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DC/R

July 3, 1946

MEMORANDUM FOR THE SECRETARY, SWNCO

Subject: Directive Regarding Basic Principles for a New Japanese Constitution.

There is enclosed a draft directive prepared on the basis of a policy decision unanimously approved at the eighteenth meeting of the Far Eastern Commission on July 2, 1946, under the provisions of paragraph II, A, 1, of its terms of reference. It will be noted that the policy decision is quoted verbatim in the enclosed draft directive.

It is requested that the enclosed directive be forwarded to the Joint Chiefs of Staff for transmission, if the directive in their opinion satisfactorily expresses the policy decision of the Far Eastern Commission, to General MacArthur for his guidance in accordance with paragraph III, 1, of the terms of reference of the Commission.

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

Enclosure:

Draft Directive.

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7/3/46

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DRAFT DIRECTIVE FROM JCS TO SCAP

Following statement of policy, adopted by FEC, 2 July 1946, in accordance with paragraph II, A, 1, of its terms of reference has been received from State, War and Navy Departments for transmission in accordance with paragraph III, 1, of terms of reference as a directive for your guidance. You should take appropriate steps consistent with the directives transmitted in WAR 82394 and WCL 43814 to insure that any Constitution adopted by the Japanese conforms to the principles set forth in this statement:

QUOTE. 1. The Japanese Constitution should recognize that sovereign power resides in the people. It should be so framed as to provide for:

a. A representative government based upon universal adult suffrage consisting of:

(1) An executive deriving its authority from and responsible to either the electorate or a fully representative legislative body;

(2) A legislature, fully representative of the electorate, which should have full legislative powers, including full control over raising of public revenue and expenditure of public funds;

b. The establishment of an independent judiciary;

c. The guarantee of fundamental civil rights to all Japanese and to all persons within Japanese jurisdiction. All Japanese shall enjoy equal rights before the law and no special privileges of particular social groups such as the nobility shall be allowed;

d. The popular election of heads of institutions of local government such as prefectures, cities, towns and villages;

e. The popular election of local assemblies such as prefectural, city, town, and village;

f. The adoption of constitutional amendments in a manner which will give effect to the freely expressed will of the Japanese people.

2. Though the ultimate form of government in Japan is to be established by the freely expressed will of the Japanese people, the retention of the Emperor Institution in its present constitutional form is not considered consistent with

the foregoing general objectives. Consequently, the Japanese should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines.

3. If the Japanese people decide that the Emperor Institution is not to be retained, constitutional safeguards against the institution will obviously not be required, but the constitution will have to conform to the requirements of paragraph 1 and shall also provide:

a. That the legislature shall have sole authority over financial measures and any other organ shall possess only a temporary veto power over other legislative measures;

b. That the prime minister and the ministers of state, all of whom shall be civilians and of whom a majority, including the prime minister, shall be selected from the Diet, shall form a Cabinet collectively responsible to the legislature. If a system of government is adopted whereby the chief executive is elected to that office by the people, the provision that a majority of the Cabinet members shall be chosen from the legislature should not necessarily apply;

c. That the legislative organ shall have the power to meet at will.

4. If the Japanese decide to retain the Institution of the Emperor, the following safeguards in addition to those enumerated in 1 and 3 above will be necessary:

a. When a Cabinet loses the confidence of the legislature it shall either resign or appeal to the electorate;

b. The Emperor shall have no powers other than those to be conferred on him by the new Constitution. He shall act in all cases in accordance with the advice of the Cabinet;

c. The Emperor shall be deprived of all military authority such as that provided in Articles XI, XII, XIII, and XIV of Chapter 1 of the Constitution of 1889;

d. All property of the Imperial household shall be declared property of the State. The expenses of the Imperial household shall be appropriated by the legislature.

5. The retention of the Privy Council and the House of Peers in their present form and with their present powers is not considered consistent with the foregoing general objectives. UNQUOTE.

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Signed & Rec'd in DCR
SWNCC 7/8/46 NVM
July 3, 1946

MEMORANDUM FOR THE SECRETARY, SWNCC

Subject: Release of Statement of Policy Regarding Basic Principles for a New Japanese Constitution, approved by Far Eastern Commission on July 2, 1946.

In reference to the statement of policy regarding Basic Principles for a New Japanese Constitution unanimously approved at the eighteenth meeting of the Far Eastern Commission on July 2, 1946, the Secretary General of the Far Eastern Commission has requested that the Supreme Commander be informed that in adopting this statement of policy, the Far Eastern Commission agreed that it would be released to the press, but expressed a desire that the Supreme Commander decide whether he would prefer to release the statement of policy himself in Tokyo or have it released by the Far Eastern Commission in Washington. (FEC-031/19)

The Secretary General stated that it would be appreciated if the Supreme Commander's decision could be made known to the Commission as soon as practicable. It is requested that the Joint Chiefs of Staff transmit the enclosed communication to General MacArthur.

J. H. Hildring
State Member
State-War-Navy
Coordinating Committee

Enclosure:

Communication to
General MacArthur.

JA:ALDunning/pm
7/3/46

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*Signed & Rec'd in DCR
SWNCC 7/8/46 NVM
July 3, 1946*

MEMORANDUM FOR THE SECRETARY, SWNCC

Subject: Release of Statement of Policy Regarding Basic Principles for a New Japanese Constitution, approved by Far Eastern Commission on July 2, 1946.

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J. H. Hildring
State Member
State-War-Navy
Coordinating Committee

Enclosure:

Communication to
General MacArthur.

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ENCLOSURE

DRAFT
COMMUNICATION TO GENERAL MACARTHUR REGARDING
RELEASE OF STATEMENT OF POLICY REGARDING
BASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION

In reference to the statement of policy regarding Basic Principles for a New Japanese Constitution unanimously approved at the eighteenth meeting of the Far Eastern Commission on July 2, 1946, the Secretary General of the Far Eastern Commission has requested that the Supreme Commander be informed that in adopting this statement of policy, the Far Eastern Commission agreed that it would be released to the press, but expressed a desire that the Supreme Commander decide whether he would prefer to release the statement of policy himself in Tokyo or have it released by the Far Eastern Commission in Washington.

The following is an excerpt from the minutes of the eighteenth meeting of the Far Eastern Commission:

MR. COLLINS moved and MAJOR PLIMSOLL seconded the motion that the Commission approve FEC-031/19 with the understanding that the policy decision would not be released to the press until after the Supreme Commander had received the United States directive and had decided whether the policy should be released in Tokyo or in Washington. The motion was unanimously approved.

Your recommendations and comments on the above would be appreciated.

JA

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON 25, D. C.

DEPARTMENT OF STATE
WASHINGTON



MB
DIVISION OF JAPANESE AFFAIRS
JUL 17 1946
DEPARTMENT OF STATE

~~SECRET/CONTROL~~

July 8, 1946

MEMORANDUM

To: FE - John Carter Vincent
From: DRF - C. Burton Fahs
Research for Far East Division
Subject: ORI Report No. 3788 - Japanese Progress Toward
Constitutional Reform

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Enclosed herewith is a copy of ORI 3788 Japanese Progress Toward Constitutional Reform. This paper, which covers one aspect of the general research program on Japanese reorientation, was requested by Mr. John K. Emmerson in mid-June for use in SWNCC discussions of American policy toward Japanese Constitutional Reform. It analyzes the developments leading to the publication of the Cabinet draft Constitution, evaluates the Cabinet draft and those of the political parties in terms of US objectives, and considers the problems raised for US policy by developments in Japan and the attitudes of states represented in the FEC.

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JUL 11 1946

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894.011/7-846

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

File: Japan Constitution Return to HCB

TO : FE and JA HK

DATE: August 23, 1946

FROM : JA: H. Kullgren
Japanese Affairs Division

SUBJECT: Japanese Progress Toward Constitutional Reform. JUV

FAR EASTERN AFFAIRS
Department
Thompson JUV

This study is valuable for the clarity and attention to significant detail with which it traces the progress of the Japanese and the Allied Powers toward Constitutional reform.

