

FEC-031/2816 July 1946FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

(Reference: SC-012/12; FEC-031/20; FEC-031/21;  
FEC-031/23)

Note by the Secretary General

1. The enclosure, a proposed policy statement relative to provisions for the review of a new Japanese constitution, referred by the Commission at its nineteenth meeting, 11 July 1946, to the Steering Committee, was considered by the Steering Committee at its twenty-first meeting, 16 July 1946, and is forwarded herewith by a majority vote for the consideration of the Far Eastern Commission.
2. The Soviet member reserved his position on the enclosure.

NELSON T. JOHNSON  
Secretary General

FEC-031/28



ENCLOSUREPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than two years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese Constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the Constitution.



FEC-031/29

24 July 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE  
ALLIED POWERS ON THE TEXT OF THE CONSTITUTION ---  
(Reference: FEC-031/19; SC-012/13; MI-003/1)

Note by the Secretary General

1. The enclosure, a request for consultation with the Supreme Commander for the Allied Powers on the text of the Japanese Constitution, approved by the Steering Committee at its twenty-second meeting, 23 July 1946, is forwarded herewith for the consideration of the Far Eastern Commission.

2. The enclosure incorporates certain textual revisions made by an ad hoc subcommittee of the Steering Committee pursuant to instructions of the Steering Committee.

NELSON T. JOHNSON  
Secretary General

FEC-031/29



E N C L O S U R ECONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS  
ON THE TEXT OF THE CONSTITUTION

The Far Eastern Commission requests the Chairman of the Commission to arrange, if practicable, for consultation between the Commission and the Supreme Commander for the Allied Powers regarding the fulfillment by the draft of the new Japanese constitution of the principles contained in the Potsdam Declaration and in the Commission's policy decision concerning the constitution, FEC 031/19. To facilitate this consultation the Commission requests the Chairman to convey to the Supreme Commander the substance of the following communication and to state to him that the Commission would greatly appreciate his views on the questions raised therein.

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1. The Far Eastern Commission is making a preliminary study of the draft of the new Japanese constitution (MI 003/1), which is now before the Diet, to determine whether the present draft satisfies the criteria established by the Commission in its statement of policy on basic principles and by the Potsdam Declaration and other controlling documents. Any comments which the Supreme Commander may wish to make on the points raised in this preliminary study would be most helpful to the Commission's work.

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

(a) Cabinet. FEC 031/19 provides that a majority of the Ministers of State, including the Prime Minister, shall be selected from the Diet. The draft constitution does not now provide for this principle of selection.



(b) Suffrage. FEC 031/19 provides that the Japanese Government be "based upon universal adult suffrage". It appears doubtful whether the draft constitution makes adequate provision in this respect. While Article XXXIX states that "both Houses shall consist of elected members, representative of all the people", it is a question whether this provision is specific to fulfill the requirement of FEC 031/19. Furthermore, it might be pointed out that, though it is provided in Article XL of the draft constitution that in respect of the qualifications of electors for both Houses there should be no discrimination because of race, creed, sex, social status, or family origin, the door is apparently left open for discrimination on such grounds as age, education, property, or income.

(c) Sovereignty. FEC 031/19 provides that "the Japanese Constitution should recognize that sovereign power resides in the people". The Commission is considering whether the draft constitution fulfills this requirement and has been confronted with a number of opposing views. The draft constitution provides in the Preamble: "We, the Japanese people, . . . do proclaim the sovereignty of the people's will". Aside from the question as to whether this clause adequately meets the provision of FEC 031/19, legal opinion has been presented to the Commission to the effect that a preamble is merely a declaratory and explanatory statement, the function of which is not to confer power and whose provisions are not a source of obligation. The United States Supreme Court has so held with respect to the Preamble of the United States Constitution. The legal position in Japan is more obscure, as it is impossible to draw a satisfactory conclusion on the basis of the Preamble of the Meiji Constitution because it has had the force of an Imperial edict.



Article I also contains a reference to sovereignty. It reads: "The Emperor shall be the symbol of the state and of the unity of the people, deriving his position from the sovereign will of the people." It is doubtful whether this article, which deals with the status of the Emperor, adequately fulfills the provisions in the basic principles regarding sovereignty.

To avoid all doubts on both points, it has been suggested that it should be clearly stated in the body of the constitution that "sovereign power resides in the people." The Commission would value the Supreme Commander's view.

3. The further question arises as to whether the draft constitution accords with the Potsdam Declaration.

(a) The draft constitution leaves several important matters to be enacted in subsequent laws, a situation which makes it difficult to determine the full implication of the articles concerned. Examples are the Imperial House Law (Articles II and V), the composition and methods of election of the two Houses (Chapter IV), and the joint committees of both Houses (Articles LVI, LVII and LXIII). The Commission realizes that many of these matters may properly be left for detailed determination by subsequent legislation. It queries, however, whether it would not better accord with the Potsdam Declaration to include in the constitution the basic provisions governing some of these matters, such as the composition of the House of Councilors.

(b) The Commission would raise the query whether Article LIV of the draft constitution should not set out clearly the grounds on which a member of the Diet may be expelled, in order to prevent this article from being used to exclude representatives of minority groups.

(c) In regard to Article LXIII, the Commission queries whether the selection of a Prime Minister should not be a matter for the House of Representatives alone, rather than for both Houses. This procedure would accord with practice in other democratic governments where the executive is responsible to the legislature, and would seem to follow naturally from Article LXV.



FEC 031/30

26 July 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS  
ON THE TEXT OF THE CONSTITUTION

(Reference: FEC 031/19; FEC 031/29; SC 012/13; MI 003/1)

Note by the Secretary General

1. The Far Eastern Commission at its twenty-first meeting, 25 July 1946, unanimously approved FEC 031/29, Consultation With the Supreme Commander for the Allied Powers on the Text of the Constitution, with the following amendments:

- a. Deletion of words "if practicable" in the second line of opening paragraph, page 1.
- b. Insertion of word "sufficiently" before the word "specific" in the sixth line of paragraph 2(b) on page 2.

NELSON T. JOHNSON  
Secretary General

FEC 031/30



FEC-031/31

30 July 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS  
ON THE TEXT OF THE CONSTITUTION

(Reference: FEC-031/26; FEC-031/29; FEC-031/30)

Note by the Secretary General

1. The enclosure, the reply of the Supreme Commander for the Allied Powers to the Commission's request for consultation on the text of the constitution, (FEC-031/30), is circulated herewith by the Chairman for the information of the Commission and referred to the STEERING COMMITTEE for consideration.

2. This paper should be listed as item 6 a. under "Other Business" on the Agenda for the Twenty-third meeting of the Steering Committee on Tuesday, 30 July 1946.

NELSON T. JOHNSON  
Secretary General

FEC-031/31



E N C L O S U R ECONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED  
POWERS ON THE TEXT OF THE CONSTITUTION

The position taken by the American member on the Far Eastern Commission with reference to the authority of the Commission is entirely in accord with the views held and expressed here. (FEC 031/26) For information and such use as you may desire, hereunder are my comments on the items enumerated for consultation:

2. (a) Cabinet. I believe the limitation that the Prime Minister and majority of Ministers of State must be selected from membership of the Diet is unwise as such requirement would deprive the Japanese Government of the services, in ministerial capacities, of many men of possibly higher qualification than might be found in the legislative body. It is an unusual and arbitrary restriction upon government which certainly is not to be found within our own governmental system, and I doubt if it can be found in any governmental system in the world. The existing requirement in the draft constitution that the Prime Minister must be designated by the Diet and approval of the Diet must be obtained to the appointment of all Ministers of State should satisfy every reasonable requirement of democratic process in such matter.

2. (b) Suffrage. While I feel that Articles 39 and 40 of the constitution adequately provide against the discrimination suggested, I shall endeavor to secure amendment to the draft constitution now before the Diet to specifically cover the points indicated.

2. (c) Sovereignty. While I feel that the draft constitution not only in the specific terms of the preamble but throughout, clearly demonstrates that the sovereign power resides in the people, in order to satisfy those who appear to be in doubt on this point, I shall endeavor to have the draft constitution further amended to place within its body the provision suggested.



3. (a) Reference first query contained in last paragraph of your radio, it is my opinion that the implementing legislation referred to is not appropriate for inclusion in the constitution, as such detailed matters of government should remain susceptible to change as conditions require by normal legislative process rather than by extraordinary constitutional amendment. The laws designed to implement any constitution finally adopted, such as the Imperial Household Law, will, of course, be closely scrutinized by the Supreme Commander for the Allied Powers to determine that they conform both to the principles laid down at Potsdam and the constitution itself.

3. (b) It is believed, furthermore, that the specific grounds on which a Diet member may be expelled finds no appropriate place in the constitution. Under normal practice, a legislative body is left free to make rules governing the qualifications of its own members. The draft constitution provides that the expulsion of a member of the Diet may be effected only by a two-thirds vote of the members present. This provision would appear to provide reasonable safeguard against arbitrary action by a majority group, and there appears to be no inconsistency with democratic process such as would warrant Allied interference.

3. (c) The last query as to whether selection of the Prime Minister should not be a matter for the House of Representatives alone is believed to be academic in view of the provisions of Article 63 of the draft constitution providing that where an irreconcilable difference of opinion exists between the two houses on selection, the decision of the House of Representatives shall be that of the Diet. There is some possibility that in the constitution finally adopted provision will be made for a unicameral legislature.

Throughout the queries of the members of the Far Eastern Commission there appears to be some indication of a tendency to attempt to obtain a perfection in constitutional government which we would not seem to be at liberty to insist upon in the implementation of the Potsdam requirement which is merely that a democratic



state be established. In this connection, sight should not be lost of the fact that this entire constitutional process now under way is one by the Japanese Government and people, and that the underlying purpose of our intervention is to assert in that the steps taken lead toward desired democratization. To attempt to force perfection in detail, among several democratic alternatives against Japanese objectors, would vitiate our very aim and purpose to secure adoption of a constitution which expresses the free will of the Japanese people.



FEC-031/32

30 July 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE  
ALLIED POWERS ON THE TEXT OF THE CONSTITUTION

(Reference: FEC-031/26; FEC-031/29; FEC-031/30; FEC-031/31)

Note by the Secretary General

1. The Steering Committee, at its twenty-third meeting, 30 July 1946 referred FEC-031/31 consultation with the Supreme Commander for the Allied Powers on the text of the Constitution, to Committee No. 3: Constitutional and Legal Reform for consideration and report.

2. It was agreed that a special meeting of the Steering Committee should be called, if necessary, to consider the report of Committee No. 3 on the enclosure of FEC 031/31.

3. A special meeting of the Far Eastern Commission will be called, if necessary, to consider the report of the Steering Committee.

NELSON T. JOHNSON  
Secretary General

FEC-031/32



FEC-031/33

12 August 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE  
ALLIED POWERS ON THE TEXT OF THE CONSTITUTION

(Reference: FEC-031/26; FEC-031/29; FEC-031/30; FEC-031/31)

Note by the Secretary General

1. At its twenty-first meeting on 25 July 1946, the Far Eastern Commission approved a request for consultation with the Supreme Commander for the Allied Powers relative to the text of the Japanese draft constitution (FEC-031/29). The reply of the Supreme Commander to this communication was circulated to the Far Eastern Commission as FEC-031/31 on 30 July 1946.
2. The enclosure, a message from the Supreme Commander for the Allied Powers, dated 2 August 1946, which further discusses the points raised in FEC-031/29, received by the Chairman of the Far Eastern Commission, is circulated herewith for the information of the Commission, and is referred to COMMITTEE NO. 3: CONSTITUTIONAL AND LEGAL REFORM.

