the Steering Committee for that part. It would be helpful to have it first in Committee No. 4, I think, for discussion, and the Steering Committee will then pass on it and on the legal aspects as the case proves.

Is there any further comment for consideration at the moment? There is a motion now before the Commission to refer this with the information which the discussions brought out for, first, the action of Committee No. 4, and then the particular consideration of the Steering Committee before bringing it back to the Commission.

REAR ADM. RAMISHVILI: In the usual procedure. The committee and then --

CHAIRMAN: The usual procedure, excepting with the benefit of this discussion -- your statement and

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the statements of those who have spoken.

Is there any seconder of that motion?

MR. NAGGIAR: It was seconded. I seconded it.

CHAIRMAN: It has been seconded. Is there any further action before the Committee? It will be so ordered.

ITEM 5 - OTHER BUSINESS

Under Item 5, Other Business, I would like to call your attention to our ever present subject of liaison with SCAP and to inform you that Lieut. Paul H. Elicher USNR who is present at the meeting has just returned from Tokyo and prior to his release from the Navy has orders to report to me in order to transmit recent papers and information. Lieut. Elicher served as Liaison Officer to the Commission during its stay in Japan.

We also have present Dr. K. C. Leebrick who was attached to the Office of the Political Adviser of the Supreme Commander. He has been attending various committee meetings. I have asked Dr. Leebrick while he is present here in Washington to sit in which us and also with the committees. So that I hope that we will have the advantage of fresh information and both these officers will be glad to be present when desired.

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Dr. Leebrick may I present you to the Commission (Dr. Leebrick stood) and Lieut. Elicher (Lieut. Elicher stood). I am glad to see you again, Lieutenant.

I have invited General Hilldring to sit in with us today and I present him to the Commission as my alternate. You may have noticed that I have been acting alone and constantly as your Chairman, but I am happy now that I have General Hilldring as my alternate. It might interest you to recall that General Hilldring has been for a period after the strain of war in charge of the Civil Affairs in the War Department and has now been appointed Assistant Secretary of State and is close to me in the sense of our immediate liaison with the State Department.

Mr. Johnson, will you bring up this always trouble-some question of the Press release.

MR. NAGGIAR: I wish to speak to the Commission about Other Business.

CHAIRMAN: Oh, yes, I beg your pardon. You referred to the minutes of the last meeting (14th FEC Meeting) and of the paper presented by the American delegate.

MR. NAGGIAR: It is "Procedure for Nomination of Allied Personnel for Service with the Staff of the Supreme Commander of the Allied Powers" (FEC-069). The paper was presented to us as a proposal and we took

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no action and the procedure has been laid down on the nomination of individual experts to SCAP. I would suggest, if you have no objection, that perhaps we might take action today on this paper.

CHAIRMAN: I don't think it was the idea that any action should be taken on it other than that it was for your information as to how participation of your representatives could be had in SCAP. Remember we took it up with General MacArthur at the time?

MR. NAGGIAR: Yes, so we have no action to take on this paper.

CHAIRMAN: No.

MR. NAGGIAR: Then, I would like to have more information. Article I says: "Government representatives on the Far Eastern Commission may forward to the Chairman their nominations of individuals on the staff of SCAP." Does that mean that there is no other channel for proposals but through the Chairman of the Far Eastern Commission or can our liaison mission in Tokyo get in touch directly with SCAP on that?

CHAIRMAN: I would see no objection to that.

MR. NAGGIAR: I raise the question because we have one candidate, a spare official, and already our mission is in touch with SCAP. I wanted to know if we

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have no other possibility except through the Chairman of the Far Eastern Commission, or if the French liaison may go on with its proposal.

CHAIRMAN: Yes, that will make it quicker and simpler for all concerned. I can assure you that that would be the best and easiest way of doing it. I was simply providing a means for members here to take it up in case they wished to do it at this end of the line.

ITEM 6 - PRESS RELEASE

Now, Mr. Johnson, will you propose the Press Release.

SECRETARY-GENERAL: For a Press Release today I suggest the following: (Mr Johnson read as follows:)

"I. The Far Eastern Commission today approved unanimously a policy statement (text enclosed) on interim reparations removals in the iron and steel industry; thermal electric power; soda ash, chlorine, and caustic soda industries in Japan. This completes action by the Commission, for the purposes of interim removals, on all the industries enumerated in the Pauley Report to the President on the subject. The Committee on Reparations is considering recommendations with respect to interim removals from other industries which were not included in the Pauley Report, and these

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recommendations will be forwarded to the Commission as soon as agreements are reached in committee.

"II. Present at the meeting today was Major Gen. J. H. Hilldring, Assistant Secretary of State, whom the Chairman introduced to the Commission as his alternate.

"The Secretary General announced that Mr. Donald G. Badger, of Australia, had arrived in Washington and had entered upon duty with the Secretariat as Economic Secretary. Mr. Badger is the first full-time member of the Secretariat to be supplied by a Government other than the United States.

"III. The Chairman also reported that among recent arrivals from Tokyo, who had reported for consultation with the Chairman, were Lieut. Paul H. Elicher USNR and Dr. K. C. Leebrick. Lieut. Elicher served as liaison officer to the Commission during its stay in Japan. Dr. Leebrick was attahced to Office of the Political Advisor to the Supreme Commander for the Allied Powers."

CHAIRMAN: Yes.

The formal meeting is now adjourned and I would ask the members to remain with myself and General Hilldring for a brief discussion.

(The meeting adjourned at 12:05 p.m.)

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FAR EASTERN COMMISSION

Transcript of Special Meeting of the Far Eastern Commission

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

Friday, 14 June 1946

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FAR EASTERN COMMISSION

Transcript of Special Meeting of the Far Eastern Commission Held in Main Conference Room, 2516 Massachusetts Avenue, N. W., Friday, 14 June 1946

REPRESENTATIVES PRESENT

General Frank R. McCoy, Chairman	(U.S.A.)
Major J. Plimsoll	(Australia)
Mr. Paul Tremblay	(Canada)
Mr. Timothy Tien-tseh Mar	(China)
Mr. R. R. Saksena	(India)
Dr. A. D. A. de Kat Angelina	(Netherlands)
Sir Carl Berendsen	(New Zealand)
Dr. Melquiades J. Gamboa	(Philippines)
Rear Admiral S. S. Ramishvili	(U.S.S.R.)
Sir George Sansom	(U.K.)

SECRETARY-GENERAL

Mr. Nelson T. Johnson

GUEST SPEAKER

Lord Wright

Reporter: E. Koontz, Department of State

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(The meeting convened at 3:05 p.m.)

SECRETARY-GENERAL (Acting Chairman): General McCoy was called away and he will probably be here a little later before we dissolve. I have been somewhat presumptious in undertaking to open this very informal meeting.

We thought we should not let Lord Wright pass through Washington without encroaching upon his time, and I thought that members of the Commission would be interested in hearing him say something of his experiences.

Before proceeding, may I make two announcements: One is that Committee No. 6, Aliens in Japan, will hold its regular meeting today following the conclusion of Lord Wright's comments. The meeting will be held in the library on the second floor rather than the main conference room. The other announcement is that the meeting of the Commission will be held on Wednesday morning at ten a.m.

Lord Wright, I think, needs no introduction whatever. He has visited us once before. He has been in Japan where he has attended the preliminaries of this war criminals trial and I am going to ask him to take over.

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LORD WRIGHT: Mr. Chairman and gentlemen, I am certainly honored by being asked to come here. I feel that I am quite unworthy of that honor because I see great authorities on Japan and everything connected with Japan sitting at this table, particularly, Sir George Sansom and others and I cannot expect -- I feel rather a globe-trotter among so many experienced gentlemen.