This Document Must Be Returned to
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Since the Potsdam Declaration and the White House Statement of September 6 called for the democratization of Japan 1/ but did not provide for constitutional reforms, SWNCC formulated certain prerequisites for achieving this democratization in the Japanese constitutional structure. 2/

The existing Constitution and basic laws by which it is implemented conflict with SWNCC policy specifically (1) in their support of Imperial divinity, (2) their establishment of an executive not responsible to an elective body, (3) their creation of a legislative extremely limited in power and not adequately responsible to the general electorate, and (4) in their failure to guarantee civil rights. 3/

Since surrender a number of changes, brought about by Allied or by Japanese action, include the guarantee of civil liberties, an alteration in the composition of the executive, the disassociation of Shinto from the State, and the Emperor's renunciation of divinity. 4/

Also prior to the publication of the Government's draft of the Constitution the three leading political parties presented their views which, despite their vagueness and difference of opinion, seemed agreed on the establishment of cabinet responsibility to the legislature, the enhancement of the power of the Diet, the retention of the bicameral system with, however, the lower house superior in power to the upper, and the abolition of the Privy Council. Their major differences lay in their approach to the questions of civil liberties and of the location of sovereignty. 5/

On the whole the draft sponsored by the Japanese Government meets the requirements advanced by SWNCC although clarification of certain points is desirable. 6/

Since some members of the Far Eastern Commission desire that final ratification of the Constitution be delayed, the Commission issued two policy statements both directed toward securing full discussion of all proposals for Constitutional revision before being accepted. 7/

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Whether the U.S. supports or opposes such preventive action depends upon the assurance it has (1) that the draft Constitution accepted at this time achieves Allied objectives, (2) that procedure has been faithfully followed, (3) that postponement of ratification would be more advantageous in enhancing popular understanding of constitutional problems and (4) that the maximum agreement on policy toward Japan within the FEC would be attained by further postponement. 8/

This study, after weighing the pros and cons of the problem, indicates that postponement would be of dubious value. 9/

<u>1/</u> pp. 1-2	<u>6/</u> pp. 26-65
<u>2/</u> pp. 2-6	<u>7/</u> pp. 66-77
<u>3/</u> pp. 8-14	<u>8/</u> pp. 78-81
<u>4/</u> pp. 15-17	<u>9/</u> pp. 82-83
<u>5/</u> pp. 21-25	

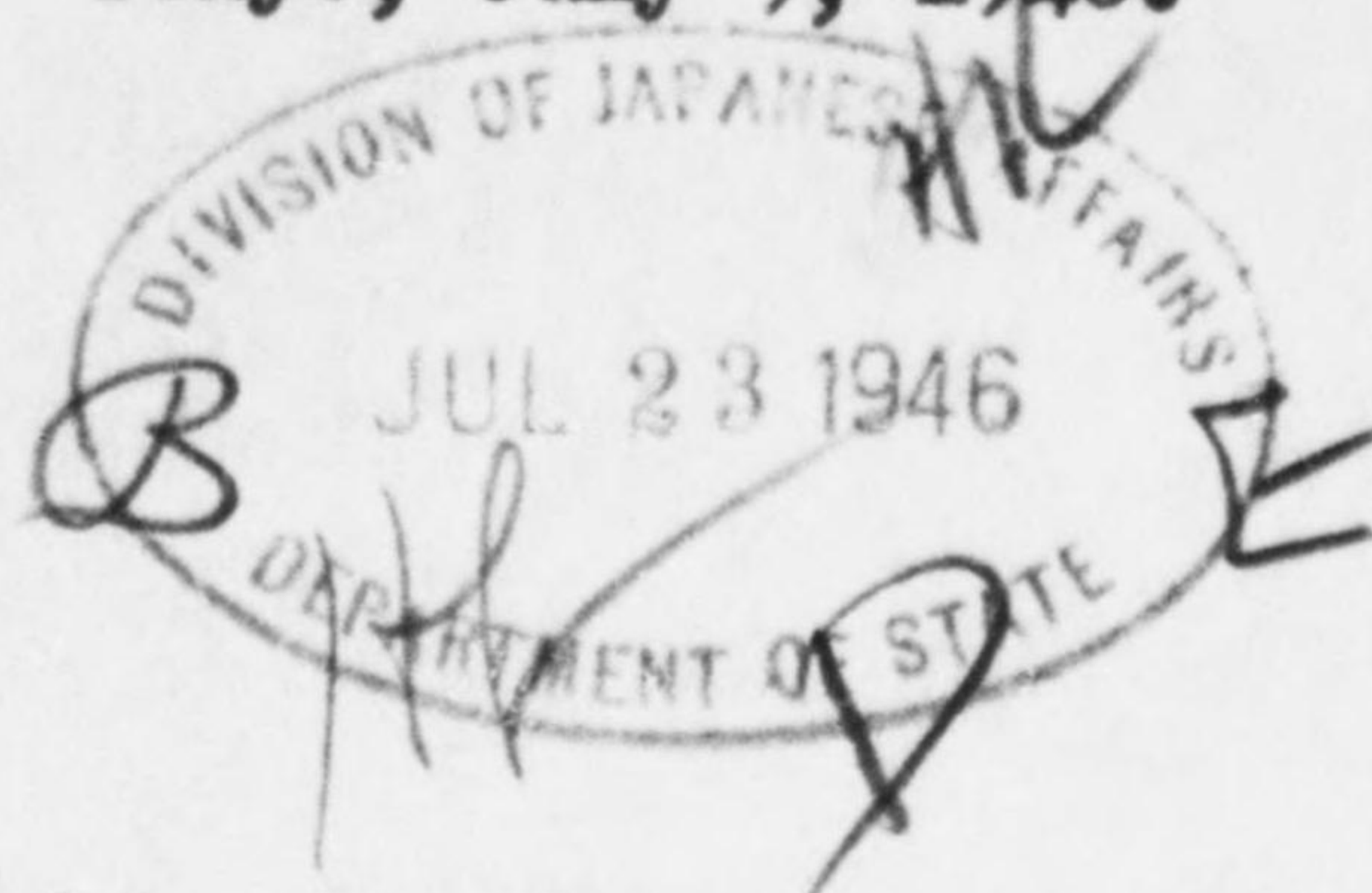
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UNITED STATES POLITICAL ADVISER
FOR JAPAN

Tokyo, July 9, 1946.

No. 495



FR
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DC/R

SUBJECT: Draft Constitution Proposed by the Japan Communist Party.

- 1/ The United States Political Adviser has the honor to enclose two copies of the Japanese language version of a proposed Constitution for Japan published by the Japan Communist Party on June 29, 1946.
- 2/ There is also enclosed a copy of a report, as published in the July 2, 1946 edition of the Nippon Times, on the salient points of this draft Constitution.

This Mission has made no translation of the Japanese document in view of the acute personnel shortage with which it is confronted.

DEPARTMENT OF STATE
DIVISION OF FOREIGN
REPORTING SERVICES
JUL 22 1946

Enclosures: *at 1/20*

- 1/ Two copies of Japan Communist Party's proposed Constitution for Japan (Japanese language version).
- 2/ Copy of Nippon Times news item regarding proposed Constitution, edition of July 2, 1946.

Original and hectograph to Department.

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Enclosure No. 1 to Despatch No. 495, July 9,
1946, from the United States Political Adviser
for Japan, Tokyo, on the subject: "Draft Con-
stitution Proposed by the Japan Communist Party".