NELSON T. JOHNSON  
Secretary General

FEC-031/33



E N C L O S U R ECONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE TEXT OF THE CONSTITUTION

The following comments are made with respect to the points raised by members of the Far Eastern Commission.

2(a) Cabinet

It was considered here that the existing requirement in the Draft Constitution that the Prime Minister must be designated by the Diet and approval of the Diet must be obtained to the appointment of all Ministers of State satisfied the underlying intent of Far Eastern Commission Policy in point. Should this not be so regarded by the Far Eastern Commission, I strongly urge the amendment of its policy. A rigid requirement that the Prime Minister and majority of Ministers of State must be selected from membership of the Diet would be unwise, as such requirement would deprive the Japanese Government of the services, in ministerial capacities, of many men of possibly higher qualification than might be found in the legislative body. It would tend to limit democratic process rather than advance it. It is an unusual and arbitrary restriction upon government which I doubt can be found in any governmental system in the world. The existing requirement in the draft constitution that the Prime Minister must be designated by the Diet and approval of the Diet must be obtained to the appointment of all Ministers of State should satisfy every reasonable requirement of democratic process in such matter.

2(b) Suffrage

While I have felt that articles 39 and 40 of the Draft Constitution provide adequate safeguard against improper electoral discrimination, I understand that the specific prohibition against discrimination in article 40 is being extended by the Japanese themselves to embrace education, property and income. I do not feel that the specific inclusion of "age" would be wise or warranted. The age at which persons reach mature political thought is for the people themselves to determine through the normal evolution of law, just as is the age at which a person might be termed "adult". In the case of the Japanese people, the present electoral law pro-



vides 19 as the minimum qualifying age, but whether this be fixed as at present or at 25 as formerly would apply to all classes of the people and hence there is no "discrimination" within the ordinarily accepted use of the term. On the other hand, if such a provision were incorporated in the constitution, confusion inevitably would result in determining the electoral age necessary to satisfy the same.

2(c) Soverignty

In the course of the unrestrained debate on the proposed constitution now proceeding in the National Diet, considerable argument has been advanced supporting the provision that a ... of the sovereign position should be made in the body of the constitution itself, although it is generally acknowledged by best legal opinion that in Japan the provisions of the preamble would be as mandatory upon the people as would be the articles that follow. It is my understanding that, to settle this controversial point, it is probably that the Japanese will amend the Draft Constitution in order that it specifically reaffirms in one of the articles thereof that the sovereign power resides in the people. Reference questions raised your paragraph 3:

3(a) I am of the opinion that the implementing legislation referred to should not be included in the constitution, as such detailed matters of government might better remain susceptible to change, as conditions require, by normal legislative process rather than be handicapped by the necessity for extraordinary constitutional amendment. The laws designed to implement any constitution finally adopted, such as the Imperial Household Law, will of course be closely scrutinized by the Supreme Commander for the Allied Powers to determine that they are not inconsistent with any principle laid down at Potsdam nor with the constitution itself;

3(b) I am of the opinion that the specific grounds on which a Diet member may be expelled finds no appropriate place in the constitution. Under normal practice, a legislative body is left free to make rules governing the qualifications of its own members. The Draft Constitution provides that the expulsion of a member of the Diet may be effected only by a 2/3 vote of its



members present, and such provision would appear to provide reasonable safeguard against arbitrary action by majority groups:

3(c) Question concerning the selection of the Prime Minister is believed to be academic in the view of the provisions of article 63 of the Draft Constitution providing that where an irreconcilable difference of opinion exists between the two Houses on such selection, the decision of the House of Representatives shall be that of the Diet. In this connection there is some possibility that in the constitution finally adopted provision will be made for a unicameral legislature.

Throughout the queries of the members of the Far Eastern Commission, there appears to be some indication of a tendency to attempt to obtain a perfection in constitutional government which we would not seem to be at liberty to insist upon in implementation of the Potsdam requirement for the establishment of a democratic state. In this connection, sight should not be lost of the fact that the entire constitutional amendment process now under way is one by the Japanese Government and people, and that the sole justification for our intervention is to ascertain that the steps taken lead toward desired democratization. I am sure that the Far Eastern Commission is equally cognizant with me of the sensitive and delicate position which the Allied Powers occupy in the effort to secure for Japan a democratic constitution which will be fact worth more than a mere scrap of paper. For this reason it is essential to avoid the slightest unnecessary display or show of force underlying our effort, or the insistence upon perfection in detail among several democratic alternatives against Japanese objections. Such action on our part would vitiate our very aim and purpose to secure adoption of a constitution which not only expresses the free will of the Japanese people but which will command their allegiance long after the withdrawal of Allied Forces.



FEC 031/34

13 August 1946

FAR EASTERN COMMISSION

CONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED  
POWERS ON THE TEXT OF THE CONSTITUTION

(Reference: FEC 031/19; FEC 031/29; FEC 031/31;  
FEC 031/33; C3 005/5; C3 005/6;  
MI 003/1; MI 003/3)

Note by the Secretary General

1. The enclosure, a reply to FEC 031/31, the remarks of the Supreme Commander for the Allied Powers in response to the Far Eastern Commission's consultation relative to the draft constitution (FEC 031/29), was approved, as amended, by the Steering Committee, at its twenty-fifth meeting, 13 August 1946, and is forwarded herewith for the consideration of the Far Eastern Commission.

2. The United States member reserved his position on the enclosure.

NELSON T. JOHNSON  
Secretary General

FEC 031/34



ENCLOSURECONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS ON THE TEXT OF THE CONSTITUTION

The Far Eastern Commission requests the Chairman of the Commission to convey to the Supreme Commander for the Allied Powers the substance of the following communication containing the Commission's comments on the Supreme Commander's replies to the Commission's request for consultation on the text of the draft constitution.

1. The Commission thanks the Supreme Commander for his thoughtful and prompt reply to its communication, which has greatly contributed to the clarification of its own thinking on many of these issues, and for the amplified reply dated 2 August 1946.

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

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



The following is a brief summary of the principal reasons why the Commission inserted in its policy decision the provision referred to:

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

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

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

Some members of the Commission were strongly of the opinion that all cabinet ministers should be members of the Diet, but the Commission realized the particular relevance to Japan of the point made by the Supreme Commander, namely, that such a limitation "would deprive the Japanese Government of the services, in ministerial capacities, of many men of possibly higher qualifications than might be found in the legislative body." Hence the Commission decided as a matter of policy that only a majority of the ministers of state need be members of the Diet and considers that this requirement gives sufficient freedom of choice and at the same time enhances the essentially democratic structure of the Constitution.

FEC 031/34



In view of the fact that Japan has not followed this practice in the past, it is impossible to rely upon established procedure to ensure that it will be followed in the future. The Commission, therefore, after full consideration of the views of the Supreme Commander, adheres to its opinion that the Constitution should contain a provision on this point.

2 (b) Suffrage. The Far Eastern Commission is gratified to learn that the Supreme Commander will endeavor to secure amendment to Articles XXXIX and XL of the draft constitution now before the Diet to cover the points raised by the Commission on the question of universal suffrage and of discrimination in the case of qualifications of electors and members for both Houses. The Commission's considerations on the question of age took account not of the question of what age should be regarded as adult for the purpose of suffrage, which must be essentially a matter for the Japanese to determine, but of the possibility that there might be a difference between the age requirements for the electors of the House of Representatives and those for the electors of the House of Councillors. The Commission considers that FEC-031/19 requires that universal adult suffrage should apply to both Houses.

2 (c) Sovereignty. The Commission is also pleased to note that the Supreme Commander will endeavor to have the draft constitution further amended to place within its body the provision that "sovereign power resides in the people."

3 (a) Implementing Legislation. While the Commission agrees that it is not appropriate to include in the Constitution implementing legislation, such as that concerning the Imperial House Law, the composition and methods of elections of both Houses, and the composition



and functioning of their joint committees, it considers that to leave such important matters entirely to be enacted by law, allows for the resurrection of undemocratic principles in the future. The Commission realizes that any such laws passed now or in the near future will be subject to scrutiny to determine whether they conform to the principles of the Potsdam Declaration and other controlling documents, but at a later date it would be possible for such laws to be amended by ordinary legislative process within the framework of the Constitution but in such a way as to contain undemocratic principles. The Commission therefore considers that it would be a valuable addition to the democratic character of the Constitution if in respect of these subjects certain broad general principles were embodied in the Constitution itself.

Naturally, the Commission's apprehension on these points may be allayed when it receives advice of further amendments which may be made to the draft constitution. In any case, the Commission would appreciate any further views the Supreme Commander may have on the subject.

3 (b) Expulsion of Diet Members. The Commission agrees that in the provision for the expulsion of Diet members there does not appear to be such inconsistency with normal democratic practice as would warrant Allied interference. Nevertheless, it is not clear from the text of the draft constitution whether the provision for expulsion by two-thirds of the members present applies only to the case of misconduct or whether it is a blanket provision for expulsion which may well be liable to political abuse. The Commission recalls that the expulsion by lawful process of members of the legislature who opposed him politically was one of the devices by which



Hitler attained full control of the state.

The Commission would welcome an appropriate revision of Article LIV, although it does not propose to suggest to the Supreme Commander that he insist upon such a revision being made if he is satisfied that the provision in question is not capable of a blanket interpretation.

3 (c) Selection of Prime Minister. The Commission desires to point out that its original query was based upon the following considerations.

The House of Representatives is the House which can be expected to represent the current will of the Japanese people. It is the House to which the Cabinet is responsible. In the case of doubt or dissension, it is the only House which can be dissolved to permit an appeal to the people. The people at a general election are voting not only for particular candidates in each constituency but also, by this means, for a government as a whole. The inevitable effect of giving the House of Councillors a say in the selection of a prime minister would be to allow the upper House to influence the choice of prime minister away from what it would otherwise be; in other words, the will of the people as expressed in the lower House would be frustrated. Furthermore, under the proposed constitution, where elections for the two Houses are unlikely to be simultaneous, a newly-elected House of Representatives with a clear majority for one party might be confronted by a House of Councillors dominated by members of opposing parties, all of whom might have been elected nearly three and six years previously. Consequently, the Commission considered that the choice of prime minister should lie with the House of Representatives alone.



It is true that Article LXIII provides that in the absence of agreement the House of Representatives shall prevail. But this may entail long delay, particularly as it is not clear from the draft how long the matter can remain with the joint committee. It is extremely disturbing to democratic government for the executive to be without an effective head for a long time. Moreover, as a result of initial disagreement between the two Houses a compromise is likely to be reached by the selection of a prime minister who is not a leading member of the dominant party in the lower House.

For similar reasons, the Commission believes that the appointment of ministers of state should be subject to the approval of the House of Representatives only, and not of both Houses as provided in Article LXIV.

The Commission does not want to ask the Supreme Commander to have made in the draft constitution more changes than are absolutely necessary, and appreciates his cooperative attitude in the changes so far suggested. The Commission inclines to the view that the question of the method of selection of prime minister and members of the Cabinet is fundamental in considering what constitutes a "responsible government" within the meaning of the Potsdam Declaration, but before coming to a final decision on this matter, the Commission would appreciate the Supreme Commander's further views in the light of the foregoing.