I went, of course, primarily to look into the question of the trails, and I went as a person interested in the law, and interested in the law relating to the punishment of war criminals. That is a question which I believe still occupies the attention and the interest of a great many people -- whether the, what I may call the high ups, in the political and juridical world regard it as anything but an added nuisance of the various troubles that afflict them. I don't say with any definiteness -- I can't help thinking sometimes they do regard it as a nuisance, but then that's only natural perhaps. Their whole life is full of trouble. But I also believe that at the bottom of their hearts is still more.

The ordinary man in the street among the allied nations is still deeply interested in the course of their proceedings for the punishment of the war criminals

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and is strongly anxious that something should be done. In a sense with all these present problems which occupy us it may seem somewhat unnecessary; something which relates to the past. We hear the ancient adage: "Let bygones be bygones, etc." But it is really related to the future and most essential from the point-of-view of the future that I regard it. It is because I think that any actual serious steps, however pertinent, which secure a regard for the international law of war, and which makes leaders of States and high politicians realize that they are responsible in their own person -- that's the test. That's the test of the responsibility -- responsibility in their own persons for reckless or wicked or aggressive anti-human character of their deeds.

It is in order to establish these two guiding principles for the future of the world that I, personally, take an interest in these proceedings. There are, of course, too many widows and orphans who have suffered from the terrible evils of this war, and there are, of course, many devastated homes and ruined lives of those who have survived. There must be millions of people in the world now who verily have not perished; who will go about morally and physically naked for the rest of their lives. The more I think of these people, the more

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satisfied I am that war is a terrible evil. When we were young we used to think of the wonderful pictures of armed knights charging each other. It wds very attractive, indeed, and we used to think of the wonderful lines of troops drawn up with their hair beautifully smoothed and whitened facing each other bravely, with firm ranks, with courage and determination and splendor. We realized, of course, that these things for very many men were the climax of their training to which they devoted their lives and they were the pathway to glory and distinction for those individuals concerned and fortunately the Army is unlimited in numbers. That was true enough and to a certain extent a war is still the climax of a soldier's career and we have, everyone of us, many friends who are soldiers whom we admire both for their courage and their character; also, their intellectual powers, not to realize how these considerations must appeal to their minds, naturally.

But for all that and even if you add to that that war is a great discipline of courage and devotion and self-sacrifice -- add all these things together and do you get anything which would determine for the incredibility of a war like that which we have just come through, and ought we to neglect anything which will help even in quite a remote degree to render such evils things of the past and not things of the future.

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We have got to remember now that the unknown mysteries of the atomic bombhave introduced elements which none of us -- I ought not to say "none" because there are so many wise people here. You may get on a plane and see a large and peaceful and happy city smiling under the moonlight, people in bed and happy, and you may drop out of your waistcoat pocket a small object and the whole city and its hundreds of thousands of people may go to ruin and destruction, and the whole magnificent array of wealth and prosperity and happiness may go up in smoke. Now that is a terrible prospect and there may be antidotes. Add to that the curious idea, which I think is frightfully -- it is within the scope of international law. At the very moment in which you act upon the declaration of war so that there is no warning of war the innocent inhabitants, natives, soldiers, and whoever else may be there are immersed in the tragedy without any means of preparation, added to that it becomes even more apparent that there ought to be well-established rules of international war, and that those in the breach of these rules are criminals.

I shouldn't hesitate to say that our friend with the atomic bomb in his waistcoat pocket who drops it has taken care that he gets away. I shouldn't hesitate

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for a moment to describe him as a murderer. A murderer is a man who takes the lives of his fellows without due legal justification. Well, now, what is the justification there? I think he broke every rule of international law which is relevant to such circumstances. I treat him as not a private individual -- if he was a private individual no one would hesitate to call him a murderer -- but I regard him as a member of some armed or other national force who was sent out by his Cabinet, his Prime Minister, or his Dictator, or whoever is in control, with instructions to carry his little package and to drop it at the appropriate moment.

In the first place, if he was doing it merely out of reckless mischief no one would hesitate to say that he was a murderer. If he does it under the orders of some potentate, some powerful person, some leader of the nation sitting some distance away in the comfort of his office, he is a man who drops the thing knowing what he is doing is murder, but equally so is the man sitting in the background who says: "Go and drop it." They are both murderers and so is everybody else who is a party aiding and abetting that scheme.

It has always puzzled me that people should refuse to think of murder as murder if, in fact, it is done on a large scale and again if it is said it is done with political motives. Well, now, I agree that a

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single murder is always interesting. Everybody knows how interesting the papers are when you have a full account of a murder. You like to know all about it. You like to run over the pictures when he is tried and you want to know what happens and all that. That is murder, and I regret it. Suppose the man who destroys hundreds of thousands and millions of lives -- he may be able to justify that but not on the ground that he did it as being the head of the State or one of the leaders or that he did it as a plitician or for political motives. These are not in themselves justifications. The naked fact remains that he has been destroying human life without due justification and if anyone says that isn't a crime I venture to refer to the most ancient catalogue of crimes. There was what we called in our Bible the Grand Khan and there was the ancient admonition: "Thou shalt not murder." I don't believe there is anyone alive who would not regard the taking of human life as anything but murder.

You see, then, that war if unjustified is simply the initiation of a long series of murders and the destruction of human life. Of course, one has to realize that the right of self-defense is feasible and is common to everyone, "every person and every State" was the description of a mischievous Admiral who when attacked defended himself -- that is an illustration of this

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ancient rule that there is a right to self-defense.

If you are attacked you defend yourselves and sometimes you have a defensive action which takes the form of aggression in the sense that the threatened individual takes the first steps in order to defend himself, and there are many complications. But I don't think anyone doubts, unless he is writing a thesis, as Aristotle used to say: "... there is a difference between defense and offense; there is aggressive war and offensive war, and a just war and an unjust war."

One of the things that has to be made cear, I hope, in defending proceedings is a world decision and it carries with it real consequences; then, as to political motives being a defense so that the great men of the world are relieved from any moral restraints and can do whatever they like at whatever cost of human life and suffering and destruction, of comfort and prosperity and happiness -- that idea of immunity if it is held anywhere now. We must see the triumphs in these proceedings, I feel. I don't want anyone to say that a murderer changes his character because it isn't done. The motive of a political matter may be legitimate or it may be illegitimate. I say if it is done on a political motive you don't get a step further to justify it or unjustify it. If it is justified, then it doesn't matter that it is a political motive. If it was

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unjustified, equally it doesn't matter that the motive was political, because political is merely self-regard on a large scale, not an individual thinking of his own advantage. You wouldn't call it political, you would say selfish. But if it is done on a national scale, then you would call it political, but you don't change the character of the act. The act is either justified or unjustified and the test is not what is convenient for the aggressor in the long run, the politician who does the act -- the test is something different. The test is whether it is right or wrong.

When I lead various discussions, I can't help coming back to these simple and elementary ideas which I think are still valid and still lie at the root of things and though they are often obscured and forgotten are there all the time. It is in order to prevent people from forgetting things like that that I think these trials, no matter how perfect they are, can claim to be supported and justified. So that really it is the future we are thinking about, not the past -- the past is beyond reparation. The only thing is don't let it happen again.

Well, of course, the mere fact that these trials have been held and the mere fact that moral rules

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have been laid down and punishments have been assigned to individuals who infringe these moral rules can't go a long way, perhaps, to putting a final end to the inherent weakness of humans -- I am not by any means limiting myself to coming within their condemnation. But the more you help, the more you raise in the world at large a feeling that war is an evil and the greatest of evils; that it should be the last resort and should not be accepted except in an extremity or defensive purpose, the more you are taking to checking the exploits and the admonitions of an Alexander, or a Genghis Khan or an Emperior William, etc. The more you realize what lies at the bottom of all that -- it is mere greed and aggrandizement and evils follow on it. The more that is realized in the world at large the less likely, in a very qualified degree, the less likely are such things to happen.