新憲法草案發表に際して

日本共産党中央委員会憲法委員会

一 わが党はこゝに新憲法草案を發表し全人民大衆の広汎な討議に委ねる。
わが党の望むところは大衆的民主主義的討議によって民主主義日本建設の指標としての新憲法草案を完成し人民の手による眞の民主憲法のために全人民と共に奮闘することである。

二 天皇制政府の無條件降伏によるポツダム宣言の受諾によって日本人民は思惟心と言論の自由、及び自由に表明された意志によって自己の政体を決定する権利を保證された。我党は公然と活動を始めて以来、人民を奴隷的圧制の下に呻吟させ、其の根源は天皇制・寄生的大土地所有制・労働者の植民地的搾取にあることを立証して、欽定憲法の露骨な反動性と政府の天皇制憲法草案の非民主性^(性)を指摘した。我党の草案は主権在君憲法草案又は似而非主権在民憲法では決してなく、眞に人民の民主的憲法として人民共和政体を内容としてある。人民の権利も客觀的可能な範囲内で行うことができるだけ具体的に保証することに留意した。

三 わが党は行動綱領及び本憲法草案の示すやうに一切の封建的・特权的身分制度及び反對し、この廃止を目標の一つとしてある。従って特权的身分制度としての皇室は当然廢止するべきであるが、人民共和政府が實現し人民大衆の民主的^(性)教育が徹底した後、この問題を人民投票に問ふて決定する方針であることはわが党がかねて聲明した通りである。

した。我党の草案は主権在君憲法案又は似而非主権在民憲法では決してなく、眞の人民の民主的憲法として人民共和政体を内容としてある。人民の権利も内容的に観的可能な範囲内で行き得るだけ具体的に保証することに留意した。

三、わが党は行動綱領及び本憲法草案の示すやうに一切の封建的、特权的身分制度には反対し、この廃止を目標の一つとしてある。従つて特权的身分制度としての皇室は当然廃止するべきであるが、人民共和政府が実現し人民大衆の民主的、教育が徹底した後、この問題を人民投票で問ふて決定する方針であることはわが党がかねて聲明した通りである。

四、本憲法は政治、経済における封建的遺制の撤廃に基く民主主義革命の實現を内容としてある。社会主義社会を通じての共產主義社会においてこそ一切の搾取制度が根絶され、能力に依りて働き、欲心のままに依りて分配される人類の最高の目標が到達されるものであるが、これは民主主義の徹底を通じてのみ實現されるものである。原則として憲法とは單なる綱領ではなく、到達された社会的政治的発展の法制化である。しかしブルジョア民主主義革命の端緒に立つ当面の日本では目前の現實の法制化ではならぬの進歩的意義も持ち得ず却つて民主主義の徹底を阻害する。少くともブルジョア民主主義革命の實現を内容とするものは民主主義憲法と稱しうる最小限の^{程度}ものである。その意味で本草案はわが党の最小限憲法綱領の具体化である。さらにそれは現實にブルジョア民主主義革命の課題が達成された後には現實の具体的條件と到達した民主主義的諸成果を基礎として、さらにによりよき完成を期待し得るであらう。

新憲法(草案)

目次

前文

第一章	日本人民共和国
第二章	人民の基本的權利と義務
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第六章	地方制度
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第九章	憲法改正

前文

天皇制支配体制によつてもたらされたものは、無謀な帝國主義侵略戦争、人類の生命と財産の大規模な破壊、人民大衆の悲惨にみちた窮乏と飢餓とであつた。この天皇制は欽定憲法によつて法制化されておたやうに、天皇が絶対権力を握り人民の權利を徹底的に剝奪した。それは特權身分である天皇を頂点として、軍閥と官僚によつて武装され、資本家地主のための搾取と抑圧の体制として、勤勞人民に君臨し、政治的には如隸的無權利状態を、経済的には植民地的に低い生活水準を、文化的には蒙昧と偏見と迷信と盲従を強制し、無限の苦痛を與へてきた。これに反対する人民の声は、死と牢獄とを以て威嚇され

前文

天皇制支配体制によつてもたらされたものは、無謀な帝国主義侵略戦争、人類の生命と財産の大規模な破壊、人民大衆の悲惨にみちた窮乏と飢餓とであつた。この天皇制は欽定憲法によつて法制化されておたやうに、天皇が絶対権力を握り人民の権利を徹底的に剝奪した。それは特権身分である天皇を頂点として、軍閥と官僚によつて武装され、資本家地主のための搾取と抑圧の体制として、勤労人民に君臨し、政治的には奴隸的無権利状態を、経済的には植民地的に低い生活水準を、文化的には家味と偏見と迷信とに従従を強制し、無限の苦痛を與へてきた。これに反対する人民の声は、死と牢獄とを以て威嚇され弾圧された。この專制的政治制度は日本民族の自由と福祉とに決定的に相反する。同時にそれは近隣植民地半植民地諸国の解放に対する最大の障害であつた。

わがらは苦難の現実を通じて、このやうな巧原と苦痛にみちた專制政治を廢棄し人民に主権をおく民主主義的制度を建設することが急務であると確信する。この方向こそかつて天皇制の下にひとしく呻吟して来た日本の人民と近隣諸国の人民との相互の自由と繁榮にもとづく友愛を決定的に強めるものである。

二、に、わがらは、人民の間から選ばれた代表を通じて人民のための政治が行はれるとこの人民共和政体の採擇を宣言し、この憲法を決定するものである。天皇制はそれがどんな形をとらうとも、人民の民主主義体制とは絶対に相容れない。天皇制の廢止・寄生地主的土地所有制の廢絶と財閥的独占資本の解体、基本的人権の確立・人民の政治的自由の保障と、人民の経済的福祉の擁護——これらに基調をおく本憲法こそ、日本人民の民主主義的發展と幸福の保障となるものである。日本人民の圧倒的多数を占める勤労人民大衆を、^{基礎となる人民の民主主義体制}帝國主義者の企てる專制抑圧政治の復活と侵略戦争への野望を防止し、人民の窮極的解放への道を確實にする。それは人民の民主的祖國としての日本の独立を完成させ、わがらの國は國際社会に名譽ある当然の位置を占めるだらう。日本人民はこの憲法に導かれ、政治的恐怖と経済的窮乏と文化的貧困からの完全な解放を目指し、全世界の民主主義的平和愛好國家との恒久的親睦をかため、世界の平和人類の無限の向上のために高邁な正義と人道を守り抜くことを誓ふものである。

第一章 日本人民共和国

第一條

日本国は人民共和國である。

第二條

日本人民共和国の主権は人民にある。主権は憲法に則つて行使される。

第三條

日本人民共和国の政治は人民の自由を基として行われ、選挙による議会の基礎として運営される。

第四條

日本人民共和国の経済は封建的寄生的土地所有制の廢止、財閥的独占資本の解体、重要企業ならびに金融機關の人民共和國政府による民主主義的規制に基として人民生活の安定と向上を目的として運営される。

第五條

日本人民共和国はすべての平和愛好諸国と緊密に協力し、民主主義的國際平和協権に参加し、いかなる侵略戦争をも支持せず、又これに参加しない。

第二章 人民の基本的權利及義務

第六條

日本人民共和国のすべての人民は法律の前に平等であり、すべての基本的權利を享有する。

第七條

この憲法の保障する基本的人權は不可侵の權利であり、これを犯す法律を制定し、命令を發することはいかなる場合も許されず、政府は憲法によつて保障された基本的人權を侵害する行為を許し、又かかる命令を發した場合に人民はこれに服従する義務を負ふ。

第八條

人民は日本人民共和国の法律と自己の良心以外にはいかなる権威もたはかなる特定の個人に對して服従又は尊敬を強要されることはない。人種・民族・性別・信教身分または門地による政治的・経済的または社会的特權はすべて廢止され、今後設置されるべき皇族、華族の制度は之を廢止する。稱号、勳章その他の榮典は之を特權を伴ふものではない。かかる榮典の授与はあたへられた者に對してのみ効力を有する。

第九條

人民は民主主義的の一切の言論、出版、集會、結社の自由を有し、労働争議及び示威行進の完全な自由を認められる。

この權利を保障するために民主主義的政黨ならびに大衆団体にたいし印刷所・用紙・公共建築物・通信手段その他一切の權利を行使する。

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人民は日本人民共和国の法律と自己の良心以外にはいかなる権威またはいかなる特定の個人に對しても服従又は尊敬を強要されることはない。

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第十條

人民は信仰と良心の自由を保障するため宗教と國家、宗教と学校は分離され、宗教的禮拜、布教の自由と共に反宗教的宣伝の自由もまた保証される。

第十一條

人民は居住移轉、口外への移住、口籍の離脱、ならびに職業選擇の自由を有する。

第十二條

人民の住宅の不可侵と通信の秘密は法律によつて保護される。

第十三條

人民は身体の不可侵を保障され何人も裁判所の決定または検事の同意なくしては逮捕拘禁されることはない。

第十四條

何人も裁判所で裁判を受ける権利を奪はれず裁判は迅速公平でなされる。

第十五條

人民を拘留、拘禁した場合、当該機関は即時に家族若しくは本人の指名する他人に通知しなされる。

第十六條

何人も自己に不利益を供述をすることを強要されず、強制、拷問または脅迫の下での自白若しくは不当に長期に亘る拘留又は拘禁の後の自白は、これを証拠としない。

被告人はどんな場合にも弁護の権利を保障され事件の資料につき精通する権利と法廷において自國語で陳述する権利を保障される。

第十八條

どんな行爲であらうか法律によつて之に對する罰則を定めたるものでなければ刑罰を科せらる。刑罰は犯罪の重要さに依りて科せらる。何人も同一の行爲のために二度處罰されることはない。死刑は二回を廢止する。