FEC-031/35

15 August 1946

FAR EASTERN COMMISSION

PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

(Reference: FEC-031/28; FEC-031/23; FEC-031/21  
FEC-031/26; FEC-031/20; SC-012/12)

Note by the Secretary General

1. The enclosure, a statement made by the Soviet member of the Far Eastern Commission at the twenty-third meeting of the Far Eastern Commission relating to provisions for the review of a new Japanese Constitution, is circulated herewith for the information of the Far Eastern Commission, and is referred, at the instruction of the Commission, to COMMITTEE NO. 3: CONSTITUTIONAL AND LEGAL REFORM for consideration.

2. The Commission also referred FEC-031/26, U. S. Policy in Regard to the Authority of the Far Eastern Commission to Approve a New Japanese Constitution, and other relevant documents to Committee No. 3 with instructions to study the matter as expeditiously as possible and to report to the Commission with the understanding that the Commission may be called in a special session when Committee No. 3 is ready to make its report.

NELSON T. JOHNSON  
Secretary General

FEC-031/35



ENCLOSUREPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

In accordance with the instructions of the U.S.S.R. Government and in reply to the Statement of the U.S. Member, FEC-031/26, U.S. Policy in Regard to The Authority of the Far Eastern Commission to Approve a New Japanese Constitution, the Soviet Delegation hereby informs the Members of the Far Eastern Commission of its view in regard to the question of authority of the Far Eastern Commission in the matter of procedure of the approval of the new Japanese Constitution.

I. The Soviet Delegation does not in any way deny the right of the Japanese Government and people to adopt a new Constitution, subject however, to the following necessary provisions:

a. if the new constitution is in compliance with the requirements of the Potsdam Declaration as providing the removal of all obstacles to the revival and strengthening of the democratic tendencies among the Japanese people; and

b. if such new Constitution meets the requirements of the policy decision of the Far Eastern Commission as set out in the Document FEC-031/19 of July 2, 1946 - "Basic Principles for a New Japanese Constitution".

2. In order to be able to determine whether the proposed draft of the constitution is in line with the aforesaid two documents, the Far Eastern Commission must consider the draft constitution and pass on it a policy decision.

3. Only after the Far Eastern Commission has passed the decision that the new draft Constitution is in accord with the provisions of the Potsdam Declaration and the requirements set out in FEC-031/19, the Constitution will be adopted by the Diet and will in due season become a law.

4. In case the Far Eastern Commission decides that the draft of the Constitution as a whole or in its particular articles does not comply with the Potsdam Declaration or with the other requirements as mentioned above, the Japanese Diet shall insert therein the appropriate amendments.



FEC-031/36

19 August 1946

FAR EASTERN COMMISSION

PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

(Reference: FEC-031/35, FEC-031/28,  
FEC-031/26, and SC-012/12)

Note by the Secretary General

1. The Far Eastern Commission, at its 23rd meeting on 15 August 1946, referred FEC-031/35, Soviet Statement on Review of the Constitution, and other relevant documents, to COMMITTEE NO.3: CONSTITUTIONAL AND LEGAL REFORM, with instructions that the Committee examine the matter expeditiously and report directly back to the Commission.

2. Committee No. 3, at its 30th meeting on 15 August 1946 and its 31st meeting on 19 August 1946, considered FEC-031/35 along with other relevant documents, and as a result of its consideration decided to amend FEC-031/28, Provisions for the Review of a New Japanese Constitution.

3. The enclosure, the amended version of FEC-031/28, Provisions for the Review of a New Japanese Constitution, was approved by Committee No. 3 at its 31st meeting, and is forwarded herewith for the consideration of the Far Eastern Commission.

4. The U.S. member and the Soviet member reserved their positions on the enclosure.

NELSON T. JOHNSON  
Secretary General

FEC-031/36



E N C L O S U R EPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

The new constitution, with such changes as may be required by the Far Eastern Commission, will in due season after promulgation become the legal successor of the present constitution but shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph.

In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than two years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution.



CONFIDENTIALCOPY NO. 127FEC-031/2726 August 1946

COMMUNICATIONS OF THE FAR EASTERN COMMISSION POLICY DECISIONS  
ON THE DRAFT CONSTITUTION BY THE SUPREME COMMANDER FOR  
THE ALLIED POWERS TO THE JAPANESE GOVERNMENT

Reference: - (a) FEC Minutes 21st Meeting 28 July 1946  
Item 5 - pages 3-4  
(b) FEC-031/29 (Consultation with SCAP  
on the Text of the Constitution)  
24 July 1946

Note by the Secretary General

1. With respect to FEC-031/29 "Consultation with the Supreme Commander for the Allied Powers on the Text of the Constitution", the Minutes of the twenty-first Meeting of the Far Eastern Commission, 25 July 1946, read, in part:

"ADMIRAL RAMISHVILI asked whether, if a communication were forwarded to the Supreme Commander, it would be conveyed by him to the appropriate members of the Japanese Government. SIR CARL BERENDSEN replied that, in view of the acceptance by the Commission of the decision of the Supreme Commander not to publicize the Commission policy decision on the constitution, the Japanese Government could not therefore be informed of FEC-031/29. MR. COLLINS pointed out that, coupled with the acceptance by the Commission of the Supreme Commander's commendation against publicity, there had been assurances from General McCoy (Minutes, 19th Far Eastern Commission Meeting, 11 July 1946) that the appropriate members of the Japanese Government would, nevertheless, be informed of the policy decision of the Commission. GENERAL HILLDRING agreed that there was no other practical method by which the Supreme Commander could implement the Commission decision. The Supreme Commander would have either to inform members of the Japanese Government personally of the policy decision or to include the policy decision in a directive to the Diet.

"MR. COLLINS asked if it was yet known whether the Supreme Commander had informed the Japanese Government of the Commission policy decision. GENERAL HILLDRING replied that he did not know what steps the Supreme Commander had taken, but that this information could be obtained."

2. The enclosure, a memorandum to the Secretary General from the United States Government, gives the information which General Hilldring agreed to obtain on this subject, and is circulated herewith for the information of the Commission.

3. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

HUGH D. FARLEY  
Acting Secretary General

FEC-031/37



CONFIDENTIAL

ENCLOSUREDepartment of State  
Washington

August 22, 1946

MEMORANDUM FOR THE SECRETARY GENERAL,  
FAR EASTERN COMMISSION

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

/s/ Ernest A. Gross  
for J. H. HILLDRING  
Assistant Secretary



FEC-031/3829 August 1946FAR EASTERN COMMISSIONCONSULTATION WITH THE SUPREME COMMANDER FOR THE ALLIED POWERS  
ON THE TEXT OF THE CONSTITUTIONNote by the Secretary General

The Far Eastern Commission at its twenty-fourth meeting, 28 August 1946, unanimously agreed that the communication FEC-031/34, Consultation with the Supreme Commander for the Allied Powers on the Text of the Constitution, should not be sent now, as subsequent developments have rendered it partially, at least, out of date, and as further consultation of this type would no longer appear necessary.

HUGH D. FARLEY  
Acting Secretary General

FEC-031/38



FEC-031/3925 September 1946FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

(Reference: FEC-031/36; FEC-031/35; FEC-031/28;  
FEC-031/26; SC-012/12; and C3-005 Series)

Note by the Secretary General

1. The enclosure, a proposed policy decision relative to provisions for the review of a new Japanese Constitution, incorporating a proposed amendment of paragraph 1 of FEC-031/36, submitted by the United States Representative at the Twenty-Seventh Meeting of the Far Eastern Commission, 21 September 1946, is circulated herewith for the consideration of the Far Eastern Commission.

2. The United States Representative stated that his Government was prepared to accept the enclosure, provided that the Commission would subsequently consider the time and manner of issuance of the directive based upon the enclosure.

NELSON I. JOHNSON  
Secretary General

FEC-031/39



ENCLOSUREPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

~~The new constitution, with such changes as may be required by the Far Eastern Commission, will in due season after promulgation become the legal successor of the present constitution but shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph.~~

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

2. In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than two years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution.



FEC 031/40

15 October 1946

FAR EASTERN COMMISSION

PROVISIONS FOR THE REVIEW OF A NEW  
JAPANESE CONSTITUTION

(Reference: SC 012/12; FEC 031/20; FEC 031/21;  
FEC 031/23; FEC 021/25; FEC 031/28; FEC 031/36;  
FEC 031/39)

Note by the Secretary General

1. The enclosure, a revision of FEC 031/39 relative to review of the Japanese Constitution as agreed to by the Australian, United States, and Soviet members, is circulated herewith for the consideration of the Far Eastern Commission.

2. At the 29th meeting of the Far Eastern Commission on 10 October 1946, the Chairman requested permission to postpone consideration of FEC 031/39 on review of the Japanese Constitution pending informal consultation by him with the Australian and Soviet representatives.

NELSON T. JOHNSON  
Secretary General

FEC 031/40



ENCLOSUREPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision of the Far Eastern Commission, shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph.

2. In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than two years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution.



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FEC-031/41

23 October 1946

COPY NO. \_\_\_\_\_

FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

(Reference: FEC-031/40)

Note by the Secretary General

1. Enclosure "A", a decision of policy relative to provisions for the review of a new Japanese Constitution, was unanimously approved by the Far Eastern Commission at its thirtieth meeting on 17 October 1946.
2. The letter of transmittal of the Secretary General forwarding this decision on behalf of the Far Eastern Commission to the Acting Secretary of State of the United States Government in accordance with the Terms of Reference, is circulated herewith as Enclosure "B".
3. The letter of transmittal also represents in itself a consultation with the Supreme Commander for the Allied Powers with regard to the time and manner of issuance of Enclosure "A".
4. In addition to the enclosed policy decision the text of Item 4 of the minutes of the thirtieth meeting of the Commission was forwarded to the Acting Secretary of State.
5. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

NELSON I. JOHNSON  
Secretary General

FEC-031/41



CONFIDENTIALENCLOSURE "A"PROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision of the Far Eastern Commission, shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph.

2. In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than one year and not later than two years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution.



CONFIDENTIALENCLOSURE "B"

17 October 1946

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

My dear Mr. Secretary:

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

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

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

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

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

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

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

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

Sincerely yours,

Nelson T. Johnson  
Secretary General



CONFIDENTIALCOPY NO. 159FEC 031/421 November 1946FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION:  
REPLY OF THE SUPREME COMMANDER FOR THE ALLIED POWERS  
TO CONSULTATION

(Reference: FEC 031/41)

Note by the Secretary General.

1. The enclosure, the reply of the Supreme Commander for the Allied Powers to the consultation by the Chairman contained in FEC 031/41 relative to publication of the policy decision on Provisions for the Review of a New Japanese Constitution, received this date by the Chairman, is circulated herewith for the consideration of the Far Eastern Commission.

2. The Chairman has pointed out that the enclosure is not a reply to the additional message on this subject dispatched by the Chairman on 3/ October as a result of discussion in the thirty-second meeting of the Far Eastern Commission on that date.

3. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

NELSON T. JOHNSON  
Secretary General

FEC 031/42



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1 November 1946

ENCLOSUREPROVISIONS FOR THE REVIEW OF A NEW JAPANESE  
CONSTITUTION: REPLY OF THE SUPREME COMMANDER  
FOR THE ALLIED POWERS TO CONSULTATION

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

Throughout the development of the new constitution, action has been largely avoided which might be construed as compulsory process in order that nothing might negate or compromise the free character essential if the instrument is to live. The publication of referenced statement of policy on the other hand would inevitably result in just what we have thus scrupulously tried to avoid. And for what purpose? It would instantly be viewed in the public mind as a display of force by the Allied Powers. It would destroy the free character of the Charter and its expression of the popular will by the coercive threat of external force to be implied. It would



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reduce the very essence of durability upon which the instrument has been built to a frail skeleton of temporary expedience overshadowed by the threat of forced abrogation or revision at the point of Allied bayonets, with an open and continuing invitation to the forces of reaction to conserve and extend their political strength against the time that, taking advantage of its very terms, pressure might be brought upon the Diet or the people direct to destroy the constitution and restore the old order which Allied policy seeks permanently to suppress.

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



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FEC-031/43

7 November 1946

CLASSIFICATION CHANGED	
TO	<i>Unclassified</i>
BY	<i>FEC-031/46</i>
	<i>4/24/51</i>
BY	

COPY NO.

153FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTIONNote by the Secretary General

1. The enclosure, a United States directive to the Supreme Commander for the Allied Powers forwarding the statement of policy of the Far Eastern Commission on provisions for the review of a new Japanese Constitution, is circulated herewith for the information of the Commission.

2. This directive was forwarded to the Supreme Commander for the Allied Powers on 28 October 1946.

3. A certified copy of the United States directive to the Supreme Commander for the Allied Powers has been filed with the Commission in accordance with Section III, paragraph 4, of the Terms of Reference.

4. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

NELSON T. JOHNSON  
Secretary General

FEC-031/43



CONFIDENTIALSerial No. 62

CLASSIFICATION CHANGED	
TO	<i>Unclassified</i>
BY AUTHORITY OF	<i>FEC-031/46</i>
<i>4/24/51</i>	DATE 28 October 1946
BY	

DIRECTIVE REGARDING PROVISIONS FOR THE REVIEW  
OF A NEW JAPANESE CONSTITUTION

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

"1. The new constitution, which will in due season after promulgation become the legal successor of the present constitution with such changes as have been made or may be made as a result of consideration and policy decision of the Far Eastern Commission, shall be subject to further review by the Diet and the Far Eastern Commission in terms of the following paragraph.

"2. In order that the Japanese people may have an opportunity, after the new constitution goes into effect, to reconsider it in the light of the experience of its working, and in order that the Far Eastern Commission may satisfy itself that the constitution fulfills the terms of the Potsdam Declaration and other controlling documents, the Commission decides as a matter of policy that, not sooner than 1 year and not later than 2 years after it goes into effect, the situation with respect to the new constitution should be reviewed by the Diet. Without prejudice to the continuing jurisdiction of the Far Eastern Commission at any time, the Commission shall also review the constitution within this same period. The Far Eastern Commission, in determining whether the Japanese constitution is an expression of the free will of the Japanese people, may require a referendum or some other appropriate procedure for ascertaining Japanese opinion with respect to the constitution."

FEC-031/43



CONFIDENTIALCOPY NO. 152FEC-031/4412 November 1946FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION:  
VERBATIM MINUTES OF THIRTY-SECOND AND THIRTY-THIRD  
FAR EASTERN COMMISSION MEETINGS

(Reference: FEC-031/41, FEC-031/42)

Note by the Secretary General

1. The enclosure, verbatim extracts from the minutes of the thirty-second Far Eastern Commission meeting on 31 October 1946 and its thirty-third meeting on 1 November 1946 relative to constitutional review is circulated herewith for the information of the Far Eastern Commission.

2. The Far Eastern Commission at its thirty-third meeting on 1 November 1946 referred FEC-031/42, Reply of the Supreme Commander Relative To Constitutional Review, to Committee No. 3: Constitutional and Legal Reform with instructions to prepare a brief for consideration by the Commission to be forwarded to the Supreme Commander for the Allied Powers. Committee No. 3 at its thirty-seventh meeting on 5 November 1946 agreed to recommend to the Far Eastern Commission that relevant extracts from the verbatim minutes of the thirty-second and thirty-third Commission meetings be forwarded to the Supreme Commander. The Steering Committee at its thirty-seventh meeting on 6 November 1946 approved the recommendation. In view of the need for expedition, the Chairman of the Far Eastern Commission, after consultation on 7 November 1946 with the Chairman of Committee No. 3 and with the approval of the Chairman of the Steering Committee agreed to forward these extracts directly to the Supreme Commander without waiting for approval of the Far Eastern Commission.

3. These verbatim extracts were corrected and approved individually by the representatives concerned prior to their being forwarded.

4. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

FEC-031/44

NELSON T. JOHNSON  
Secretary General



CONFIDENTIALE N C L O S U R EPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION:  
VERBATIM MINUTES OF THIRTY-SECOND AND THIRTY-THIRD  
FAR EASTERN COMMISSION MEETINGSI. THIRTY-SECOND MEETING OF THE FAR EASTERN COMMISSION,  
31 October 1946ITEM 5 - PROVISION FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION. (FEC-031/41)

GEN. MCCOY: Item 5 is still kept on the agenda for continued interest.

MAJOR PLIMSOLL: Mr. Chairman, may I say something concerning this item? Mr. Chairman, this item has been placed back on the agenda today at my request to consider the question of publication. You will remember that the Commission adopted this statement on the 17th of October -- that is a fortnight ago today -- with the understanding that after we had received the views of the Supreme Commander on publication, the Commission should then proceed to discuss the time and the manner of publication of this decision. The Commission resolved that General MacArthur should be consulted on this matter and that at the same time he should be informed of the views that were expressed at this Commission meeting by certain members, particularly the Australian member, Mr. Makin. I think General MacArthur was probably sent a copy of the minutes and in those minutes there are such statements as these by Mr. Makin: "To delay announcement might lay the Commission open to the charge by the Japanese that it had broken faith by not declaring to them the existence of the review provision, particularly since the Japanese were planning elaborate ceremonies to celebrate the new constitution". And again, "He agreed that the Supreme Commander should be consulted on the question of publication. He urged, however, that such announcement take place as soon as possible, and that it not be delayed later than the date of promulgation of the constitution". Now, the Constitution is going to be promulgated on the third of November, which is next Sunday or actually in Washington time next Saturday, two days from now. And so this is the last time, I think, that the Commission can decide before

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promulgation the question of publication.

I feel that the question of publication is not simply an occupation problem. It is a problem that relates to the whole question of the faith and the intention of the Allied powers. There are several ways in which the Supreme Commander could publish it. One is, to talk informally to Yoshida, the Japanese premier, on the subject. That is the way in which General MacArthur has acted in the past on a number of occasions. Now, I think that is open to a number of objections. This policy paper will not come into effect completely for two years time possibly, and Yoshida may not be in power. He may be dead. Quite possibly he is going to be replaced within two years by a premier of a very different political complexion, and whatever we may say to Yoshida privately now may not have very much effect on his successor in one or two years' time.

A second way in which we could inform the Japanese is to tell them in two years' time that they have to hold a special session of the Diet to consider this matter and that the Far Eastern Commission is then going to review it. That may be a little difficult because the Japanese would probably feel that the Allied powers have been guilty of a breach of faith with them. We have allowed them in two days' time to promulgate this Constitution with a flourish of trumpets. We have given the impression that they have adopted this Constitution of their own free will and that the Allied powers have not interfered because they are satisfied with the Constitution, and then in two years time we are going to come out and say that the Constitution must be reviewed, that we ourselves had some doubts concerning the Constitution, and that we had passed a resolution that it should be reviewed in two years' time, that the Japanese themselves should review it -- and yet we did not tell them that. And I think the Japanese can very well argue in two years' time that a resolution or decision which was not communicated to them is not binding upon them. It is very difficult first to say what the situation in Japan is going to be in two years. Conditions may have changed very much. We may no longer be able to influence the Japanese



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quite so easily by informal methods.

The third way, and I think the way we should adopt, is to tell the Japanese by the time of promulgation that the Commission has passed this resolution, and that within one or two years the Constitution shall be reviewed by both the Japanese Diet and by the Far Eastern Commission. That may have certain temporary disadvantages, but it is a straightforward way, it is an honest way, and it is a way that is going to avoid us getting involved in long-term difficulties. We have nothing to be ashamed of in this decision, and the Japanese people, I think, themselves can be brought to welcome it. And I have quite a lot of confidence in General MacArthur's ability to inform the Japanese people of this. General MacArthur in the past has been able to make decisions acceptable to them, and I am quite sure that at the time of promulgation he can inform the Japanese people of this decision without in any way arousing either their hostility or creating distrust of the Constitution.

To repeat, I don't think this is simply a matter of occupation policy. It is a matter which involves each country on this Commission. Each of us has become a party to a decision that the Constitution shall be reviewed in two years, and I think our relations with the Japanese people, the faith that we are trying to build up between the two parties, the Japanese and the Allied Powers, is involved in this. We have got to tell them now that we have come to this decision. I understand that General MacArthur has not yet replied, and I am not critical of him for not doing that because we know in the past he has been very prompt in replying to us, and there must be some reason for his delay in this case. I think, before deciding what action we are to take, it would be a good thing if other members would express their opinion on the general principle of publication.

GEN. MCCOY: I am sorry I assure you that we haven't had a reply from General MacArthur, and I also assure you that it is no fault of his. My Government was conscious of this very



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problem that you have stated so well, clearly, and reasonably, and it was for that reason that I made the reservation. My Government would have much preferred not to have that paper, but after its very careful consideration, after Dr. Evatt put it before us as an idea and a formula which seemed well considered by him and the Commission, my Government did feel that, in spite of the fact they preferred not to have had it, they would meet the situation by compromising and going with the Commission. But, at the same time, we made the following reservation, which I repeated at the last meeting: "The United States was prepared to agree to the enclosed policy provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider the time and manner of issuance of the policy decision embodied in the paper". The United States member's statement explained that the inclosed policy would be forwarded to the United States Government to be transmitted as a directive to the Supreme Commander in the usual fashion. At the same time, the Chairman would request the Supreme Commander to express to the Commission his views as to the time and manner of issuance of the enclosed policy decision. After the views of the Supreme Commander have been received, the Commission would then be in a position to consider the time and manner of the issuance of this policy decision. The Commission agreed to the proviso of the United States member and authorized him to consult with the Supreme Commander in order to obtain his views on this subject.

COL. POWLES: Mr. Chairman, I would like very heartily to indorse the remarks made by Major Plimsoll. There is very little that I should like to add -- I think he has covered the ground extremely adequately -- except to say that we too consider it an extremely important matter, and I am inclined to think that when the work of the Commission is reviewed in subsequent years, this decision will rank as one of the most important decisions that the Commission has ever made. In view of that fact, I do feel that we must exercise to the fullest our sense



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of individual and collective responsibility in deciding the very best method for it to be published. And I think that it is very obvious that, as Major Plimsoll stated it isn't entirely a matter which must be reserved for the consideration of the occupying authorities alone.

MR. COLLINS: Mr. Chairman, I think we all realize the difficulty of the position that the Commission is now in and the advisability of having an expression of opinion from the Supreme Commander, before any decision is taken on this matter, because of its importance, particularly with regard to the psychological moment at which such an announcement should be made in Japan. I think it seems very clear also that, from the standpoint of the Commission keeping faith, as Major Plimsoll has said, with the Japanese, the date of promulgation is undoubtedly the most appropriate time at which such an announcement could be made. I wonder if there would be any possibility or any likelihood of receiving word from General MacArthur in time to have a special meeting of the Commission on this subject tomorrow, so that we might take his views into consideration.