The early part of this century was very much occupied with the idea of war and we all know various institutions which were established. What I think people don't remember sometimes is how extremely sweeping and important was the Pact of Paris in 1937 where all the great nations of the world agreed to renounce war as an instrument of policy, and that's very far sweeping; it is implicit; is something so simple it can't be true. It is perfectly clear -- the nations

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have an honest war and the nation which without due cause resorts to war is breaking a moral rule embodied in the Treaty, but most import of all a rule of international law because they know better.

But we come back again to a clear recognition that war which is organized murder is not only evil but unlawful. If that is so, everyone who in a sufficient degree of responsibility has aimed or taken part in doing that, taking part in the promotion or organizing or initiation of war is an instrument or agent in unlawful conduct and he is liable as an evil doer and a criminal.

I am afraid I have been rather long in talking of various platitudes, and I think of my friend who once described the eighteen miles from Tokyo to Yokohoma as the eighteen longest miles in the world. On each side of these eighteen miles, as you all know, there is an area of devastation of wooden buildings swept away by fire. There was a strong gale, sixty or seventy miles an hour, and the flames spread with most tremendous activity and the whole place became a devastated ruin. It is perfectly true that the big concrete beddings are standing more or less. Well, it is a terrible area of destruction and I am devotedly sorry for all the people who were living there, but, after all, they

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brought it upon themselves, or rather their leaders brought it upon them, and I heard on every side in Tokyo, and you have also heard, that the Japanese people are quite sympathetic with the trials and are quite anxious that the leaders who brought about this terrible mess should suffer some penalty for what they have done. I was saying at the British Embassy and no doubt Sir George will support me -- no doubt he has looked out on the ground all around and seen these people building with any wood or corrugated iron that they could get hold of, building their sheds. And there is quite a colony springing up all over but it is not a very happy sort of desolation.

The people in Japan, so far as I made out, seemed very orderly and peacefully disposed. I haven't heard from anybody that I have spoken to that there are any signs of underground movements, none being vindictive, and I don't know enough about the leaders, apart from those who have been taken into custody -- I don't know what leaders there are of if there is any underground movement or uprising I think that at this moment probably not -- externally, anyhow, the position is very, very peaceful.

It all seemed to me, wandering about as I did for a few weeks, that the women are the brightest sex of the Japanese. I am not referring to the geishas,

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because I didn't attend a geisha performance, but I was told by a man who went to see what it was like that it was extremely dull. I don't know whether Sir George had the same experience. He said he sat for about three hours and there was a lot of chatting going on and everybody was very cheerful and it was all in Japanese and for the life of him he couldn't make out what they were saying or what they were doing. But certainly at the excellent Imperial Hotel you do find very charming waitresses gaily attired in kimono, but the younger women in the street seem to be reverting rather to the less attractive wanton manner of wearing skirts or even occasionally shorts, and shoes instead of these sandles which they cluttered about in the old-fashioned way.

There are universities at Tokyo, more than one I think. The Tokyo University is a wonderful institution and it seems to be in full swing. It hadn't been hit at all, so far as I could see. I went around it and I have no doubt that the local government is lifting its head up.

General MacArthur holds all the strings. My only fear is that he will hold too many strings and find that he is taking on himself rather more than he can manage consistently with his health. I don't know whether that is a view peculiar to myself, and I don't

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suppose anyone wishes to discuss his personal affairs but that will not be reported in any way. I couldn't help thinking that he was -- I won't say "overworked", but so far as I could see the pressure of work will never leave him. But he's a very remarkable man beyond any doubt. Then, all the troops are clamoring -- American especially. The Americans are those I saw principally. They are all clamoring to go home, which is not unnatural, and the American military authorities have been billoting large platoonments in which life will be made more bearable for the occupation troops. They will have to do something to provide amusements and rest houses, every convenience which would make life endurable to the soldier. But it is a thing which will not cease to be difficult as times goes on.

The country in Japan so far as I have seen -- and I covered an area of many hundred square miles -- looks extremely prosperous. Their methods of manuring the soil are not altogether in conformance with European ideas and the result is that you never, as I understand, you never eat Japanese grown vegetables because of their soil and the manure with which they are produced. But it is a beautiful country and cultivated with the greatest care and success. It seems to me more like a market garden than an ordinary

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cultivated area in England. Everything is done by hand. I never saw anything like the mechanical machines which we use in our agriculture, and still more the Americans use in their agriculture. I haven't seen anything like that. I have seen them cutting down their wheat and their other grain -- wheat and barley I think -- cutting it down by hand. It is all grown in nice rows with a little space in between so that the man wielding the sickle can get a good hack at it and be close to it and have room to plant. Of course, it doesn't sound very economical in a country like this but in Japan apparently labor is almost a glut in the market.

The crops looked to me extremely good, very promising. Rice, of course, was not so far advanced, but even there it looks as if they might have a good crop.

On the trial itself, that is, the trial of the major criminals, it has, I think, now gotten under way. I was at the opening just as I had been at the opening at Nuremberg.

(General McCoy came into the conference room at this time).

I thought the opening address by Mr. Keenan was very admirable and I suppose reports haven't reached you yet but I thought it contained a very admirable

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survey of the general scope of what was going to be laid before the judges, and also of the principles of law on which the court was proceeding. I'd like to emphasize that the court is proceeding on principles of law.

It is perfectly true that the Charter lays down what the scope of their jurisdiction is to be but they do that on the footing that what they are laying down is not something invented or promulgated or laid down by them but is in accordance with international law -- that part of international law which leads to these questions and agrees with these questions, and, I confess, agrees with my own view. It is likely, I am afraid, to be a rather long trial. I tried to figure it out and it seemed to me that what is called the opening, and that is the series of speeches stating the facts and putting in the relevant documents on which the trial is based, might take five, six, seven, or eight weeks. I have never heard any suggestion that it would take less than five weeks.

Well, then, as soon as that is done, you have got twenty-six defendents, two of them, and possibly a third, more or less out of action, and their cases, I take it, may not be gone into. I presume that will leave twenty-three. Suppose you give each defendent

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three days in which he may state his defense and in which he may be cross-examined by the prosecuting counsel. There you have sixty-nine days. At five days a week you will get say about fourteen weeks so that you get in the neighborhood of twenty-six and that's five months. Maybe things will pan out shorter; maybe they won't be quite so expeditious. I don't know. But, of course, if you go into this method of investigating war crimes it must take a long time. I don't see any way out of it. Our friends in Nuremberg took nine or ten months, did they not? I don't think Tokyo will be quite so long and there is a tremendous desire on everyone's side to expedite things as far as possible.

A perfect army of defenders came down by air from America a week or two ago. That made it more difficult to pass on the trial without further adjournments. But I think now the period of adjournments is over and the trial will proceed regularly now without any intermission or delay.

It is a little striking to see eleven judges all sitting in a row; all attired in black silk gowns. I should think it must be rather a job to handle a team of that sort. I have heard it said if you let the defending counsel get out-of-hand they are as difficult to stop as a fore-in-the-hand is if you let the horses get out of control, but I hope that neither the defending

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nor the prosecuting counsel will get out-of-hand and that the judges won't get out-of-hand. Things ought to go nicely, but eleven judges are rather a handful to manage. There have been cases of courts of some repute in which even nine judges have proved to have had difficulty, and with eleven you have two more. Let us hope for the best.

But they have gotten down to their work and they are very anxious to understand everything, and then the prosecuting counsel are certainly hoping and working very hard so far as I can judge along very well-organized lines.