第十九條

国家は裁判の結果無罪の宣告を受けた被告人に對しては精神上物質上の損害を賠償しなければならない。

第二十條

受刑者の取扱ひは人道的であらねばならない。受刑者の勞賃と勞働時間と一般企業家の勞働條件を基準として決定される。受刑者の共和口市民としての社会的再教育を目的とする。受刑者に對して合法的に科された刑罰を更に加重するやうな取扱を行つた公務員はその責任を問はれる。

第二十一條

受刑者を含み被拘禁者に對して進歩的民主主義的出版物の看讀を禁止することは出来ない。勤勞に基づく財産および市民としての生活に必要な財産の使用、受益、處分は法律によつて保障され、その財産は相続を認めらる。社会的生産手段の所有は公共の福祉に從屬する。財産権は公共の福祉のために必要の場合には法律によつて制限される。

第二十二條

人民は性別を問はずすべての國家機關の公務員に選任される権利をもつ。人民は個人又は団体の利害に關しすべての公共機關に口頭又は文書で請願、又は要求を提出する権利をもつ。何人もその請願又は要求をしたためにどんな差別待遇も受ける事はない。

第二十三條

女子は法律的、経済的、社会的および文化的諸分野で男子と完全に平等の権利をもつ。婚姻は兩性の合意によつて成立しかつ男女が平等の権利をもつ完全な一夫一婦を基本とし純潔な家族生活の建設を目的とする。社会生活において家長及び男子が専横を可能とする非民主的の専制主義に代りて相互継続は之を廢止する。夫婦を以て親族生活に於て女子に對する圧迫と無権利とをまたらす法律はすべて廢止される。

第二十四條

寡婦およびすべての生児の生活と権利は國家および公共団体によつて十分に保護される。人民は勞働の権利をもつ。即ち勞働の質と量に小ざけい支拂をうける任事につく権利をもつ。この権利は民主的経済政策に基き失業の防止、如親的雇傭關係及勞働條件の排除、同一勞働に對する同一賃銀の原則生活賃金を基準とする最低賃銀制の設置、による現実に確保され勞働諸法規によつて保障される。

第二十五條

労働者の團結権団体交渉団体協約その他団体行動をする権利は保障される。被傭者は企業家の経営に参加する権利をもつ。

第二十六條

労働の期間及條件は労働者の健康人格的威嚴又は家庭生活を破壊するものであってはならない。十八才以下の未成年者はその身心の發達を阻害する労働に對して保護され十六才以下の幼年労働は禁止される。

第三章 国会

第四十二條 日本人民共和国の最高の国家機関は国会である。

第四十三條 国会は主権を管理し、人民に対して責任を負ふ。

第四十四條 国会は次の事項を管掌する。
一、内外行政に関する基本方針の決定。
二、憲法の実行の監視。
三、憲法の変更または修正。
四、法律の制定。
五、予算案の審議と確認。
六、政府首席の任免と首席による政府員の任免の確認。
七、国会常任幹事会の選挙、国会休会中において常任幹事会の発布した諸法規の確認。
八、日本人民共和国最高検事の任命。
九、人民から提出された請願書の裁決。
十、會計検査院長の任命。
十一、各種専門委員会を設置。

第四十五條 国会は法律の定める定員数からなる代議員によって構成される一院制議會である。
第四十六條 日本人民共和国の立法権は国会だけがこれを行使する。
第四十七條 代議員として選挙される代議員は選挙する資格は政治上の権利を有する十八歳以上の男子に与えられる。選挙権は定住、資産、信教、性別、民族、教育その他の社会的條件によるいかなる差別、制限をも加へられない。

第四十八條 代議員の選挙は比例代表制に基き平等直接、秘密、普通選挙によって行はれる。

第四十九條 代議員はその選挙区の選挙民に対して報告の義務を負ふ。選挙民は法律の規定に従って代議員を召還する事が出来る。

第五十條 国会は四年の任期を以て選挙される。

第五十一條 国会は代議員の資格を審議する資格審査委員会を選挙する。国会は資格審査委員会の提議により何々の代議員の資格の承認又は選挙の無効を決定する。

第五十二條 国会は必要と認められた場合には、すべての向題に關して査向委員会および検査委員会を任命する。すべての機関および公務員はこれらの委員会の要求に応じて必要な資料と書類を提供する義務を持つ。

才四十八條 代議員の選挙は比例代表制に基き平等直接・秘密・普通選挙によつて行はれる。

才四十九條 代議員はその選挙区の選挙民に対して報告の義務を負ふ。選挙民は法律の規定に従つて代議員を召還する事か出来る。

才五十條 國會は四年の任期を以て選挙される。

才五十一條 國會は代議員の資格を審議する資格審査委員会を选举する。國會は資格審査委員會の提議により何々の代議員の資格の承認又は選挙の無効を決定する。

才五十二條 國會は必要と認められた場合には、すべての問題に關して査向委員会および検査委員会を任命する。すべての機関および公務員はこれらの委員會の要求に応じて必要な資料と書類を提供する義務を持つ。

才五十三條 國會の会期は年二回を原則とする。臨時國會は國會常任幹事會の決定および代議員三分の二以上の要求によつて召集される。

才五十四條 國會は代議員数の三分の二以上の出席によつて成立する。

才五十五條 法律は國會において、代議員の單純多數決によつて成立し、國會常任幹事會議長および書記の署名を以つて公布される。

才五十六條 國會における議事はすべて公開とする。

才五十七條 國會は議長一名、副議長二名を選挙し、議事の進行、國會内の秩序の維持に當らせる。

才五十八條 代議員は國會の同意がなくては逮捕されない。國會の休会中は國會常任幹事會の承認を必要とし次の國會の同意を要する。

才五十九條 國會には代議員の三分の二以上の決計に基づき解散を告示する権限がある。

才六十條 國會の任期が満了するか又は國會が解散された場合には、四十日以内に総選挙が施行される。

才六十一條 総選挙施行後三十日以内に前國會常任幹事會は新國會を召集する。

才六十二條 國會は二十五名の國會常任幹事會を选举する。

才六十三條 國會常任幹事會は議長および副議長各一名を选举し、議長は日本人民共和國を代表する。

才六十四條 國會常任幹事會は次の事項を管理する。

- 一 國會の召集および解散、総選挙施行の公告。

ニ口会休会中政府首席による政府員の任免の確認 及びこれについては口会事後確認を必要とする

三口会の決定による人民投票の施行の公告

四政府の決定および命令及び地方議会の決定及び命令のうち 法律に合致しないもの廃止

五赦免権の行使

六口際條約の批准

七外口における日本人民及び口全權代表の任命および召還

八日本駐劄外口代表者の信任状および解任状の受理

九民意的学典の授与

第六十五條

口会の任期が満了するかまたは口会が解散された場合には口会常任幹事会は新長に選挙された口会による 新常任幹事会が選出されるまでその権限を保持する

第四章 政府

第六十六條

政府は日本人民共和国の最高の行政機関である。政府首席は口会による任命され 首席の指名に基き口会の承認をえた政府員と共に政府を構成する

第六十七條

政府は口会に対して責任を負い 口会の休会中は口会常任幹事会に対して責任を負ふ 各政府員は政府の一般政策については全体的に個人的行動については個人的に責任を問はれる