GEN. MCCOY: I will declare a recess for a few moments while I consult the department concerned.

(The meeting recessed for ten minutes.)

GEN. MCCOY: We will please come to open session again. The expressions of the representatives from Australia and New Zealand are very pertinent to the question and, after due consideration, I will ask my Government to communicate immediately to the Supreme Commander -- that is, not only the substance of it but the actual expressions as stated by Major Plimsoll and as agreed to by Colonel Powles. And, if we get an immediate reply, I will call an emergency meeting of the Commission to consider it.

MAJOR PLIMSOLL: It might be useful to the Supreme Commander if he knew to what extent other countries agreed -- to what extent that is the prevailing view of the Commission.

GEN. MCCOY: Well, I didn't put it to the Commission because--



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MAJOR FLIMSOLL: I didn't want a vote taken, Mr. Chairman.

GEN. MCCOY: The Commission had already expressed itself in the sense as I read. But, I accepted your remarks as pertinent and feel that General MacArthur should have the benefit of them immediately and will try my best to get it to him as soon as possible.

SIR GEORGE SANSOM: Mr. Chairman, may I make a few remarks as partial reinforcement to what has been said by the Australian and New Zealand representatives. There has been a rather considerable delay in hearing from the Supreme Commander and I feel it personally very difficult, in the absence of the views of the Supreme Commander, to reach a decision in my own mind as to what is the proper time and manner of publication. But I do agree very much with what those two representatives have said on the point that this is not solely a question of occupation policy, but has a most distinct bearing upon the capacity, the competence, the authority of this Commission and of its good faith, and I would like very much to associate myself with that point of view.

Arising out of the question of delay and not perhaps relevant, there is another point in connection with the Constitution -- we still have not received the Japanese text of the Constitution, although I have received several letters from the United Kingdom liaison mission dealing with specific points of interpretation. If those letters could have arrived, I should have supposed that the text of the Constitution might have reached us by now.

GEN. MCCOY: Yes. I am sorry I haven't followed that up more assiduously. Have you any remark on that?

MR. BORTON: We have received telegraphic instructions ten days or two weeks ago saying that -- we originally telegraphed for it as a result of Sir Carl's inquiry about one of the articles. We asked telegraphically for the romanized text. We received an answer to that message saying that the text as approved by the Diet, both the Japanese and English, was being sent by special courier. That was ten days ago. We have not seen the courier or received the text, and I would suggest,



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Mr. Chairman, that the thing to do is perhaps for us immediately again to ask where the courier is and where the text is.

SIR GEORGE SANSOM: The text in particular.

COL. FOWLES: It is interesting to note, Mr. Chairman, that in that particular respect, with reference to Article 15 of the Constitution, there has been a translation issued as an MI document through the Commission of that amended text which differs entirely from the translation which was transmitted to us through other sources, also through the Commission. You remember the first translation that was issued to us made reference to the question of universal adult suffrage being guaranteed. Well, the translation in this MI document doesn't say that at all --doesn't mention the words "universal, adult, or suffrage". So that there is a definite query with reference to the text.

GEN. MCCOY: Yes.

MR. NAGGIAR: I would like to--

DR. TAN: Mr. Chairman, our delegation happens to have a copy of the text. It is dated October 9th. I think it is the most recent one. We can make it available to the Secretariat.

GEN. MCCOY: Well, that seems to be a good deal quicker than my government can act. I hope you will make it available, Dr. TAN.

DR. TAN: It was published in a Japanese newspaper, called Jiji Shimpo. It was published in this paper on October 9th.

MR. JOHNSON: Published in Japan of Japanese text?

MR. NAGGIAR: Perhaps I might suggest that we should subscribe to this Japanese paper in order to get the text. (Laughter)

SIR GEORGE SANSOM: It is very small print.

GEN. MCCOY: Well, I think there has been a definite point of view of the wisdom of our review paper in the sense that there seems to be differences of interpretation, even on the part of the Japanese. I have constantly noted that in the information I have received.

MR. NAGGIAR: Mr. Chairman, I have not been personally very



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completely acquainted with the subject of the review of the Constitution, but it seems to me that there are two problems in this question. One is the formulating of policy by the Commission and the Commission, so far as I understand, formulated the policy by proposing for the review of the Japanese Constitution. Everybody has agreed on this formula. Now the point is the publication of this principle, and as far as I understand we have decided not to have it published as long as we don't get the opinion of the Supreme Commander on the opportunity and date and manner of publication. So, more or less, our hands seem to be tied on the question of publication, but, of course, it seems to me that our hands cannot be tied forever. We have formulated a policy; some sort of publication ought to be given in response, either here through your press conference or in Japan through the Supreme Commander. We are waiting for the Supreme Commander's opinion on the date of publication. But it is quite clear that we cannot wait forever, and I suggest that if we can't get an opinion from the Supreme Commander, some sort of information given to the press on our formulating of policy on the review of the Japanese Constitution through your press conferences here in Washington may help the situation. So, we might fix a date and as of the date if we can't get an opinion from the Supreme Commander, we could give some sort of publication of our policy. After all, this body after long study of the matter, wrongly or rightly, has formulated a policy and it has been agreed on some sort of reserve, if I am not mistaken that the problem has been reserved as long as we don't get the Supreme Commander's opinion on that case. But, are we going to wait forever?

GEN. MCCOY: Well, I don't anticipate that. However, this review in itself takes place two years hence or later. So that it doesn't seem to be a burning matter except in the matter of opinion. And there we have had very clear expressions of opinions from three members of the Commission, which I will immediately send to the Supreme Commander, and I will not, of



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course, object to further discussion at all, when he gives us his opinion, as to the wishes of the Commission with regard to the particular point. But I do feel that his opinion in this matter should be given and considered by the Commission.

MR. NAGGIAR: Yes. I quite agree. But, if we receive no answer, what will we do?

GEN. MCCOY: Well, but you will receive an answer. I assure you of that.

SIR GIRJA BAJPAI: I think, Mr. Chairman, before this discussion closes, I might be permitted a comment or two, because I understand that you are to indicate to the Supreme Commander the number of members of the Commission who have expressed their particular view. Now, no one is more conscious than I am of being guided in matters of this kind by the wisdom of the man on the spot, especially a man of the wisdom and experience of the Supreme Commander. But, this particular issue, as has already been pointed out, is not one to be determined by the individual judgment of any one person. I think it is not unusual constitutional practice for a Constitution to provide in the body of a constitution itself for a revision of the Constitution. I know that our own Government of India Act has provided for a review within a period not exceeding ten years. The idea was that those for whose benefit the Constitution was framed should know when a review of that Constitution would take place. The point to which I am leading up to is that a decision for the review of the Constitution in two years is a material decision, it is not an adjective decision but a substantive decision. It is a decision which, properly speaking, ought to be made known to the people concerned simultaneously with the other provisions of the Constitution. The difficulty with which we are confronted is that, according to Major Plimsoll, the new Constitution is to be promulgated next Sunday, Japanese time, Saturday, our time and as far as I can see there is no possibility of getting an answer from the Supreme Commander before the promulgation. Now, sir, East is East and West is West.



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I don't profess to know the psychology of the West but I do know something about the psychology of the East, and I think we do run real risk of being accused of springing something entirely new and unforeseen upon the Japanese people if the announcement of the decision of the review of the Constitution is made after the Constitution itself has been promulgated. I think myself that, although ever consideration is due the Supreme Commander and his difficulties, something is also due to the reputation of the Commission for good faith. I merely submit that when you communicate the view of others to the Supreme Commander, perhaps you would be so good as to put forward the ideas expressed on behalf of India on this occasion.

GEN. MCCOY: It will be done.

ADM. RAMISHVILI: Mr. Chairman, though I have not received special instructions on this particular matter from my government, I think it will be very helpful to pass this decision without delay. So far as reasons are concerned, if I will be permitted to do so, I fully indorse the reasons expressed by the Ambassador of India without having to repeat them. I only would like to point out, Mr. Chairman, that that question that the subsequence of this publication will harm the Allied Powers and Allied headquarters of General MacArthur has been fully considered and we think that there is no foundation for this. Therefore, Mr. Chairman, we think that we all fully recognize the necessity of publication of this paper and it will be very satisfactory if the Commission take the necessary steps in this direction.

GEN. MCCOY: I might remark that the United States Government was willing to pass this paper three months ago and that this little affair of publication to be decided after hearing from the Supreme Commander was put up in a few days when we don't have much time to consider it. We were perfectly willing to consider the question of this paper when Dr. Evatt presented it and it was held up because we couldn't agree to the last minute, and, unfortunately, now we are concerned with an attendant point that I think has been well expressed, and I will communicate



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immediately on the point of all concerned. But, I would not want to have the feeling directed at the Supreme Commander, who didn't know anything about it until a few days ago and with no time to give it the consideration that we have given it for months. So that is one of the attendant difficulties of eleven nations agreeing. It takes a long time to get agreement. And, sometimes we are under pressure at the last minute and we all regret it. But it is attendant upon an international commission. It is much easier, of course, for one nation to go ahead and do it, but we are faced with agreement and cooperation, which we are getting however slowly it seems at particular moments. And I feel it is perfectly reasonable on the part of everybody here to form their point of view, but I don't want to feel that we are ever going to get any quick action in international cooperation. It takes tolerance and Christian-like fortitude on the part of all of us to cooperate, and that is what we are here for. And I hope that we will before long, in our having step by step solved the major problems, see the procedure smooth out and become quicker in action.



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## II. THIRTY-THIRD MEETING OF THE FAR EASTERN COMMISSION - 1 Nov. 1946

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

GEN. MCCOY: A preliminary to this meeting was well stated in Item 5 of the minutes of the last meeting in Major Plimsoll's statement.

As representing the United States, I would like to present the views of my Government regarding the time and place of issuance of the policy decision providing for review of the New Japanese Constitution and to the reply of the Supreme Commander which was received this morning and has been circulated to the members of the Commission. May I refer again to the stated position of my Government in regard to this policy decision. The United States agreed to the policy of a review of the new Japanese Constitution provided that the Commission at some subsequent meeting and after obtaining the view of the Supreme Commander will consider the time and manner of issuance of the policy decision embodied in the paper. The Commission agreed to the proviso of the United States member and authorized him to consult with the Supreme Commander in order to obtain his views on the subject. At the last meeting of the Commission as well as at earlier meetings, some of the members advanced considerations in favor of the publication of this policy decision at this time, and especially before the promulgation of the Constitution which is scheduled for November 3rd. These considerations were persuasively presented and deserved the most careful consideration. On the other hand, there are the considerations presented by General MacArthur, who is Supreme Commander for the Allied Powers, that is for all governments here represented. He believes that it would be harmful to the common interests of all of us to publish this policy decision at this time. My Government has given careful consideration to the views presented by the representatives who favor immediate publication of the policy decision requiring a review of the Constitution and they have also given careful consideration to the views presented by the Supreme Commander, and especially to his conclusions,



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since he is in a particularly favorable position to judge the effect of publication upon the Japanese and upon the attainment of the objectives which we all hold in common. My Government, therefore, has concluded that it should support the recommendation of the Supreme Commander that the publication of this policy decision should be delayed.