The court building was, I think, a military building. It is a great big building and it has been handed over entirely to the International Military Tribunal. There are a series of corridors opening out on each other and a great many rooms and there you have I don't know how many hundreds of workers all hard at work in examining and sifting and organizing the evidence and preparing it for presentation in a convenient form to the court.

One great problem that they have had to consider is the question of translating. The documents which have been found in Japan or any documents from that side have all been translated and that's not an easy job, and in the court itself the translators often seem

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to be very much puzzled by the appropriate word to be used in somewhat more technical language. Now it is inevitable that there will be matters of that sort. I have every hope and expectation though that the trial will proceed; that a just result will be arrived at; that it will meet with the approval of the world, and that it won't take too long. Supposing it took four or five months. That is a very small period of time if it is really a worthwhile decision because it is something which will have its effect upon the world directly and indirectly for many generations, for many centuries to come.

General MacArthur is extremely interested in everything connected with war criminals. I think he (?) (?) was largely responsible for the Amashta and Armor cases which started off. They were, of course, a different type of trial as you know. They were the big trials in which the politicians and statesmen are the figures and the trials in which soldiers of different ranks up to Generals who are charged not with the general offenses like initiating war but with particular offenses against the laws of war committed against particular people.

You have all heard of what they call the "death march" in which 1600 European or allied prisoners were marched through the mountains -- was it Borneo

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or New Guinea -- there were two of them?

MAJOR PLIMSOLL: Borneo.

LORD WRIGHT: At the end of the march there were only six surviving. That was a terrible business and there are other instances of that sort and there are many instances of men being beaten, and there were offensive prisoners being bayonetted merely out of malice and spite, of nurses maltreated and murdered, hostages killed, and there was widespread destruction in the occupied countries. All these are offenses against the laws of war and no one would dispute that the punishment of them after trial is legitimate exercise of the rights of the captors and legitimate acts of justice done as the cause of war. These were the major criminals as they were called in the Moscow Declaration. The minor criminals are the other criminals under that Declaration. The ones we have been discussing form the other class only they are different in various ways, but the view is that there are in different degrees infringements of that part of the international law which deals with the laws of war and that in their different ways they both fought under the same condemnation if the offenses are made out.

Now I am afraid I have been very long and I hope you will ask me some questions because, obviously, I might not have addressed my mind to things which interest

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you most; possibly, talked about things which interested myself and not of things which interested you. Well, then, you must make up for that by asking some questions.

SECRETARY-GENERAL: Might I ask one question? Did you gather the attitude of the Japanese jurists towards the treatment of war crimes?

LORD WRIGHT: No, I was rather unfortunate in that respect. There was the language difficulty and I was not brought into company with any of the jurists. I don't know what their views were. But, after all, Japan has always held a great many cultivated people and some very good lawyers, but I was unfortunate, I didn't come across them. (To Sir George) I don't know if when you were there you came across anyone --

SIR GEORGE SANSOM: No, I didn't. I did find that most people I talked to not only had no objection to the trials but rather favored them.

LORD WRIGHT: Yes, everyone agrees they are in favor of the trials.

Of the criminals, I confess I was rather struck by Tojo who struck me as a determined man -- a man with a will of his own and a clear, cultivated and intelligent mind. Of course, naturally, I didn't see him, but I watched him a good deal as he sat with an

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imperturbable, inscrutable expression. I never saw his face change in any moment except at one time when Keenan was delivering his speech, which he did very fairly and temperately. I noticed Tojo taking notes and looking preoccupied. I don't say he looked anxious; I don't say he looked conscious-striken. He was preoccupied -- I put it quite generally. As to the others, I thought they were a very unappetizing looking lot and I couldn't detect any signs of animation or intelligence in any of them at any time.

GENERAL McCOY: Who were their counselors, Lord Wright? I missed so much of your talk that you may have told the others, but are the counselors for the defense all Japanese?

LORD WRIGHT: No, they have got some Japanese. There's a man whose name I can't pronounce, a well-known Japanese lawyer, who takes an active part, but in addition to that the American Government sent out twenty-six lawyers whom they chose here in Washington or New York -- anyhow they were chosen by the Army authorities and they shipped them out in order to carry on the defense, one for each. But they hadn't really got into action when I left. One or two of them argued shortly, but they are all there to see that everything that's possible -- to see that the interests

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of each prisoner are adequately protected. There were also Japanese counselors in addition to that one who took an active part, but I didn't see as many Japanese counselors as I saw German counselors at Nuremberg. I think at Nuremberg the counselors were almost entirely German -- I think almost entirely at the big trial. At some of the minor trials of minor offenders that I attended there was a mixture. Sometimes the American or the British advocate took the burden and was supported by German advocates; sometimes the reverse. But apart from one or two prominent Japanese I think most of the counsel were sent over from America, but that ought to save a lot of time.

They have rigged up these ear phones, which you have no doubt heard about, and they seem to be working all right.

GENERAL McCOY: Had the trials developed far enough to give you any idea whether they would appear to make statements in their own defense?

LORD WRIGHT: No, you see so far when I left they had finished the opening speech by Mr. Keenan, the principal prosecutor, and apart from some minor observations from the defense that's as far as they had gotten, and, presumably, the prosecuting counsel will go on for another four or five weeks relating the case in detail before the court. How far the

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Japanese or American defense counsel will intervene at that stage -- they will intervene to some extent because they will have to make objections. But, primarily, during that period the main work will be done by the prosecutor so that at present you can't say. I think we may assume that the defendents will make statements on their own account; possibly, give evidence; possibly, be cross-examined. I think that's generally expected. That would follow the lines of the Nuremberg trial and it would be the ordinary practice of a man sent up. He is entitled to make his own defense in his own way.

The court room was very well-arranged, but it was devilish hot even last week. I should think they will have to -- if they go through the summer season, July or September -- they will have to air-condition that room because it was very hot and it had a lot of lights. They will have to air-condition it, certainly, if it is to be bearable.

SIR CARL BERENDSEN: I wonder whether you can help me in one of my difficulties. I agree with you that one of the most astounding phenomena to any visitor to Japan is the obvious docility of the people and you have presented a picture of a people who in a sense were anxious to see the war criminals punished, but how does one reconcile that apparent or possibly

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superficial docility with the widespread beastiality and inhumanity of their methods of conducting war? Are you yourself, Lord Wright, of the opinion that what we are seeing is one of the best known qualities of the possum?

LORD WRIGHT: Of what?

SIR CARL BERENDSEN: The possum -- the gentleman who plays dead when it seems convenient to do so.

LORD WRIGHT: I don't know. It is a problem. I was talking to General King, who was General Wainwright's second in command, and who was captured at Corregidor and he had a terrible time and he summed it up -- he said: "The Japanese are a cruel people."

GENERAL McCOY: Are what?

LORD WRIGHT: A cruel people, and so they must be. I think partly it may have been the Germans. They imitated the Germans very much and the Germans always started off with what they called "frightfulness" because they had been taught to believe by their international lawyers that you can start a war whenever you like and conduct it with any methods which are likely to terminate the war successfully. The whole object is to end the war and it doesn't matter -- One of the best ways of ending the war is frightfulness and I think they have imbibed that same idea maybe. But these accounts which you hear and read are almost

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incredible -- working people to death in the mines, etc.

DR. de KAT: Lord Wright, have these defendents in one way or another been given a way to express themselves on their own feeling of guilty or not guilty?

LORD WRIGHT: All they have been asked is guilty or not guilty and they have all said not guilty, and that is the Anglo-American method. In some countries we regard a man as not guilty until he has been found guilty. In some systems of law a man man is regarded -- a prisoner in court is regarded as guilty unless he can prove that he is innocent. But following, I think, the Anglo-American method he has been asked straight out: "Do you plead guilty or not guilty?" He says"not guilty" and then the thing proceeds and, therefore, the prosecution has to start because it starts with that dead fact against it. It would be otherwise if the prima facie of the man who stood in the dock was regarded as guilty. You might say: "If you are not guilty what are you doing in the dock? We don't regard it that way and, therefore, we follow as at Nuremberg -- at Tokyo they have followed that procedure.