第六十八條

口会が政府に対する不信任案を採擇した場合には政府は総辞職する

第六十九條

政府は次の事項を監督する
一 徹的中央行政事務の遂行のために現行諸法規に基いて決定又は命令を発布し且その執行を監督すること

二 各省およびその管轄下にある口家の諸機関を統一的に指導すること

三 日本人民共和国の発展 公共の秩序の維持および基本的人権の保障のために必要なる諸措置の施行

四 各省に附屬する特別委員会または事務局の組織

五 対外関係の一般の指導

を負ふ。各政府員は政府の一般政策については全体的に個人的行動については個人的に責任を負はれる。

第六十八條
国会が政府に對する不信任案を採擇した場合に於ては政府は総辭職する。
第六十九條
政府は次の事項を監督する。

- 一 一般的中央行政事務の遂行のために現行諸法規に基いて決定又は命令を發布し且その執行を監督すること
 - 二 各省およびその官廳下にある国家の諸機關を統一的に指導すること
 - 三 日本人民共利の発展、公共の秩序の維持および基本的人權の保障のために必要なる諸措置の施行
 - 四 各省に附屬する特別委員会または事務局の組織
 - 五 対外関係の一般的指導
 - 六 政府の権限に關する問題につき、各省の訓令、指令、または地方議會の決定若しくは命令を口法に合致しないもの取消
- 政府の命令は日本人民共利の全領域に亘りて施行される。
政府の命令の公布は当該政府員の署名と首席の副署とを必要とする。

第五章 国家財政

第七十一條
国家財政の處理には国会の議決を必要とする。
第七十二條
租税の賦課および徴收は変更されし限り一年を限りて効力をもつ。消費税はこれを廃止する。

第七十三條
口費の支出または口家債務の負擔は国会の議決を経るを必要とする。
第七十四條
政府は毎會計年度の予算を作成し、国会の審議をうけ承認を得なければならぬ。事業計画については政府は毎年事業計画を作成し、国会に提出しなければならぬ。

第七十五條
国家財政の決算はすべて毎年會計検査院の検査を受け、政府は次年度にその検査報告と共にこれを国会に提出しなければならぬ。

會計検査院長は国会に於て任命され、取務の遂行につき、国会に責任を負ふ。
會計検査院の組織と権限は法律によつて定められる。

第六章 地方制度

第三十六條

日本人民共和国はその領土内に地方制度(町、市、縣等)を認める。地方制度は法律に基いて運営される。

第三十七條

地方制度は第四十七條、第四十八條を基準とする選挙法によつて選挙される地方議会(村会、町会、市会、縣会)を基礎として運営される。

第三十八條

各級の地方議会(夫々の行政機関を委任する)行政機関は夫々の地方議会(地方)に上級行政機関に責任を負ふ。

第三十九條

各級の地方議会は夫々の行政機関の活動を統轄し地方予算を審議確認し法律の範囲内において地方的問題を議決し命令を發布する。

第四十條

政府機関の地方支部の活動は地方の権力機関の行政と合致するやう法律によつて調整される。

第七章 司法

第四十一條

日本人民共和国における裁判は人民の基本的権利の尊重を根本精神とし人民の名により行はれる。

第四十二條

裁判官は地方裁判所、地裁裁判所によつて行はれる。裁判官は公平の審理に陪審員の参加を要する。日本人民共和国の最高裁判機関は最高裁判所である。

第四十三條

最高裁判所の裁判官は国会の推薦に基き人民の信任投票によつて五年の任期を以つて選任される。各下級裁判所の裁判官は夫々地方の議会の推薦に基き夫々の地域の人民の信任投票によつて四年の任期を以つて選任される。

第四十四條

裁判官は独立的であり法律にのみ服従する。裁判官は独立のあり法律にのみ服従する。

第四十五條

検事の任務は人民が法律を正確に遵守するのを監視することにある。検事の任務は人民が法律を正確に遵守するのを監視することにある。

第四十六條

検事局の検事は五年の任期をもつて国会により任命される。下級検事局検事は最高検事局検事の確認を経て上級検事局が任命する。検事局機関は最高検事局の検事にだけ服従し一切の地方機関から独立してその職務を行う。

第四十七條

第九十條

第八章 公務員

第九十條

公務員は民主主義と全人民の利益に奉仕し官僚主義に陥つてはならぬ。公務員は民主主義と全人民の利益に奉仕し官僚主義に陥つてはならぬ。

第八十五條 各下級裁判所の裁判官は夫々地方の議会の推薦に基き夫々の地域の人民の信任投票によりて四年の任期を以て選任される。

第八十六條 裁判官は独立的であり法律にのみ服従する。

第八十七條 検事の任務は人民が法律を正確に遵守するのを監視するにある。

第八十八條 検事局の検事は五年の任期をもつて国会により任命される。

第八十九條 下級検事局検事は最高検事局検事の確認を経て上級検事局がこれを任命する。

第九十條 検事局機関は最高検事局の検事にだけ服従し一切の地方機関から独立してその職務を行ふ。

第八章 公務員

第九十一條 公務員は民主主義と全人民の利益に奉仕し官僚主義に陥つてはならぬ。

第九十二條 公務員は廉潔を旨とし一切の汚辱行為職権濫用行為をすることを厳禁される。

第九十三條 国家は公務員及びその家族に必要な生活手段を保障する。

第九十四條 行政機関の公務員は中 議会によりて任命されるもの以外はその行政機関の長が任免する。

第九十五條 人民は公務員の罷免を議会その他の公共機関に要求する権利をもつ。

第九十六條 議会は公務員の活動を監視し議会の確認によりて執行機関の長が任免する公務員に対しては罷免を要求する権利がある。

警察官の責任はその官職の領域内の人民によりて選出され警察制度が官僚的支那機構として固着することを阻止する。

第九章 憲法改正

第九十七條 日本人民共和國憲法の改正提案権は国会に属する。

第九十八條 日本人民共和國の地方上級議会は代議員三分の二以上の同意をもつて憲法改正の提案権をもつ。

第九十九條 日本人民共和國の憲法の改正は国会代議員三分の二以上の出席により開かされる国会において三分の二以上の多数をもつて採択されなければならない。

第一百條 日本人民共和國の共和政体を破壊せしめよび特権的身分制度を復活し憲法改正の対象となり得ない。

Enclosure No. 2 to Despatch No. 495, dated July 9, 1946, from the United States Political Adviser for Japan, Tokyo, on the subject "Draft Constitution Proposed by the Japan Communist Party."

NIPPON TIMES, July 2, 1946

DRAFT CONSTITUTION PUBLISHED BY REDS

Advocate Republican Form of State and Abolition of
Emperor System

The Japan Communist Party on Sunday published its draft constitution advocating the abolition of the Emperor system and the establishment of a republican form of Government.

In making the draft Constitution public, the Communist Party in a statement said that it wished to submit its draft constitution to public discussion prior to submitting it to the Diet.

In its preamble, the draft constitution of the Communists described the Emperor system as "incompatible with the maintenance of freedom and happiness of the Japanese peoples and declared that only through the adoption of a republican form of Government will "the Japanese people be able to create a society where there will be no room for exploitations". The draft constitution, however, made no reference of the controversial issue regarding the renunciation of war.

Article one of the draft constitution, which is titled "The Constitution of the Japanese People's Republic," places the sovereignty of the state into the hands of the people. Other salient points of the draft constitution included the following:

- (1) All persons shall be equal before the law of the state and shall possess all fundamental human rights guaranteed under the constitution.
- (2) The Imperial Family system and the Peers system shall be abolished.
- (3) Women shall have equal rights as men in every field of life.
- (4) Laborers shall be guaranteed by the state to have the right to own a home, receive education and an appropriate vacation.
- (5) All persons over 18 years of age shall have the right to vote and be elected. Elections will be held under a proportional representative system, and the Diet shall consist of one house.
- (6) The Diet shall supervise and guard the sovereignty of the people.
- (7) The Diet shall elect a 25-men committee whose chairman shall represent the republic.
- (8) All judges shall be elected by the Diet.
- (9) Local governments shall be established on a self-governing basis.
- (10) Police and all other public officials shall be elected.