MAJOR FLIMSOLL: Mr. Chairman, when the members of the Commission yesterday morning expressed their opinions on this subject, of course we did not have the views of the Supreme Commander and the Supreme Commander was similarly without our views when he sent this message in reply to the message of consultation. Since we received the Supreme Commander's reply this morning, I have gone through it with very great attention, bearing in mind always the great responsibility which General MacArthur bears and the distinguished manner in which he has discharged his duties and is discharging them.

There are a number of points which he raises in reply which I think are worthy of consideration by this Commission. The first is whether the decision of the Commission should be published at all, and it seems from General MacArthur's reply that he is, in general, of the opinion that this decision should never be published. He concludes that, "As the harmful effect of such publicity is as patently clear as any benefit therefrom to the Allied case is obscure, I most strongly recommend against any such procedure, at least until the proposed year of experience has passed and the Far Eastern Commission feels that the situation then existing calls for affirmative action". In other words, General MacArthur seems to be of the opinion that perhaps this decision should never be published at all, and in fact I think he probably goes further and hopes the decision will never be put into effect. That would seem to follow from the first page where he says, "It is unrealistic in its failure to recognize the inescapable facts, etc." and General MacArthur seems to be of a view that in one or in one and a half years' time we may consider the situation in Japan as such that the Constitutio



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does not need review either by the Diet or by the Far Eastern Commission. Now that, Mr. Chairman, cuts across one of the basic ideas we had in passing the paper. We wanted the Japanese to know at this time, first, that we shall judge the Constitution by the way in which it operates during the next two years, and secondly, we want them to know that they themselves should be on the lookout to see how it is working, knowing that there will be a full-scale debate in the House of Representatives in Japan on the way in which the Constitution works. It is not simply the legal fact that the Japanese have the right at any time to introduce amendments. That is General MacArthur's position on the first page - that the right of review always exists in the House of Representatives. Well, we admit that there is an automatic right there, but we also wanted the Japanese to know that, apart from that formal right, they will have a full-dress debate at some stage in which they will deliberately look at the Constitution, see how it has worked, and see whether any changes are necessary. I think myself, Mr. Chairman, that the arguments in favor of publication of this decision at some stage or other are overwhelming and I don't want to go into that point. But I think we can all agree here that sooner or later it has got to be published.

So the decision first to make is when it should be published. I think, if I might for a few minutes be allowed to go into the question of the dangers of delay in publication, the first danger, and one which we touched on yesterday, is the fact that if we delay publishing this decision until the Japanese have put it into effect, we are going to throw ourselves open to the justifiable charge that we have been guilty of a breach of faith. Sir Girja Bajpai, you may remember, yesterday morning strongly supported that view from his experience of the outlook of people in Japan - that if we let them at this stage feel that the Far Eastern Commission has no objections and has no reservations, the people of Japan can justifiably state that we have let them harbor a false impression. And that is going to create considerable difficulties in the future. General MacArthur has not only got the responsibility now of carrying out the



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occupation; he has got the responsibility of carrying it out in eighteen months or two years' time. And I feel that whatever temporary difficulties he may encounter in putting this into effect are, very small compared with the difficulties he will have in two years' time in springing a surprise of this nature on the Japanese people.

Secondly, I feel that there is a very great danger of leakage. It is very difficult to keep a decision like this from the press and from the public for a great length of time. I don't think anybody here would deliberately allow a statement of this to leak out. Certainly, nobody in the Australian delegation or the Australian Government would do so. But these things do leak out. It could leak out through SCAP himself. He has a large staff there. He can't watch the activities of each officer of that staff. These things come out in little conversations sometimes, and personally I can't believe that we can keep this thing secret. It would create difficulty for every Allied country in Japan which has the responsibility of advising and consulting with the Supreme Commander in the matter of implementation. The meetings of the Allied Council are held in public, and if at any stage the question of the implementation of this directive arises, then it is certain that the people of Japan will learn about it - and if a secret meeting of the Allied Council is held, I think the press in Tokyo have sufficient pertinacity to discover very quickly what happened.

Next, there is the difficulty of explaining the role of the Far Eastern Commission in regard to the Constitution. The Japanese Constitution is the most important single thing that has happened in Japan since the occupation, and we cannot hope to persuade the press or anybody else that throughout the whole of this time the Far Eastern Commission has not given any consideration whatever to the Constitution. It is perfectly obvious that we must have considered it. In point of fact the Far Eastern Commission itself has issued a press statement stating that the Commission had enunciated a series of basic principles for the Constitution. So the people of Japan know that we have considered the Constitution, and the people



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of Japan will want to know what we decided in that respect. By publishing a statement of this kind we offer ourselves a complete way of letting the people of Japan know that we considered the Constitution, at the same time preserving the fiction, which I don't think deceives anybody, that we didn't intervene in any way. We say that the Constitution has been adopted and we are not raising any objections to it--it is not unacceptable--we are merely laying down that in two years' time both the Japanese people and the Commission itself shall review the Constitution. Now, with all respect to the Supreme Commander, that does not seem to me to destroy in any way the free character of the charter or to cast any reflection upon the expression of the popular will of the people. It is merely giving the Japanese people an additional opportunity to express their popular will.

But I think the greatest threat of all is the fact that if we don't publish this decision we are going to have difficulties confronting us for the next two years. We are going to be dogged throughout by the fact that there is a decision we have come to which we are ashamed of or in some way we are afraid to make public. We are going to have various situations arise in which our actions and the actions of the Supreme Commander and possibly the actions of the Japanese Government itself are determined by a decision which the Japanese people know nothing at all about. There is nothing to be ashamed of in this policy decision. It is going to be published sooner or later. If it is not published in two years' time, it is going to be published in twenty years' time. Archives are always open at some stage or other and the legality of this Constitution does not concern merely what may happen in two years' time. In twenty years' time you may again have a danger of a militaristic trend in Japan and in twenty years they can go back to what we have done now, and by publishing it now we are proclaiming to the world that in no way had we doubts about this decision.

The Supreme Commander has raised the dangers of immediate publication. I think that depends to a large extent on the way in which



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General MacArthur announces this decision. General MacArthur has shown himself up to now to be a very expert handler of situations involving civil government. He has handled the Japanese civil government in a way in which I think no other military commander in modern times has handled civilian affairs, and I have no doubt at all that he can announce this decision without arousing any hatred or any suspicion or any doubts on the part of the Japanese people. It could be done by a simple statement. He could merely state that the Japanese Diet has considered this, that the Japanese Government has been shown great confidence by the Allied Powers because they alone of any of the defeated major peoples have been allowed to introduce their own Constitution so early after defeat, and the Far Eastern Commission in Washington, which has the right and the duty to see that the Potsdam Declaration is put into effect, has not intervened - it has allowed the Japanese people to act and the only action it has taken is to say that in two years' time once again the situation shall be reviewed. That, I think, sums the line of approach - or any one of a number of other lines of approach can be carried out by the Supreme Commander without in any way creating the difficulties which, I am afraid, he envisages.

Lastly, I would like to return to the point which I made yesterday, that it is not simply an occupation problem. We know General MacArthur's difficulties. We know that he is responsible for maintaining order and the safety of the occupation troops, and any views he expresses on that we should give the greatest possible weight. But there are also our own obligation as eleven powers here. The Japanese people, once again I would say, are entitled to assume that if we do not make a statement of this nature concerning the Constitution, each government here is allowing the Constitution to go into effect without any qualifications, and that, of course, is not the case.

I think the promulgation is the obvious time to announce it. It has got to be announced some time. I think the longer we delay it the greater the difficulties we are creating, the greater and the



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more difficult is going to be General MacArthur's position.

GEN. MCCOY: Thank you very much. I think that is a perfectly plain statement of the views that have been consistently held by the Australian representative, and which have not yet reached the Supreme Commander. They have been sent to him and this, evidently, crossed yesterday or the day before, so that he has not had a chance to consider your point of view. Unfortunately, the point that you make about the promulgation is a fixed date--tomorrow--so that there is not much time to cover that particular point. But, I am sure that the Supreme Commander will give full consideration to the minutes which have been sent to him and the dispatch that has been sent to him covering pretty much the same points of view but expressed naturally in a little different way due to the difference in time. Are there any other comments from around the table?

SIR GEORGE SANSOM: Mr. Chairman, may I make a few observations I don't wish to prejudge the question of publicity, but I would like to make, if I may with all respect, some observations about the tenor of the Supreme Commander's document which we have. It seems to me couched in rather curious language and I am not impressed at all by the arguments in this document, although I think it is quite probable that there are very sound arguments in favor of delaying publicity or giving publicity in some special form. But, there are certain arguments in this document which, it seems to me, can be rebutted at once on the facts. And there is another objection to the document in that I think that it sweeps away in rather contemptuous language the decision which has been as carefully as possible reached by the Commission. It simply says in ten words that the case of the Supreme Commander is as clear as that of the Allied is obscure. This is couched in very epigrammatic form but it doesn't really answer our arguments and I wonder whether we shouldn't, perhaps, do something useful if we went through the paper in a little more detail and studied some of the arguments put forward by the Supreme Commander. Now, I am not saying that there aren't any arguments but I do say that I was impressed that the arguments, as he



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expresses them, are not entirely cogent. Therefore, it might be that some useful purpose would be served by looking at them paragraph by paragraph. But, perhaps you would think that is unnecessary, Mr. Chairman.

GEN. MCCOY: No. I think we should do that because he is entitled to know our feelings as well as our opinions.

SIR GEORGE SANSOM: The paper is certainly very rich in metaphor. Not very strong in argument. He begins by saying--I am not sure that I am the most competent person to do this analysis, I only hastily skimmed through the document and am merely reporting my first impressions and I haven't had an opportunity to study it more carefully. Perhaps if I were to begin--"The purpose underlying such a suggestion is obscure". I can't understand why it should be obscure. I should have thought that most of the reasons were in the Supreme Commander's mind or have been communicated to him.

GEN. MCCOY: Yes, but he hasn't yet had time--he didn't get them until probably yesterday or today.

SIR GEORGE SANSOM: I agree that he hasn't had the thing in specific language, but I should have thought that the reasons--they may not be good reasons in his view--but they certainly cannot be stated as being obscure. I think they are very clear. However, perhaps we might leave that point.

It isn't, I think, correct to say--going down the page--that our proposal is unrealistic in its failure to recognize the inescapable facts that by its very terms the Constitution is constantly before the Diet from its effective date. We all fully realize--in fact it has been the view of His Majesty's Government in the United Kingdom all along that the Constitution did contain ample provision for review. But there is a difference between what is in the Constitution and what steps are taken to bring those clauses and passages to life. Therefore, I think that in this passage also the Supreme Commander is not doing justice to the deliberations of the Commission. I think I might go on, but I think it would be proper that I should leave this analysis to those who have studied it more



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carefully. Perhaps in the course of going through the document we might light on some way out of this impasse.

GEN. MCCOY: That is the unfortunate condition of time, and that is the reason why my Government made the reservation as to the time and manner. Now that has forced us to the wall here, in a sense, in a full consideration of his point of view, and it goes without saying, in a sense, that we have had this in consideration for a long time. But, that hasn't been put before him. It's new and comes to him at the last minute without the proceedings of the Commission before him. I might remark that we may have a subsequent reply when he receives the record of the proceedings and the statements that were made, with particular reference to those of the Australian representative, and naturally, if a subsequent reply from SCAP expresses a different view, of course, the Commission would be informed immediately.