Japanese is certainly a great difficulty in translating. I thought the translators they had -- four or five of them sitting altogether -- improved even in the short time that I saw them, but it is certainly

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a difficulty. The earphones are tuned primarily for the English, but there is a button you can press and that turns on the Japanese. You get the Japanese from the translators who sit in a glass box as in Nuremberg and translate into Japanese as the proceedings go on. If you are sitting near their box you will hear a murmur because they are turning it into Japanese, and I think it is very difficult but they seem to have done it fairly successful. The man who wants Japanese presses the right button and hears the Japanese and doesn't hear the English. It is a very clever way --

SIR CARL BERENDSEN: It is extremely difficult even for experts to convey the exact shade of meaning from one language to another.

LORD WRIGHT: You never can. If you wanted exact shades where would you be? This is a working world.

SIR CARL BERENDSEN: The exact shade there may be something approaching black, but it must add greatly to the difficulty of administering justice.

LORD WRIGHT: Of course, in England we are very familiar with proceedings which take place and in which one or more of the parties speak a foreign language. No translation can ever be precisely accurate. But you edit. You can always stop if you come to a very delicate moment where it is necessary to have a delicate

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shade of meaning explained.

I have had a good deal of experience when I was a judge a long time ago -- a good deal of experience of trying cases through interpreters and I think for all practical purposes one got a fair result and you could always tell if there was any difficulty and stop until it was cleared up. However, that's inevitable -- the same thing is equally true in Germany.

SIR CARL BERNDSEN: But they are probably more competent interpretors.

LORD WRIGHT: I think these interpretors are pretty good, but I should think there's more community of thought between England and Germany than between England and Japan.

SECRETARY-GENERAL: Well, are there any more questions that you would like to ask Lord Wright?

Well, I am sure everyone here appreciates the fact, Lord Wright, that you have been willing to come here and take part of your very valuable time. I am sure that we will all remember it with interest and try to pass it on to those who should hear it.

Thank you very much sir.

LORD WRIGHT: I am very much obliged to you for giving me this opportunity and I hope that the time hasn't been wasted.

(The meeting adjourned at 4:10 p.m.)

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FAR EASTERN COMMISSION

Transcript of Sixteenth Meeting of the Far Eastern Commission Held in Main Conference Room, 2516 Massachusetts Avenue, N.W., Thursday, 20 June 1946

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FAR EASTERN COMMISSION

Transcript of Sixteenth Meeting of the Far Eastern Commission
Held in Main Conference Room, 2516 Massachusetts Avenue, N.W.
Thursday, 20 June 1946.

REPRESENTATIVES PRESENT

Major General Frank R McCoy, Chairman	(United States)
Dr. Herbert Evatt	(Australia)
Mr. Lester B. Pearson	(Canada)
Mr. T'imothy Tien Tseh Mar	(China)
Mr. Paul E. Naggiar	(France)
Mr. R.R. Saksena	(India)
Dr. A.D.A. de Kat Angelino	(Netherlands)
His Excellency Sir Carl Berendsen	(New Zealand)
Dr. Melquiades J. Gamboa	(Philippines)
Mr. N.V. Novikov	(U.S.S.R.)
Mr. H.A. Graves	(U.K.)

SECRETARY GENERAL

Mr. Nelson T. Johnson

Reporter: V. Voce, Department of State

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(The meeting convened at 10:00 a.m.)

CHAIRMAN: Good morning, gentlemen, the session is now open, and you notice we are meeting at 10 o'clock. Is that an agreeable time for the members of the Commission to meet, or would you prefer the normal session a little later? I'll leave that before you to think about and we'll discuss it before the session ends. It just occurred to me that we have been meeting at different times and you might wish to express your opinion on that matter when we come to it.

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

CHAIRMAN: We will proceed in order. First item is the approval of the minutes of the 15th meeting, which involves a correction or revision, requested by the French Representative on pages 2 and 3 of the minutes and this paper which is before you as a substitution. Are there any other corrections or suggestions for the substitution proposed? If not the substitutions proposed by the French Ambassador will be accepted and the minutes will be made of record.

ITEM 2 - - ELECTION OF DEPUTY CHAIRMAN OF COMMITTEE NO. 3 (FEC-004/13)

CHAIRMAN: On Item 2, the election of a Deputy Chairman of Committee Number 3, the Steering Committee on 19th

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of June unanimously approved the recommendation of Committee Number 3 that Mr. R.E. Collins, the new member for Canada of that committee since the departure of Mr. Herbert Norman, be elected Deputy Chairman of the Committee. If there is no objection or if there are no other proposals the recommendation of the Steering Committee will be accepted.

ITEM 3 - - INTERIM REPARATIONS REMOVALS; PRIVATELY OWNED MUNITIONS PLANTS (FEC-059/15)

CHAIRMAN: On Item 3 the Steering Committee unanimously approved the paper on the 18th of June. The document contains the first provision for interim removals froman industry other than those enumerated in the Pauley Report on interim removals. Are there any comments on that paper? It seems to be accepted unanimously by the Committee and it is so recommended to the Commission. There seems to be no action for suggestions otherwise and the paper is accepted by the Commission.

ITEM 4 - - REPORT ON JAPANESE EXTERNAL ASSETS (FEC-072)

CHAIRMAN: Item Number 4, Report on Japanese External Assets: The Steering Committee at its 17th meeting approved the document by a vote of 10 to 1. The Soviet member was not prepared to approve the paper. He asked for consideration of the paper by the Commission be deferred for w week in order for him to obtain instructions from

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his government. Does the Soviet Representative have anything to say on that? Have you any comments to make on that, Ambassador?

MR. NOVIKOV: I'm speaking on the instructions of my government on this paper and they concede this paper is not acceptable because it is outside the Commission. They want you to refer it back to the Committee Number 1 for consideration. My speech is declared in the opinion of the Soviet Government that this Far Eastern Commission cannot consider the matters on policy on assets not within the Island of Japan - - it can't consider the assets now within the external assets of Japan. It is not in the agenda. That subject was to be included into the agenda of Committee number 1, so on these grounds I say it is not in accordance with our terms.

CHAIRMAN: Gentlemen, may I delay a moment, because this is new material to me, on a very important subject? I agree with the Soviet Representative that it needs more thorough consideration, especially in view of the statement that he has made. It seems to me that it is one of those subjects that for the moment should be held in abeyance as we are trying to do on the general subject of reparations and this point is naturally a very vital one and

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the Soviet Representative has been insistent on that point so far, so that I think it would be wiser to have this referred back to Committee Number 3 for further consideration by that committee. Are there any comments?

DR. EVATT: Is this the point, Mr. Chairman, is this the Soviet Union Delegate's point: that because the assets are not situated within the Island of Japan proper that that can't be considered by this Commission on matters of policy? I understand that that is his point, and of course, if so, that really goes to the whole authority of the Commission. I don't mind it going to any Committee for review but it would be here that it clearly is within the competency of the Commission because we are prepared to formulate policies relating to the fulfillment by Japan of its obligations under the surrender terms and therefore you have got to look at what those obligations are and those obligations are certainly implied in relation to reparations. That does not mean I submit when looking at reparations you confine your attention to the main assets in Japan or wherever they are.