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

SWN-4521
10 July 1946

FA

DC/R

MEMORANDUM FOR THE STATE MEMBER, SWNCC:

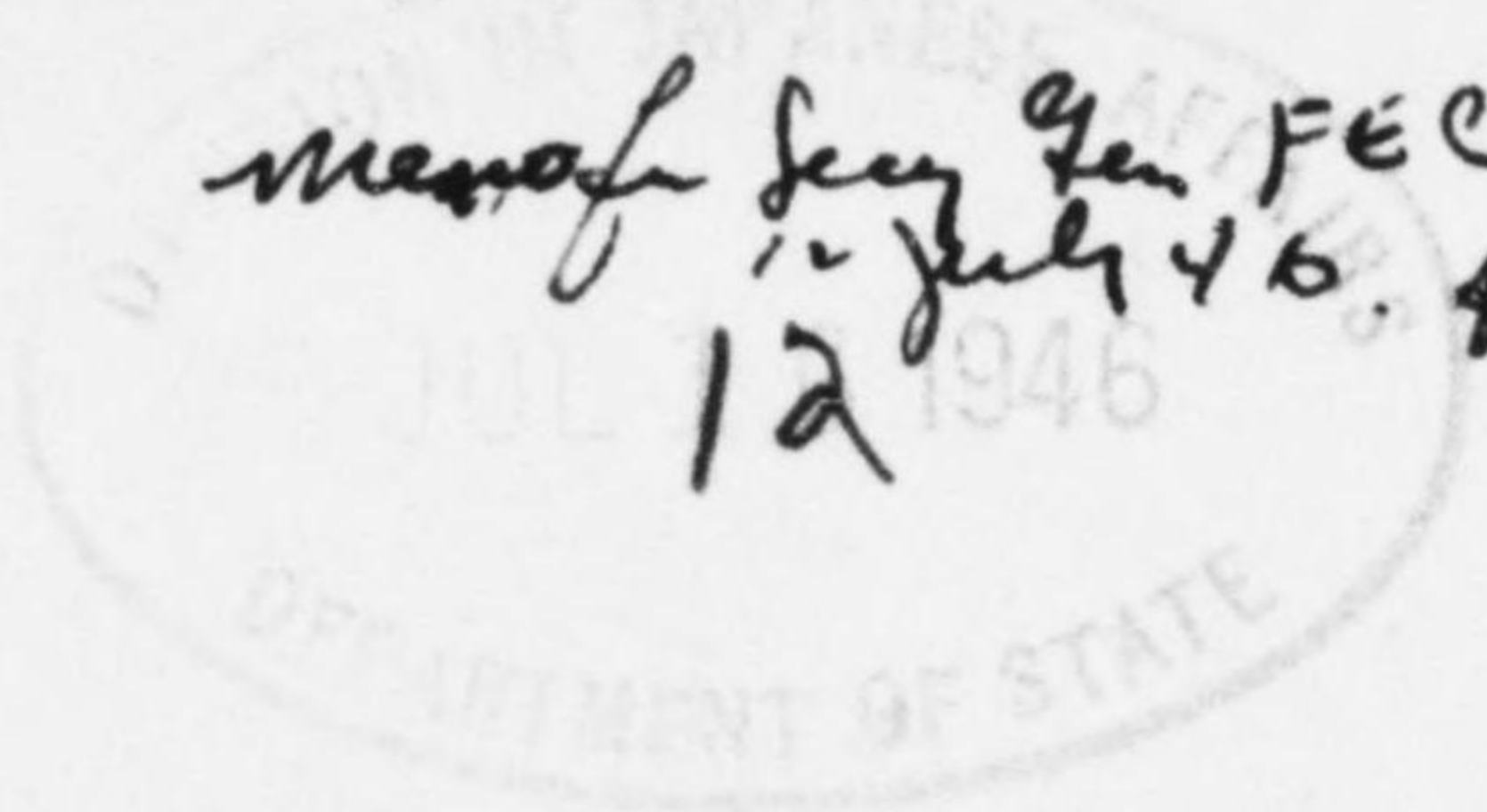
Subject: Release of Statement of Policy Regarding
Basic Principles for a New Japanese Con-
stitution, approved by Far Eastern Commis-
sion on July 2, 1946.

Reference is made to your memorandum on the above
subject dated 3 July 1946 and received by the Secretariat,
SWNCC, on 9 July 1946.

The text of this memorandum and the enclosure thereto
were transmitted to the Joint Chiefs of Staff for dispatch
to SCAP on 9 July 1946 by the Secretary, SWNCC. However,
by the time the memorandum had reached the Joint Chiefs of
Staff, SCAP had replied to a cable transmitted by the War
Department covering the same subject (CM-OUT 93298, July
1946). In view of this action, informal concurrence of the
Department of State was obtained to the return without
action by the Joint Chiefs of Staff of the above memorandum
together with a copy of SCAP's comments.

Attached is a copy of a message containing SCAP's
reply and a supplement thereto, which are forwarded for
any action deemed necessary by the Department of State.

*memo for Sec Gen FEC
in July 46. HD
12*



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

JUL 18 1946

FILED

Enclosures:
MC-IN-54108 (9 Jul 46)
MC-IN-54704 (10 Jul 46)

Routing slip with handwritten initials *RC* and *FR*

894.011/7-1046

CS/V

894.011/7-1046

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

SWN-4521
10 July 1946

MEMORANDUM FOR THE STATE MEMBER, SWNCC:

Subject: Release of Statement of Policy Regarding Basic Principles for a New Japanese Constitution, approved by Far Eastern Commission on July 2, 1946.

Reference is made to your memorandum on the above subject dated 3 July 1946 and received by the Secretariat, SWNCC, on 9 July 1946.

The text of this memorandum and the enclosure thereto were transmitted to the Joint Chiefs of Staff for dispatch to SCAP on 9 July 1946 by the Secretary, SWNCC. However, by the time the memorandum had reached the Joint Chiefs of Staff, SCAP had replied to a cable transmitted by the War Department covering the same subject (CM-OUT 93298, July 1946). In view of this action, informal concurrence of the Department of State was obtained to the return without action by the Joint Chiefs of Staff of the above memorandum together with a copy of SCAP's comments.

Attached is a copy of a message containing SCAP's reply and a supplement thereto, which are forwarded for any action deemed necessary by the Department of State.

A. D. REID,
Secretary

Enclosures:
MG-IN-54108 (9 Jul 46)
MG-IN-54704 (10 Jul 46)

COPY TO ACCOMPANY ORIGINAL

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

PRIORITY

From: GHQ SCAP Tokyo sgd Mac Arthur

To: War Department for WSCA

Nr: Z 07139

8 July 1946

Reurad W 93298. There is no inconsistency between the basic principles governing constitutional reform approved by the Far Eastern Commission on July 2 and those previously prescribed by the United States Government and SCAP. As consequence, the draft constitution now under consideration by the Diet at the instance of the Japanese Government conforms in every respect to the basic principles outlined and scrupulous care will be exercised to insure that the constitution finally adopted by the Diet contains no provision inconsistent therewith. It would appear, however, that the public release of the directive, at this time would be grave, if not fatal, error.

The Japanese Government and people, by virtue of the Potsdam surrender terms, have since the start of the occupation been evolving their own form of government and, with the advice of and consultation with SCAP, voluntarily have been moving toward constitutional reform designed to produce a thoroughly democratic state. The publication, under these circumstances, of a restrictive and mandatory directive such as that contained in WCL 25073 would tend to provoke a revulsion of the Japanese people against any such reform, irrespective of its terms, as the voluntary character of the work now in process would instantly become clothed with the taint of Allied force. It would vitiate the requirement contained in the Potsdam declaration, and fundamental to all subsequent policy enunciated on constitutional reform, in-

MC-IN-54108

(9 Jul 46)

UNCLASSIFIED

894,011/7-1046

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

PRIORITY

Page 2

From: GHQ SCAP Tokyo sgd MacArthur.

Nr: Z 07139

8 July 1946

cluding that of the Far Eastern Commission (WCL 43814), that any such action must be responsive to the free will of the Japanese people. It would not only seriously threaten the gains already made in the democratization of Japan but would materially increase the hazards and difficulties which yet confront the occupation. I, therefore, recommend most earnestly that this directive be regarded with the * which invariably surrounds diplomatic procedure under conditions of equivalency.

End.

* Being Serviced.

ACTION: CAD

INFO : JCS, Adm Leahy, CG AAF, D/I, D/PO, CAD(State),
Adm Nimitz, Mr Petersen, C of S

MC-IN-54108

(9 Jul 46) DTG 081241Z

13

UNCLASSIFIED

899.011/7-1046

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

PRIORITY

SUPPLEMENTARY COPY

From: GHQ SCAP Tokyo, Japan sgd MacArthur

To: War Department for WDSCA

Nr: 2-07139

10 July 1946

Change Page 2, line 6 to end of message to read:
"I, therefore, recommend most earnestly that this
directive be regarded with the same discretion which
invariably surrounds diplomatic procedure under conditions
of equivalent delicacy."