SIR GEORGE SANSON: Mr. Chairman, if I may add a little to what I was just saying, I think that there may be very good arguments-- very strong arguments to support the Supreme Commander's view. We must treat his view with the greatest respect in our considerations. He is there--he is on the spot, and he has this extraordinary flair for timing and method. But the arguments that he gives us seem to me here to be so easily rebutted that I am astonished that he hasn't used other better ones. I could think of one which, I think, perhaps is more powerful. I wondered that he hasn't said--Here you are going to have a period of enthusiasm and celebration of the new Constitution and it would have a damping effect on public sentiment if at this moment this thing were to be said, and he might have suggested, perhaps, that there were ways of moderating the effect of this statement. In fact, Major Plimsoll has already suggested that there are possibilities in that direction. There are others too. But what it comes to, as I see it, is that there are probably very cogent arguments in favor of what General MacArthur suggests, but he hasn't stated them. All I can read into this first page is an elaboration of his final categorical statement that to do this would



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be wrong. But there aren't any very strong supporting arguments there, and it looks to me as if, when the Supreme Commander gets the information which is on its way, tomorrow, that situation will be made even more difficult because he will have had counter arguments which weren't present in his mind when this document was compiled.

COL. POWLES: Mr. Chairman, I should like to endorse what has been said by Sir George Sansom and Major Plimsoll. I think the situation that we are in now is one where we have no real meeting of minds--there is no real argument and counter argument being presented to us at this stage, because the statements submitted to us by General MacArthur don't, as Sir George Sansom points out, deal explicitly with the reasons which motivated many of us in desiring that the review decision should be published. And I think that situation is due to the most unsatisfactory nature of our liaison with the Supreme Commander, a situation which has been mentioned several times before by Sir Carl Berendsen and in respect of which he made several suggestions for improvement. But those suggestions, unfortunately, were not found satisfactory. At any rate, we were told that in any case it would probably be all right because the minutes of the Commission meetings and all the Commission papers are sent to General MacArthur so that he will know what is going on in the Commission anyway. But it does seem to me, Mr. Chairman, that this document which we have presented before us today indicates that the author of the document is not aware of what has been going on in the Commission. I feel that is the only explanation that one can offer for at least some of its terms, because, if I may refer to it a little bit in greater detail, we notice that in the first paragraph the Supreme Commander characterizes the policy decision of the Far Eastern Commission as being unrealistic upon certain grounds, upon one ground which has been referred to by Sir George Sansom, and upon another ground that the enforcement of any measure of review is inherent in the power of the occupation itself. Now, those of us who sit around this table well remember that that was an argument which was very cogently put forward by, I think, yourself, sir, and also



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submitted by the representatives of the United States Government in the Constitution Committee as a reason why the review decision should not be passed. There were counter arguments against that and ultimately we were able, those of us who produced those counter arguments, to convince the United States representatives that this particular point in itself was probably not sufficient to warrant a decision that there should be no review by the Far Eastern Commission. So here is a point where General MacArthur is producing an argument which has been present before the Commission right from the earliest stage of its consideration of this policy and has been very, very fully considered. Then, if I may refer, sir, to the second part of the document, I would suggest that it does seem to be stretching matters slightly to regard the review decision as a display of force by the Allied Powers. I feel that a plain statement or argument of that kind would be much more useful if it were supported by reasons as to why the Japanese would regard it as a display of force. Then, if I may refer to another reason in that paragraph, General MacArthur says that it would be an open and continuing invitation to the forces of reaction to conserve and extend their political strength against the time that, etc., etc., etc. Well, sir, here again we have a point which was also very fully argued in the Commission. That point, I am sure all of us will remember, came up in committee and also came up in the Commission and it was realized that it might be an argument against having a set, definite stated period in which the Constitution should be reviewed. Nevertheless, it was decided and decided openly by the Commission that that was a risk which ought to be taken, having regard to the great advantages which were present in the minds of all of us and which could be expected to insure, from having the review itself. So, that is another case in which we have an impression that the Supreme Commander is really quite unaware of what the Commission has been doing with reference to the review decision over the last three months at least. I think it is apparent that this situation has been building up over the last three months and it is just unfortunate that we have been



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caught by a set such as the promulgation tomorrow, which has brought all this unfortunate difference of opinion to light.

Now I refer again, Mr. Chairman, to the last paragraph where the Supreme Commander refers to the harmful effect of such publicity." Now, it seems to me that the whole tenor of this document indicates that the Supreme Commander regards publicity as being necessarily a public announcement--giving the review decision to the press of the world and I think that is the meaning in which he is using that word "publicity". He makes no reference to the differing methods by which it would be possible for the decision to be communicated to the Japanese, differing methods which were very well outlined by Major Plimsoll at the last meeting that we had. And I would call your attention, sir, to the fact that the United States reservation doesn't use the word "publicity". The United States reservation says that the time and manner of the issuance of the policy decision shall be a matter for consideration by the Commission at a later date. So, here again we have no meeting of minds with the Supreme Commander. We are not talking about the same thing. Are we to understand from the Supreme Commander's reply that he does not intend to communicate it in any form whatsoever to the Japanese or to any authoritative representative of the Japanese people? In other words, is it going to stop dead at his headquarters for the next year at least, as he seems to suggest. Now, sir, I am not sure that he means that. But that is what one can possibly construe from his document. So, I must confess to a feeling of grave disquiet that if we leave the matter at the present stage--I feel that further communication to the Supreme Commander is necessary and I do think it would be most advisable if such further communication could take place and that we could have immediate reply.

Of course, I know it means that we lost the advantage of publicity or such announcement as might possibly be made at the time that the Constitution is to be promulgated, but although promulgation was, in the opinion of a number of us, obviously the best time for the publication of this decision, there are other times which might be good times even though we might



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have missed the best time. And that is the reason why I feel that it is necessary that we should take all the steps that are in our power to see that the Supreme Commander really does appreciate and understand what the Commission has been up to and the reasons for it.

GEN. MCCOY: Well, I certainly agree with you on that statement, and all I can promise is that we will communicate with him the very explicit expressions here of the representatives who have spoken. Heretofore, when we have gotten to him the opinion and the feelings of the representatives he has always met them very promptly, and I think that he certainly will give full consideration after he gets these arguments that have been made today as well as at the last meeting.

MR. COLLINS: Mr. Chairman, following up the remarks that have been made. I don't think that there is very much that can be added to the extremely cogent analysis of the situation that has been presented by the representatives who have spoken before, but I would like to say it would seem that the Supreme Commander is perhaps suffering from some slight misapprehension as to the real purpose of the review provision. I get the feeling from reading his reply that in his mind perhaps the emphasis is on the part of the Far Eastern Commission and, if I recall correctly, the original point of the review provision was that it should provide an opportunity for the Japanese themselves to make a further review in the light of the experience of its operation, not so much an opportunity for the Far Eastern Commission to take any positive action on the Constitution. I agree with the Supreme Commander that the Far Eastern Commission is charged with that duty in any case and that one can take this for granted. It was put into the paper but I couldn't myself view that as the most important or even a very important aspect of the policy decision. With this in mind I should think that the question of manner of issuance and the manner of communication of this policy to the Japanese might very well be handled by the Supreme Commander in such a way as would give no appearance of forcing anything upon the Japanese or imply that their Constitution is subject to influence at



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the point of Allied bayonets or anything of that sort. And if the Supreme Commander could see the situation in that light that it might be a fairly simple matter for him, as Major Plimsoll has pointed out, with his very acute knowledge of Japanese psychology to be able to present it in such a way as would receive a definitely favorable reaction from the Japanese. It might even be a public statement by the Government itself. If it is impossible to have the statement made at the time of promulgation, it might come say on the occasion when implementing legislation is brought before the Japanese people--some statement that this legislation is now passed but that the Constitution is, of course, a new charter and will need constant review in the light of its operation, and that it is the intention of the Government that there should be a full-dress debate some time within the next two years--and I should think that perhaps our own good faith might be fully covered if the Japanese Government itself were fully apprised of the contents of our policy decision.

MR. VESUGAR: Mr. Chairman, Major Plimsoll and Sir George Sanson and Colonel Powles have very ably and in a very restrained manner put forward the views of most members of this Commission. We are now faced with this fact that the promulgation takes place tomorrow. There is nothing that can be done before that date and I feel that the various members of the Commission will accept that fact. On the other hand, the one thing which appears very obvious from the reply of the Supreme Commander is that the work of the Commission here, the amount of thought that we put into each decision is not obvious to the authorities in Japan. Even that is not so important as the fact that our attitude toward the future of the Japanese people is not obvious to the Japanese people themselves; at least that is the impression I gather from this reply, because a reply of this sort has come from a man of the ability of the Supreme Commander and head of as large and efficient staff as he is can only mean this--that in the enormous amount of work that is in front of him and especially the mass of papers that must go out tomorrow, etc., it is not possible for him to sift our ideas and intentions in a connected manner, for



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him to come to a decision on the subject bearing in mind our actual views on the subject which to him may be clouded by the way they are expressed in the minutes. I don't say that the minutes are wrong but one view is expressed at this place and another one three weeks after somewhere else, etc. I therefore suggest now that the Commission here make a dossier of what has so far passed, collect the relevant material in one place, so that the whole picture becomes clear to him with minimum effort on his part and that we note connotations on our part here to bring out the various opinions expressed here which may not be immediately clear in the minutes. Now I am perfectly certain that when this is done our viewpoint will not be materially different from that of the Supreme Commander and he will himself realize not only the necessity of letting the Japanese people know at some fairly early date that this decision has been decided upon but also that this decision has been decided upon primarily from the interest of the Japanese people themselves--not as an act of falsity or as an act to show the authority of this Commission. \*

GEN. MCCOY: Is it your idea, Mr. Vesugar, that the Constitutional Committee should prepare a dossier covering the whole picture that has developed here in the Commission for his information?

MR. VESUGAR: Yes. I mean it is obvious from remarks like this that the Commission has not taken this into consideration or that into consideration--these facts are on the record somewhere in the minutes. But, let us prepare it all in one place, if necessary with annotations to it or even giving the full text of statements made by various delegates as an excerpt so that the whole thing is in one place for his consideration.

GEN. MCCOY: That would meet, Colonel Powles, certain parts of your statement? Do you think that would be the best way of doing it?

COL. POWLES: I am not quite sure, Mr. Chairman, that it would at this stage. I feel that the preparation of such a document would be a matter of some little difficulty and I think it would be limited to existing records and just might not contain a fully balanced



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picture because the records don't very often do so. It is not because the records are wrong but because of the fact that the minutes are themselves kept in full form only as far as the Commission is concerned, and even what we call full form is briefed from the verbatim minutes and, of course, the minutes of discussions in the Constitutional Committee where a very great number of these points were very carefully considered are just in brief summary form.

MR. JOHNSON: We only make a very brief record of the committee meetings but we make a more detailed record of the Steering Committee and Commission meetings.

MR. VESUGAR: Mr. Chairman, my reason for suggesting annotations was just to remove this too much impersonal atmosphere of the normal minutes. The normal minutes are recorded in too impersonal a manner and, therefore, they do not convey the requisite amount of force with which an argument put forward before this Commission has been pressed at the time the point was being made.