It's one thing for a delegate to disapprove of a recommendation, if necessary, by the special rights conferred on some members, but I submit the right of this Commission to determine policy on this matter is not limited by

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any territory advantages of Japan. It is limited by the terms of the terms of surrender or if it is a matter of policy. And therefore, I submit it to the Commission for really it would come in the long run to the Commission to determine its own jurisdiction. If you think, Mr. Chairman, as you do apparently, that the matter is of sufficient importance to warrant special consideration I don't object to that course. The view of my government would not be to insist on the Far Eastern Commission jurisdiction in accordance with its Constitution - which in turn refers to the terms of surrender and which in turn requires consideration of the subject of reparations - and which are not limited and could not be limited to reparations situated in one country. That would be contrary to the whole idea of reparations.

SIR CARL BERENDSEN: Mr. Chairman, I entirely agree with Dr. Evatt. This point has been raised previously and it was raised, as you remember, on the original terms of reference of the Committee. I share Dr. Evatt's views, it will be complete futility for the Commission to endeavor to deal with the matter of reparations, and unless we could deal with the matter, not territorially but levelly, it's a fundamental point of issue. But, of course, with the provisions on this Commission I supppse we might

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consider whether the decision is taken on a matter of interim reparations or substance. As I understood the matter the subject was under consideration by some individual government. I don't know what the situation is. I don't say, Mr. Chairman, that it is an advantage in referring the matter back to the Committee. The Committee can't do any more than it has already done. The Committee won't be able to resolve it. I don't know what suggestion to make.

MR. GRAVES: I endorse the views expressed by Dr. Evatt. The jurisdiction of the Commission embraces the estate of Japan and the estate of Japan is not limited geographically by the four main islands. It embraces all those territories or assets that happen to lie inside Japan or outside Japan and our view has been insistent there that this Commission has been entitled to deal with reparations that lie inside or outside of Japan. I don't think we should gain anything by referring it to the Reparations Committee. It's a fundamental problem of the Commission and we know the view of the Soviet Delegate on this will be the same as when it's submitted to the Commission. We are hamstrung in reparations because this problem is not settled, so I should be opposed to submitting this matter to the Committee.

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MR. SAKSENA: Mr. Chairman, I would like to subscribe to the view of my people. I think this is a matter to be dealt with here in the Commission and no useful purpose can be served by sending it back to the Committee.

CHAIRMAN: I think there would be. I still am in a very hopeful frame of mind we will be able to iron out step by step certain differences of opinion without undue delay. We are getting somewhere on reparations and I agree with all of you that it's a vital point. I think the Soviet Representative would agree on that and it would seem to me that the only way it can be solved is in the higher echelon. Our foreign ministers, that is of the five powers, are now meeting in Paris and this subject was taken up by me with Secretary Byrnes before he left and I'm hopeful if we could just hold it in abeyance a little longer it will be solved. I didn't refer it back to the Committee for further consideration but I just want to hold it in abeyance until we can make an attempt to iron out this vital point and I think we can do that better before we commit ourselves as a Commission in a futile way. I would hope very much that you will agree with me that you will find it to be useful to hold this

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point in abeyance a little while longer. Certainly it is a matter for the Commission sooner or later, and I would like it if it would be a little bit later, if it would be agreeable to you gentlemen.

MR. NAGGIAR: Mr. Chairman, I agree entirely on the point. The fundamental point expressed by the United Kingdom is that the state of Japan embraces all of the assets of Japan, inside and outside Japan, but owing to consideration you made now that you have discussed the matter with Mr. Byrnes before he left for Paris - - - maybe I didn't understand you - - and without taking sides in favor of the point of law just raised by the Soviet colleague about the limit of the Commission, we may be in favor of your proposal to have the matter in evidence.

DR. EVATT: There are two distinct points. First is whether the Commission can deal with the subject. I understand the Soviet Union Delegate denies that. The second point, and separate, is, when dealing with it is whether this information should be obtained as a step in that procedure of dealing. The first point couldn't be cleared by any ruling of any department or any government. It might be desirable to get unanimity on that point. But I think it will be expected to be

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solved by the Commission pretty soon as to whether it has jurisdiction; otherwise the whole question of reparations will get tangled with the suggestion that the Commission cannot deal with assets outside Japan. I suppose it wouldn't be able to mature. I think the suggestion of Sir Carl Berendson shouldn't go to the Committee but should be held here to be brought up as early as possible because the Committee can't determine the jurisdiction of the Commission. I would strongly urge that the matter be not delayed too long, otherwise whatever we do on reparations will be held up and held up and may not be effective after it has been adopted.

SIR CARL BERENDSEN: It has already been delayed a long time.

DR. EVATT: The question of what the Soviet Union has collected in Manchuria has to be brought into account.

SIR CARL BERENDSEN: There is nothing to be gained by putting it simply. I don't see much use in sending it to the Committee.

CHAIRMAN: I think the Committee acted possibly a little bit hastily on this particular paper and they could have wisely continued to consider it while we are hoping to iron out the difficulty, at least while the

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conference is in session in Paris. I'm possibly taking a little too much pride in our continuing to cooperate here so effectively on the approach to the vital problems where we have differences of opinion. We seem to be the only committee that seems to agree on our daily dozen so that I keep naturally trying to avoid any of the vital things until we can hope to get certain points ironed out behind the scenes. It's important for us to be cognizant of the prestige and participation of this Commission in the broad policy and I am very jealous of that prestige of the Commission which has been so acknowledged by the governments concerned in having you important and distinguished men sit in here. I know there has been some feeling of frustration at times.

Last week I called a special conference of just the delegates after the meeting, thinking that Sir Carl and Dr. Evatt were going to be here, for the very purpose of discussing these points where you felt and have so expressed yourselves that we ought to do something about them, but we will have to discuss that together too. We did have your representative here, Sir Carl. I think he held your line of feeling and interest very well for you in your absence, but I'm particularly sorry that you and Dr. Evatt were not here in the general discussion before

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the Commission. However, I would hope that this may still be held in abeyance a short time and if you feel better about it in just having it continue on the agenda of the Commission rather than send it back to the Committee I'm quite agreeable to that, as the American Delegate. However, I think that from what I'm told by my assistants that considerable work can still be done on this paper in the Committee and that the American Representative on that Committee will be prepared to help in bringing to the attention of the Committee certain points that need elucidation there and continued consideration.

DR. EVATT: Mr. Chairman, I would like to make one comment on what you said. I agree with you in your suggestion that you're willing to keep it on the agenda, and I presume that your reference to another conference is to the fact that in certain circumstances its wise sometimes to defer matters so that the minority vote will not be changed, or some of it might be possible. But, with all due respect to you, Mr. Chairman, I think it's better sometimes to have a difference of opinion on some questions - - and there is apparently in the Soviet Union's opinion - - I think not only in this meeting because I refer to you in your desire to keep it on the agenda, but I think it's better sometimes to

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take it and let the government which has the special right exercise the responsibility, but when it's suggested that one of the countries will not agree on anything, then the danger might be that it will be delayed so long that the time limit is up and no effective vote can be taken by the Commission. I don't mean the prestige of the body as measured by the fact that there is no dissent or exercise of legal rights. There will be a delay and I think it's very important if the Soviet Union has a definite determination on this matter of policy, not to prevent from considering it, but to reach a certain decision on the policy. Then I think the time has come shortly when that will be known and the responsibility will be taken for it and the state of the Commission is not in a sound position. But you have suggested, and I don't dissent from it, it should be returned to the agenda and disposed of.

CHAIRMAN: I would hope that that would be the case. Although, as I said, the Soviet Representative has been insistent on that point in the Committee. The meeting of the ministers in Paris is for the express purpose of changing certain policy and it's very, very possible that that might happen so that once more

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the Soviet Representative could be continuous in his insistency even though the policy might be changed. I think it is important for us to give our opinions on the policy, the jurisdictional policy of this Commission, and it has got to be decided sooner or later by the Commission but I would like to still hope that we can hold this in abeyance and on the agenda of the Commission for a brief period.