End.

Supplementary Copy of MC IN 54108 (9 July) CAD

ACTION: CAD

INFO : JC/S, Adm Leahy, CG AAF, D/I, D/PO, CAD (State),
Adm Nimitz, Mr Petersen, C of S

MC IN 54704

(10 July 46) DTB 081241Z se

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894011/7-1046

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ENCLOSURE

8 July 1946

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July 12, 1946

MEMORANDUM FOR THE SECRETARY GENERAL,
FAR EASTERN COMMISSION

Subject: Views of the Supreme Commander for the Allied Powers on the Public Release of Statement of Policy Regarding Basic Principles for a New Japanese Constitution, approved by the Far Eastern Commission on July 2, 1946.

In reply to your letter of July 3, 1946, in regard to the above subject, there is enclosed, for the information of the Far Eastern Commission, a copy of a message from the Supreme Commander for the Allied Powers concerning the question of the release to the press of the statement of policy regarding Basic Principles for a New Japanese Constitution approved by the Far Eastern Commission on July 2, 1946.

Enclosure:

Copy of message from
the Supreme Commander.

JA:ALDunning:als
7-12-46

FE

ENCLOSURE

8 July 1946

There is no inconsistency between the basic principles governing constitutional reform approved by the Far Eastern Commission on July 2 and those previously prescribed by the United States Government and SCAP. As consequence, the draft constitution now under consideration by the Diet at the instance of the Japanese Government conforms in every respect to the basic principles outlined and scrupulous care will be exercised to insure that the constitution finally adopted by the Diet contains no provision inconsistent therewith. It would appear, however, that the public release of the directive, at this time would be grave, if not fatal, error.

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99

DRAFT MESSAGE FROM JCS TO SCAP

The substance of your recommendations that the Far Eastern Commission's policy decision on Basic Principles for a New Japanese Constitution should not be released to the press "at this time" was circulated to the Commission on July 10, 1946 and was considered by the Commission at its nineteenth meeting on July 11, 1946.

The Commission agreed to accept your recommendation not to release the policy statement at this time but it was also of the opinion that the statement should, as a matter of principle, be released at an early date and instructed its Chairman to consult with you with a view to determining the date when release to the press would be appropriate. You are therefore requested to advise in advance the date which you would approve for release of the policy decision.

file
7-16-46

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

11 July 1946

Major General J. H. Hilldring
Assistant Secretary of State
State Department
Washington, D.C.

DEPARTMENT OF STATE
RECEIVED
JUL 15 1946
DC
OFFICE OF CHIEF

Memorandum
7/13/46
DIVISION OF JAPANESE AFFAIRS
DEPARTMENT OF STATE

Dear General Hilldring:

In his letter of 2 July 1946 transmitting to the Secretary of State the policy decision of the Far Eastern Commission on Basic Principles for a New Japanese Constitution (FEC-031/19), the Secretary General asked, as the Commission had requested, that the Supreme Commander for the Allied Powers be consulted with respect to the question of the release to the press of the Commission's policy decision.

894.011/7-1146

The reply of the Supreme Commander, in which he recommended that the policy statement not be released to the press "at this time", was circulated to the Far Eastern Commission on 10 July 1946 as FEC-031/24, and was considered by the Commission at its nineteenth meeting on 11 July 1946.

Xref. 00119
Central Japan

The Commission agreed to accept the Supreme Commander's recommendation not to release the policy statement at this time, but it was also of the opinion that the statement should, as a matter of principle, be released at an early date and instructed me to consult with the Supreme Commander with a view to determining the date when release to the press would be appropriate.

I am accordingly forwarding this decision to you with the request that you have it transmitted to the Supreme Commander, and that you ask him to advise the Far Eastern Commission, through me, prior to the date when he would approve the release of the policy decision on Basic Principles for a New Japanese Constitution to the press.

JUL 16 1946

FILED

DCF NE Unit
mrd

Sincerely yours,

Frank R. McCoy
Frank R. McCoy
Chairman

Confidential File
894.011/7-1146

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

SWN-4534
12 July 1946

File
7-19-46
DCIR

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JUL 12 1946
MAIL ROOM
MAIL 4 32
RESEARCH BRANCH

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

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

Enclosed are three copies of Directive, Serial No. 54, transmitted to SCAP by the Joint Chiefs of Staff. Copy No. 1 is for transmittal to the Far Eastern Commission and Copies No. 2 and 3 are for the files of the State Department.

For the State-War-Navy Coordinating Committee:

A. D. Reid.

A. D. REID,
Secretary.

Encls.
Copy No. 1, 2, and 3
of Serial #54



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Confidential

Serial No. 54COPY NO. 2

6 July 1946

DIRECTIVE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSBASIC PRINCIPLES FOR A NEW JAPANESE CONSTITUTION

The following statement of policy, adopted by the Far Eastern Commission on 2 July 1946 under the provisions of paragraph II, A, one, of its terms of reference has been received from the State, War and Navy Departments for transmission to you as a directive for your guidance in accordance with paragraph III, one, of those terms of reference. You should take appropriate steps consistent with the directives on Draft Constitution for Japan* and Principles Governing the Machinery for the Adoption of a New Japanese Constitution,** to insure that any constitution adopted by the Japanese conforms to the principles set forth in this statement:

"1. The Japanese Constitution should recognize that sovereign power resides in the people. It should be so framed as to provide for:

a. A representative government based upon universal adult suffrage consisting of:

(1) An executive deriving its authority from and responsible to either the electorate or a fully

* Serial No. 36

** Serial No. 47

representative legislative body;

(2) A legislature, fully representative of the electorate, which should have full legislative powers, including full control over raising of public revenue and expenditure of public funds;

b. The establishment of an independent judiciary;

c. The guarantee of fundamental civil rights to all Japanese and to all persons within Japanese jurisdiction. All Japanese shall enjoy equal rights before the law and no special privileges of particular social groups such as the nobility shall be allowed;

d. The popular election of heads of institutions of local government such as prefectures, cities, towns and villages;

e. The popular election of local assemblies such as prefectural, city, town, and village;

f. The adoption of constitutional amendments in a manner which will give effect to the freely expressed will of the Japanese people.

2. Though the ultimate form of government in Japan is to be established by the freely expressed will of the Japanese people, the retention of the Emperor Institution in its present constitutional form is not considered consistent with the foregoing general objectives. Consequently, the Japanese should be encouraged to abolish the Emperor Institution or to reform it along more democratic lines.

3. If the Japanese people decide that the Emperor Institution is not to be retained, constitutional safeguards against the institution will obviously not be required, but the Constitution will have to conform to the requirements of paragraph 1 and shall also provide:

a. That the legislature shall have sole authority over financial measures and any other organ shall possess only a temporary veto power over other legislative measures;

b. That the Prime Minister and the Ministers of State, all of whom shall be civilians and of whom a majority, including the Prime Minister, shall be selected from the Diet, shall form a Cabinet collectively responsible to the legislature. If a system of government is adopted whereby the Chief Executive is elected to that office by the people, the provision that a majority of the Cabinet members shall be chosen from the legislature should not necessarily apply;

c. That the legislative organ shall have the power to meet at will.

4. If the Japanese decide to retain the Institution of the Emperor, the following safeguards in addition to those enumerated in 1 and 3 above will be necessary;

a. When a Cabinet loses the confidence of the legislature it shall either resign or appeal to the electorate;

b. The Emperor shall have no powers other than those to be conferred on him by the new Constitution. He shall act in all cases in accordance with the advice of the Cabinet;

c. The Emperor shall be deprived of all military authority such as that provided in Articles XI, XII, XIII, and XIV of Chapter 1 of the Constitution of 1889;

d. All property of the Imperial household shall be declared property of the State. The expenses of the Imperial household shall be appropriated by the legislature.

5. The retention of the Privy Council and the House of Peers in their present form and with their present powers is not considered consistent with the foregoing general objectives."