MR. GUERIN: Mr. Chairman, the French delegation confirms itself with the views that have been expressed at this meeting, particularly with the view expressed by the United Kingdom representative concerning the form and the content of General MacArthur's reply. I wish also to associate myself very strongly with the view expressed by the representative of Canada. I am convinced that tomorrow is, however, a very important date and that it is a serious question to know whether or not General MacArthur will let pass the date of promulgation of the Constitution without expressing or not expressing a few words, and if he deems fit to express some words, it might be a very good occasion to prepare the Japanese mind, and General MacArthur will know very well how to do it, to prepare the Japanese mind and Japanese public opinion to the idea of the review of the Constitution. The exact content of the decision might eventually be published in its textual form at a later stage but the idea could be expressed tomorrow in one way or another which General MacArthur will be absolutely free to choose the proper expression and ways and means. Eventually also, as Mr. Naggiar suggested at the last meeting, the declaration of General MacArthur could reach a



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press conference here where the point of view of the Far Eastern Commission could eventually be expressed without necessarily publishing the document in its textual form.

GEN. MCCOY: Would these different ideas be met by the Constitutional Committee presenting to the Chairman their views explicitly as stated by the different members here in such form as to be a basis for consultation as soon as practicable by my Government with General MacArthur? I am trying to find a practical way to meet with your wishes that is because they all have been expressed in a way that makes me wish to present the different views, as presented, in a way that we can consult with General MacArthur, with the hope that he will show his usual quickness to comply with our wishes when he understands them.

MR. VESUGAR: Mr. Chairman, may we take the two propositions that have now arisen out of this discussion separately? Taking first the one made by the Canadian representative and supported by the French representative that we request General MacArthur in his address tomorrow, which we anticipate he will make some sort of an address, to indicate as he sees fit some part of our mind. Then the latter part of the program can await and can be taken up after full discussion with him. Is it possible to do this? If this were possible, I am sure, would undoubtedly meet with the unanimous approval of all of us around the table.

CCL. POWLES: Mr. Chairman, I feel that suggestion is worthy of very careful consideration, particularly in view of the fact that it could perhaps be hinged on the references made by General MacArthur in his reply to the words "publicity" and to the words "be made public" in the first sentence, and he uses "publicity" in the last sentence and uses the word "publicity" right through whereas our communication concerns itself, as I mentioned, with reference to the time and manner of the issuance of the policy decision, and it might possibly be put to General MacArthur that the Commission has yet made no decision on the question of the manner in which this policy was to be issued but was merely concerned that it should be



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issued at some appropriate time and suggest to him that, as has been suggested by Mr. Vesugar, that it, within his discretion, would be proper for him to make some appropriate reference to it in the public announcement he is going to make.

GEN. MCCOY: Well I shall have to consult on that and we haven't much time to consult, so that I shall consult here and declare a recess while I am doing it, subject to recall in a few moments.

MR. VESUGAR: Mr. Chairman, if I may ask a small question, is there a telephone connection between here and Tokyo? Is it possible for you to speak on the telephone?

GEN. MCCOY: Teletype. At any rate we will consult on these points.

MR. COLLINS: There is one question which you asked in regard to the Constitutional Committee, and just speaking offhand I should think that the drawing up of any such statement by the Constitutional Committee might take a fair length of time--a matter definitely of days and probably necessitating that the Secretariat draw together the appropriate information to be incorporated in the statement. I wonder whether or not in connection with any such formal consultation with the Supreme Commander it might not perhaps be better to wait until we have received his comments on some of the statements that have already been communicated to him, in order to clear the record on the pros and cons of the issue. But with regard to any announcement tomorrow, might it not be psychologically beneficial if the Japanese Government itself in the course of the ceremonies made some statement which would indicate that it was, in the opinion of the Japanese Government, a good idea if this new Constitution should be reviewed at some later date in the light of its actual operation, and then General MacArthur could pick that up. It would make it much easier all the way around without any definite reference at that particular moment to the text of this policy decision.

GEN. MCCOY: Well, I will declare a recess and consult these matters and call you back in five or ten minutes.

(The meeting adjourned for 20 minutes)



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GEN. MCCOY: Gentlemen, will you please come to open session? Thank you for giving me the opportunity to canvass and consult. It is my opinion, after this consideration, that it is impracticable to take any action as to the wishes of some of the members as to the explicit action for the promulgation tomorrow. It is already tomorrow in Tokyo and it seems from our information that General MacArthur himself is taking no part in the promulgation ceremonies or showing himself in any way in connection with it. However, as Chairman of this Commission, I am very much impressed by the arguments this afternoon and also in the trend of discussion and final agreement on this review paper. I am fully with the Commission on that and once more I express my desire, as your Chairman to bring before General MacArthur in the best way the results of our work here and the expressions that have been made, so that he will be fully informed, and under my responsibilities as your Chairman can consult with him under the Terms of Reference. I should be very glad to present a brief and I would hope it would be prepared by the Committee which has handled this so well in the past and put at my disposition for formal consultation with him on this subject. I am sorry that we can't comply with all the wishes expressed here but I think it might possibly meet the wishes of the Commission as a whole, having heard the different points of view. I hope that you will give me that duty and responsibility as representing the Commission to General MacArthur.

DR. TAN: Is the day for promulgation set for the second or the third? On the third. It is about early in the morning of the second in Tokyo now, isn't it?

GEN. MCCOY: It is the second out there, isn't it? Well I am under the responsibility of not feeling any action can be taken at the time of promulgation. But that gives us time to pick the best time and manner and I would hope the brief would cover alternatives for suggestion to the Supreme Commander that would enable him to carry out our wishes as to the issuance of this review paper. If there is no objection, I will ask that that duty be performed by



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the Constitutional Committee and I would hope that I might from time to time consult with them.

MR. COLLINS: Mr. Chairman, in that connection, I was going to ask--I assume that whatever draft the Constitutional Committee would bring forward would be passed on by the full Commission, and I believe next week there is no meeting of the full Commission.

GEN. MCCOY: Yes. Well, once this promulgation is out of the question, that gives no time which will press us and then we can give due consideration to all points of view and put the case in the best brief possible for the consideration of the Commission, and for me then to consult as Chairman with the Commander. If there is no objection, I will carry it out on that line.

MR. VESUGAR: Mr. Chairman, I presume that what we call the brief now will contain everything that has gone before. I don't mean to call it a white paper but I mean it would serve in time as a white paper sort of thing if necessary.

GEN. MCCOY: Well, I will leave that to the Committee to consider because I think that it is an important paper for the future and I will leave that to the Committee to propose to the Commission.

SIR GEORGE SNASOM: Mr. Chairman, is the proposal to inform the Supreme Commander now that he may expect--

GEN. MCCOY: Well, I would assume from my assistants representing different departments that there would be quite a continuing lot of information on the side of my Government. But, I am acting now for the Commission.

ITEM 2 - OTHER BUSINESS

GEN. MCCOY: If there is no other business, we stand adjourned.

(Whereupon the meeting adjourned at 4:30 P.M.)



CONFIDENTIALCOPY NO. 195FEC-031/4520 November 1946FAR EASTERN COMMISSIONPROVISION FOR THE REVIEW OF A NEW JAPANESE  
CONSTITUTION: STATEMENT BY THE UNITED STATES  
GOVERNMENT(References: FEC-031/41, FEC-031/42; FEC-031/44)Note by the Secretary General

1. The enclosure, a statement of the views of the United States Government with respect to the problem of the time and manner of issuance of the Commission's policy decision, Provision for the Review of the New Japanese Constitution (FEC-031/41), submitted by the United States Representative, is circulated herewith for the consideration of the Far Eastern Commission.

2. The attention of all concerned is invited to the classification of this document which prohibits the dissemination of the information contained therein to unauthorized persons or to the press.

NELSON T. JOHNSON  
Secretary General

FEC-031/45



CONFIDENTIALE N C L O S U R EPROVISION FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION:  
STATEMENT BY THE UNITED STATES GOVERNMENT

19 November 1946

1. In connection with the problem of the time and manner of the issuance of the Far Eastern Commission policy decision on the review of the new Japanese Constitution (FEC-031/41), the United States Government has consulted with General MacArthur and has received a reply to the effect that:

- a. General MacArthur has given full consideration to the Far Eastern Commission Minutes of October 31 and November 1.
- b. The Prime Minister is already thoroughly familiar, as a result of General MacArthur's personal discussions with him, with the continuing authority of the Allies and with their power of scrutiny and intervention. The right of review or amendment by the Japanese Diet and people in the light of experience is specifically provided in the Constitution itself.
- c. Public announcement of the review policy would result in disastrous consequences. Its interpretation by the people would in effect destroy the Constitution even before it became operative, as the Commission's action could only be viewed as a lack of confidence therein even by the Allied Powers, coupled with the continuing threat of future Allied intervention. It would undoubtedly be construed as an open repudiation not only of the validity of the document itself but of the methods and purposes underlying its adoption. It would cause complete bewilderment of the Japanese and leave them in a state of utter futility. No move, furthermore, could be devised which would better serve the reactionary interests in Japan which seek above all collapse of the liberal principles embodied in this new charter.



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d. The Japanese regard this Constitution as of their own evolution and their enthusiasm for it is at high pitch. Failure to give them the support of at least silent encouragement at this time would destroy their confidence in the Constitution.

e. The publication of the policy decision would result not only in the collapse of the Constitution but would give rise to serious deterioration in the whole Japanese situation and would unnecessarily jeopardize the objectives of the occupation and the gains made thus far.

f. General MacArthur has indicated his willingness, despite his opinion that even such action would be unwise, to advise formally the Prime Minister of Japan of the policy decision of the Far Eastern Commission contained in FEC-031/41.

II. After consideration of the views expressed by General MacArthur, and with due regard for the views expressed by the members of the Far Eastern Commission, the United States Government proposes, if the Far Eastern Commission agrees, to take the following action:

a. The United States Government will request the Supreme Commander for the Allied Powers formally to advise the Prime Minister of Japan as soon as practicable of the terms of the policy decision contained in FEC-031/41.

b. The United States Government will inform the Supreme Commander for the Allied Powers that the time and manner of public announcement of this policy decision are matters for the discretion of the Supreme Commander.



FEC-031/46FEC-031/4624 April 1951FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION  
Directive Serial No. 62  
(Reference: FEC-031/43)Note by the Secretary General

1. In order to facilitate handling of records FEC-031/43 (7 November 1946), a U. S. directive to SCAP regarding provisions for the review of a new Japanese constitution, is from this date graded to UNCLASSIFIED.
2. FEC-031/41, the Far Eastern Commission policy decision upon which this directive was based, was declassified and released to the press 27 March 1947.
3. All holders of FEC-031/43 are requested to make the appropriate change in their copies of this document.

NELSON T. JOHNSON  
Secretary General

FEC-031/46



FEC-031/47FEC-031/4712 December 1951FAR EASTERN COMMISSION

DRAFT CONSTITUTION FOR JAPAN  
Directive Serial No. 36  
(Reference: FEC-031/4)

Note by the Secretary General

1. In order to facilitate handling of records FEC-031/4 (29 April 1946), a United States directive to the Supreme Commander for the Allied Powers regarding a draft constitution for Japan, is from this date graded to UNCLASSIFIED.

2. FEC-031/1, the Far Eastern Commission policy decision upon which this directive was based, was declassified and released to the press 19 April 1947.

3. All holders of FEC-031/4 are requested to make the appropriate change in their copies of this document.

NELSON T. JOHNSON  
Secretary General

FEC-031/47