MR. GRAVES: Mr. Chairman, would it be reasonable to assume that by reference to that matter of the foreign ministers, they are likely to get a definition of jurisdiction of the Commission on Reparations, or is it assumed that some other aspect of reparations as a whole will be considered? There are two matters. One is the jurisdiction of the Commission on that matter and the other deals with the reparations as a whole. I take it that what you have in mind is treatment of the reparations on the whole, not the jurisdiction of the Commission - - am I right?

CHAIRMAN: I'm certain other definitions are issued on as important a point, of course, and I would presume that the foreign ministers will discuss those two matters. The third point is the machinery for the carrying out of our policy which is in the paper now be-

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fore the Committee, including the terms of reference to the Committee proposed by the American Government where we are not together. That, I don't think will be discussed in Paris, but it seems to me the question of war booty will. It's bearing on this point of the overseas assets.

SIR CARL BERENDSEN::: Mr. Chairman, might I have just a few minutes on a general question? To your well known optimism and outlook on the future you call attention to the fact that the effect of this Commission has been a friendly, amicable body. I fully agree with that and I think it would be more pleasant to the meetings of this Commission if we started taking hurdles as we come to them. My belief is this: that we run very happily along with it until we come to a hurdle and when we come to the hurdle we don't take it. We have got to start taking hurdles or we can't do anything about it. I'm exceedingly sorry I was absent at the last meeting. I should explain why. I don't wish to imply that membership of this Commission is not a responsibility, but we have other engagements too and we have had a regular day for meeting. I fully understand it could be desirable to change the date of meeting, but I'd another engagement, another scheduled meeting, on that day. I regret very much that I was absent. But, as you said, sir,

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we expressed the point of view of my country that my country is most earnestly anxious to see that Commission effectively operated. Our point is this: unless we - - in due course - - do face the hurdles, then this Commission is not going to fulfill its purpose.

MR. SAKSENA: Mr. Chairman, I'd like to make two points. First, I would like to say a word in defense of the Reparations Committee. As you know, the Reparations Committee has been busy during the last three months in dealing with this interim removals program. Now we are finished with that and we feel we could not go on in dealing with this question of reparations unless we took into account what was to come into the reparations pool.

This paper is the result of very deep thinking on our part and we felt that, until this question was dissolved, we could not make any promise at all in consideration.

Second, the fact that this matter was being considered at very high levels, meaning that the Reparations Committee had never had any idea at all that this matter was in consideration at the Paris Conference or was likely to receive the consideration in the very near future, it was with a view of bringing matters to a head and to see

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that things were expedited that this paper was framed. I want to make this point clear so that what you said in regard to the Reparations Committee had not been mindful to the Reparations Committee in all respects.

The second point is that the issue which has been raised by our Soviet Representative goes far beyond the question of reparations - - that the Far Eastern Commission is only concerned with the geography of Japan. Well, if we agree to that principle it will not only apply to reparations but other principles -- of the demobilization of other countries, the demobilization of personnel. I think this wider question has such important aspects that we have to consider it quite apart from the question of reparations.

CHAIRMAN: In other words, the jurisdictional point?

MR. SAKSENA: That is right, Mr. Chairman.

DR. EVATT: Of course, the Soviet Union Delegate might not take the point - - and hasn't taken the point - - in relation to anything other than reparations, but it involves the whole question.

MR. SAKSENA: Mr. Chairman, as a matter of fact, while we were discussing this question we had an amendment proposed by the Soviet Representative in which he

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stated that we should call for a statement of assets from neutral countries and that, of course, made us think that probably there are reasons for all those assets being brought in and it does seem to me that we should object entirely to anything being considered.

DR. EVATT: Is that proposed by the Soviet Union - to bring the neutrals in?

MR. SAKSENA: That is right.

MR. NOVIKOV: I want to say that, in our proposal about neutral countries, as far as I know my government has no objection to considering extending assets in Japan or as separate from the Reparations Committee.

SIR CARL BERENDSEN: Does that imply that the body who is to handle reparations should be entirely separate from the Far Eastern Commission?

DR. EVATT: Does it mean they should deal with matters we can't do? Why should they discuss the subject at all?

MR. NOVIKOV: I don't say that the Reparations Committee should serve separate from the Far Eastern Commission. I don't say that at all.

CHAIRMAN: If there is no objection the paper will continue to be on the agenda of the Commission with the hope that these points of difference can be ironed out shortly.

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ITEM 5 - - REPORT OF COMMITTEE NO. 3 ON BASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION (FEC-031/13)

CHAIRMAN: The next subject on the agenda is the report of Committee Number 3 on the Basic Principles for a New Japanese Constitution (FEC-031/13). The Steering Committee on its 18th meeting on June 18th considered a report from Committee Number 3 containing a reply to the question of whether or not the document on basic principles for a new Japanese constitution should go into such detail as it does in the light of the United Kingdom as contained in their paper. The Steering Committee referred that original paper to go back to Committee Number 3 for reconsideration with instructions that Committee Number 3 prepare a report setting out as narrowly as possible the difference between the majority view as previously expressed in SC-012/5 and the United Kingdom's position as expressed in their favor, and that such report be forwarded directly to the Commission at its next meeting for debate. Those papers are now before you and I would welcome discussion on that very important subject.

Dr. Evatt: I understand it is a fact that all members of the Commission and the representatives on the Committee agree with the first part. I'd like to say

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when you have a majority of the Commission like that that has done a lot of work on the subject -- a difficult subject and an urgent matter - - the only result of pressing or continuing to press a view which does not really reject the basic principles suggested by the majority, that nothing will be done. It is the same kind of problem that might arise as in the matter last before the Commission. The principle is so broad that you get no application of it in any relevant sense and therefore I take it the majority of the Committee dealing with the Constitution have stated the thing with some elaboration of principle and unless it's done in that way it seems to me you will just get nothing at all. The things will ljust end in the sands. I don't wish to do more in dealing with this basic principle number item than to say that whoever is responsible for its drafting deserves congratulations. There might be some things in it that will be altered in some way or that you would like to see altered, but I submit that the United Kingdom, under the circumstances as they now exist, should not go forward but that is the first point. There is one other matter I'd like to mention in relation to the practical problem we have as a Commission with the policy in relation to

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the Constitution. I suppose we could take it to vote and have a resolution adopting the majority view but it might not help if the dissent is continued. The practical position is this: that there is a Constitution now before, or about to be placed before the Japanese Diet. Does that Constitution conform to the principles either of Document "A" or Document "B"? Is the matter one that can be delayed or isn't the matter one of great urgency? If this Far Eastern Commission is to make its views felt on the Constitution at all it will have to be done quickly. My government and I have been thinking of this problem as to what would be a practical solution of the difficulty and it would seem - - for instance, let me quote what General MacArthur said as FEC Document 031/11: "In this matter speed is of the essence in dealing with the new Constitution due to the fact that, too readily lost lsight of, the Japanese people are now subject to their present wholly undemocratic constitution and will remain subject thereto so long as reform is delayed. Such delay furthermore but serves the interest of those who much prefer that such reforms be not instituted at all." We have got to be careful in dealing in this matter, because what we think is the best solution doesn't seem possible, and we further de-

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fer the delay in operations, General MacArthur says. He also said that the situation there is a fluid one. There is no crystalized view, apparently, of the questions involving the future frame of government. That is not surprising - - it's a new departure. What occurs to me is this: could not we consider as part of this program a provision that whatever Constitution is now being dealt with in Japan we should, as a matter of policy, declare that that should be an interim provisional Constitution? It should be subject to ratification some time to be fixed in the future, twelve months, two years, but I don't think the question of time need concern us. The principle is the matter of which we are concerned. We would think the solution would be then to have either a special session of the Japanese Diet or a special convention elected after this present Constitution, or whatever it is is operating, in place of replacing the other one, so that that authority can review the working of the Constitution in the light of a lot of experience gained. And then, at that time, let the Constitution as redrafted or amended, with the nine points or any great points of principle which are acceptable from the Constitution as a whole, be referred to the Japanese people

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for a vote and referendum. I think a proposal like that might turn out to be the most practical solution of this extraordinary difficult question. We must get something done. General MacArthur asks us to let the other Constitution operate, and up to that point I would think it's worth considering, provided the policy be that some opportunity be given for revision of this Constitution for a study of its working at some future time and then for a final reference of the acceptable discussion of its principles. I don't think it has been put before the Commission as a solution of this problem, but this is a very difficult problem. If we were unanimous on the decision here it would not be so difficult, so it might be better to take a vote whether or not we are unanimous. I would submit this other idea for consideration by you and my other colleagues to see whether along that line there isn't some solution to the problem. After all, the Constitution of a country really should be enforced by the people of that country and I'm not sure whether the present Japanese Parliament was elected for the purpose of making a Constitution or not. I rather gathered that they had the opposite impression.

I don't think when the Parliament is elected, not as a specific constituent assembly but for general jur-

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isdiction, it opens the matter of what is the purpose there. Whether there is any question or not - - that being some of the background of General MacArthur's having declared "time being rather the essence of this problem" - - I submit to the Commission a consideration of that.

I emphasize that the remarkable thing is on the principle of what the Constitution should contain. I think it's a very good document that is being prepared but I would like to know what are the contradictions between that Constitution drafted and the one that is now going to be put forward. If there are substantial differences that is another matter, but in any event I think it might solve this problem if we were allowed time off to express our views. I think the time should be allowed to express our views. The Japanese people, after constituent assembly, should express their views.

MR. NAGGIAR: I think you know the fundamental attitude I have on this matter of basic policy to be forwarded by the Commission: that from the very beginning the sooner we may arrive to some sort of formulation of basic policy the better. Now, we have this paper, the General's paper, and the British and United Kingdom's

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proposal. Must I understand it that in paragraph 3 on the first paper, Enclosure "A" comprises the Soviet delegation too? What is the Soviet Delegation in favor of? Is it in favor of this paper, Enclosure "A"? It seems that the only dissenting opinion was the United Kingdom delegation's opinion, but I would like to be sure that the Soviet Delegate was in favor of Enclosure "A".

MR. NOVIKOV: Yes, it is.

MR. NAGGIAR: So, from the French Government point of view, I'm in favor of Enclosure "A" and any statement of policy on this problem of the Constitution that would be considered as the formulation of policy by the Commission - - either that Document "A", if we could all agree on it, or any other document that would permit the Commission to fulfill what I call its principle duty to formulate a basic policy and we will have done a good job if we could at this stage approve unanimously a state of basic principle for the Constitution. So I'm in favor, if possible, of Enclosure "A" and if there is a possibility to agree on Enclosure "B" I'm in favor too, and if we can't agree on either of these documents I'm even in favor of sending both forward. After all, one is longer and the other one is shorter. I've no objection if we send the two documents, if it's necessary. So we might

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accept Enclosure "A" and add that the United Kingdom delegate has made an exception on Enclosure "B", but the main point of my discussion is that we are asked to agree on some sort of formulation of basic policy on the Constitution.

DR. de KAT ANGELINO: We take about the same standpoint as Mr. Naggiar. We are willing to accept Document "A", but we are also willing to limit ourselves to Document "B", if necessary.

CHAIRMAN: Your reasons would be pretty much those of the delegate from France?

DR. de KAT ANGELINO: Yes, for the sake of agreement.

DR. EVATT: Does the United Kingdom delegate regard those as being in conflict with any part?

MR. GRAVES: The views of my government have been sent to the Steering Committee as the fundamental difference of opinion as to what would be the guiding policy of the principles of this. Our views are that it should be the most general - - the original paper only - - and we have instructions to get some reconciliation between Document "A" and our own document which is very much more general and does not go into detail at all. At the moment

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we can not go beyond the original document without further instructions from our government. I don't think that there is any possibility, at the moment, of adding anything or of taking away anything from our document. We are unable to go beyond the original paper which is FEC-013/6.

DR. GAMBOA: Might I add that Document "A" is the result of three months deliberation by Committee Number 3. I happen to be a member of that committee, and our opinion is not too detailed. It contains only the basic principles. We are therefore definitely in favor of Document "A". It was only at the very last moment the objection of the United Kingdom was raised.

MR. GRAVES: I can't quite agree with that last statement of the Philippine delegate. We did put in an objection in the very early stage, but we went forward with the paper because of the Committee's basis that it had been known to arrive at an agreement of the fundamental principles- - the only ones that were authorized - - and the paper was taken up to the Steering Committee and then we had to take the stand and say that without further instructions we can't go beyond that. Right in the beginning we did put that objection in the basic principles.

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CHAIRMAN: Do I understand they were, in general, covered under our own basic papers on the Constitution which the criteria agreed upon in the second place?

MR. GRAVES: Our own paper was made out quite a long time ago. It had no reference to the American guidance onthe Constitution paper; but it consisted of six very general principles and they emerged from the understandings that there would be a general emergency, in view of our Constitution and their Constitution, to amend their own Constitution and get something in the form of a new Constitution that would flow naturally, but up to the present the government is not being permitted to go beyond their general principles.

CHAIRMAN: That was covered in our paper of criteria?

MR. GRAVES: Those three items, yes, generally represent our views.

MR. NAGGIAR: May I ask if there will be some strong objection - - if the Commission vote or accept Document "A" - - why they can't put the dissent of opinion of the United Kingdom delegate and the fact the United Government has only accepted Document "B" on that paper so at least we will have something on the Constitution?

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DR. EVATT: Take, for example, paragraph 2 of Document "A" of the basic principles, agreed to by all the governments except one - - There is reference to "the retention of the Emperor Institution in its present constitutional form. It is not considered consistent with the foregoing general objectives. Consequently, the Japanese should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines." That is a statement of policy. That is not a matter of detail at all. Whether you agree with a policy or not, that is an excellent expression of a policy. It's not particularized because you might take hundreds of clauses to particularize it.

That is dealt with in Enclosure "B". At least in paragrsph number 6 it says "The Head of the State shall have only such powers as are provided for in the Constitution and shall exercise those powers only on the advice of the Cabinet." Well, that deals with one portion of the topic. It takes up that if the Emperor Institution is retained that there would be a provision for retaining it and having it made more democratic.

Now, is the United Kingdom's objection simply to the details, any of them, or to any of the policy matters stated in there? If there is an objection on policy, if there is disagreement with the policy, that is very im-

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portant. The trouble about Mr. Naggiar's suggestion is this: that we can only adopt policy "A" - - we know it by concurring the votes of the countries specifically mentioned. And your resolution referring to dissent would only be stating in another way that that isn't the policy. That would be followed by a directive.

MR. NAGGIAR: The two documents could be sent.

DR. EVATT: Yes, but I think a directive should follow on policy.

MR. NAGGIAR: The Commission, as such, do not formulate directives.

DR. EVATT: I know; but the directive, as I understand, can only and should only follow upon a decision of the Commission given in accordance with the constitution of the Commission; and the important thing is to prevent further delay to ascertain whether there is a difference of opinion or merely a difference in expression. I should think it wouldn't take the United Kingdom two minutes to decide "Well, this is more detailed than the other, but that is a question of mere draftsmanship or just a question of taste." It's quite unimportant in relation to what is the main thing.

What is the policy that the emperor objects to the United Kingdom Government? I thought it was agreed to