100

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

12 July 1946

*Filed 7/27/46
at the direction of
Mr Reischauer's office
H.S. P.*

CONFIDENTIAL

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

Dear General Hilldring:

At the 19th meeting of the Far Eastern Commission on July 11 the question of the authority of the Far Eastern Commission to approve a new Japanese Constitution was raised again. The matter has been under consideration by the Commission for some time in general terms, but was brought specifically to a head at yesterday's meeting in such a way as to demand prompt resolution. I would therefore appreciate it if you could arrange for me to have at an early date a statement of United States policy on the subject of the authority of the Far Eastern Commission to approve a new Japanese Constitution for the guidance of the American delegation on the Commission.

As a possible position for the United States in this connection I am enclosing a draft which I hope you may find helpful in giving me the necessary guidance. The draft, entitled "United States Policy in Regard to the Authority of the Far Eastern Commission to Approve a New Japanese Constitution" is one which seems to me and my advisers adequately meets the issue, and which I think also stands a good chance of being supported by the other governments represented on the Commission.

For your information the following immediate background is pertinent to the issue. At the Commission meeting on July 11 the enclosed paper, FEC-031/23, "Provisions for the Review of a New Japanese Constitution", was up for consideration. Of the 11 representatives on the Commission, 10 were prepared to accept this paper. The Soviet representative alone dissented and insisted that the paper should include an additional paragraph on the subject of the authority

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CCB NE Unit
Ans. <i>WJG</i>
To
Date
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CONFIDENTIAL

General John H. Hilldring

Page 2

12 July 1946

of the Commission to approve the new Constitution. Such a second paragraph had been a part of the paper, but had been deleted prior to consideration of the paper by the Commission because it had been impossible to agree on its language..

The deleted second paragraph read as follows:

"The new constitution, unless previously disapproved by the Far Eastern Commission, will in due season after promulgation become the legal successor of the present constitution without awaiting final review by the Diet and the Far Eastern Commission in terms of the foregoing paragraph."

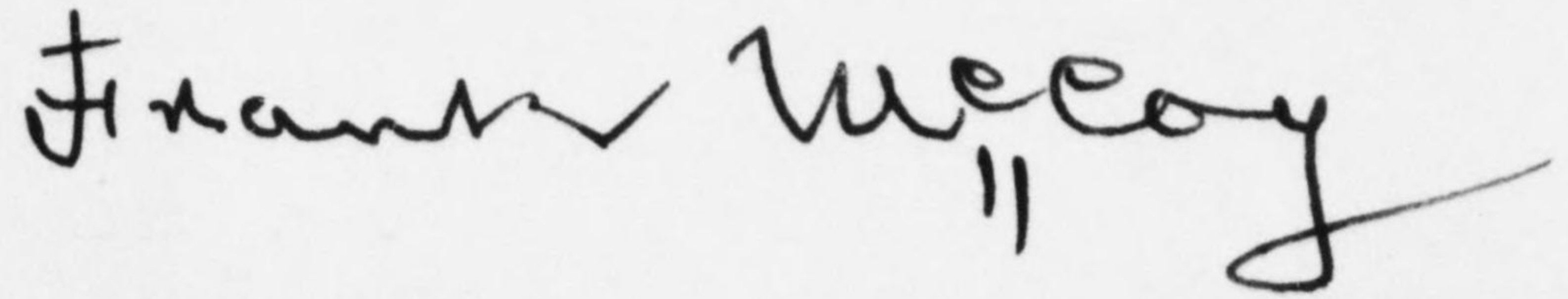
This paragraph had been accepted in the Steering Committee, again with 10 representatives concurring, but with the Soviet representative insisting that its language be changed to read as follows:

"The new constitution, ~~unless previously disapproved~~ after approval by the Far Eastern Commission, will in due season after promulgation become the legal successor of the present constitution without awaiting final review by the Diet and the Far Eastern Commission in terms of the foregoing paragraph."

It was the hope of the Steering Committee, in deleting this controversial second paragraph, that the Commission could approve the review principle embodied in the first paragraph.

The Soviet statement at the Commission meeting on this subject is enclosed for your information. Your particular attention is invited to the 5th paragraph of the Soviet statement, in which the position is taken that a new Japanese Constitution can go into effect only after it has positively been approved by the Far Eastern Commission and after a consequent United States directive to this effect has been issued to the Supreme Commander.

Very sincerely yours,



Frank R. McCoy
Chairman

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SOVIET STATEMENTon theAUTHORITY OF THE FAR EASTERN COMMISSION
TO APPROVE A NEW JAPANESE CONSTITUTION

The paper FEC-031/23, which is submitted for our consideration today, in its original form contained two paragraphs and out of these the first paragraph covered the provisions for the review of a new Japanese constitution while the second one dealt with the provisions for its going into effect. Now we are offered to adopt only the first paragraph of that document concerning the provisions for the review of the constitution.

I wish to state here that the Soviet Delegation, taking into account some of the considerations which have been expressed here, is prepared to concede with respect to the last sentence of the first paragraph and accept the wording which was suggested by the U. S. Delegation. But I am unable to consent upon the exclusion from that document of its second paragraph. It is my view that the question of provisions for the constitution's going into effect cannot be divorced from the question of reviewing it, and logically it should inevitably precede it. There is not much sense in speaking of how and when and who is going to review the constitution unless we come to a preliminary agreement on how and when it goes into effect.

At the last meeting of the Commission the Soviet Delegation proposed to make an amendment in the original second paragraph to the effect that the new Japanese constitution prior to its going into effect should

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come for approval by the Far Eastern Commission.

This suggestion of the Soviet Delegation was contended by some of the members of the Far Eastern Commission. The Soviet Delegation considers it necessary to give a complete clarity to this question as it is of fundamental importance and upon its solution it will be dependent whether the Far Eastern Commission intends to live up to the spirit and letter of the Moscow decisions of the Three Ministers in respect to the scope of its jurisdiction.

In the Soviet Government's view it is doubtless that such question as the new Japanese constitution's going into effect does fall under the provisions of the Article 3, Part III of the Moscow decisions, which provides that substantial changes in the Japanese constitutional structure are subject to agreement within the Far Eastern Commission. This question is one of those upon which the U. S. Government should necessarily issue a directive to the Supreme Commander after an appropriate consultation with the Far Eastern Commission and after reaching in the Commission an agreement on acceptability of the Japanese constitution from the viewpoint of application of the principles of the Potsdam Declaration. After this only, the Japanese constitution approved as complying with the principles of the Potsdam Declaration can go into effect. A different approach to the question would be contrary to the Moscow decision regarding the terms of competence of the Far Eastern Commission.

In stating this point of view and bearing in mind the extreme importance of this question, the Soviet Delegation invites all the representatives of the member-nations of the Far Eastern Commission to define

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their position on this question and state formally their viewpoint regarding the Far Eastern Commission's prerogative to approve, in accordance with the Moscow decisions of the Three Ministers, the new Japanese constitution as the necessary prerequisite of the latter's going into effect.

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CONFIDENTIAL

UNITED STATES POLICY IN REGARD TO THE AUTHORITY
OF THE FAR EASTERN COMMISSION TO APPROVE
A NEW JAPANESE CONSTITUTION

1. The Japanese Government and people are competent to adopt a new Constitution provided it is enacted in accordance with Japanese constitutional requirements and is consistent with the provisions of the Terms of Surrender, including the Potsdam Declaration and of the policy decisions of the Far Eastern Commission.

The Potsdam Declaration contains the following statements which describe certain features which must characterize a new Japanese Constitution: (1) "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion and of thought, as well as respect for the fundamental rights, shall be established"; (2) "The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established, in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible Government".

2. The Far Eastern Commission has the function "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".

The Far Eastern Commission, therefore, has the authority to determine the principles and standards in accordance with which the new Japanese Constitution should fulfill the provisions of the Potsdam Declaration.

The Far Eastern

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-2-

The Far Eastern Commission determined these principles and standards by a policy decision, FEC 031/19, adopted on July 2, 1946.

3. The Far Eastern Commission has the right to pass upon a new Constitution to determine whether it is consistent with the provisions of the Potsdam Declaration and of pertinent policy decisions of the Far Eastern Commission.

The Secretary of State, on March 12, 1946, stated that "before the Constitution becomes constitutionally effective it will in some way or other come before the Far Eastern Commission". The United States representative on the Far Eastern Commission joined with the other representatives on the Commission in voting for the following provision: "The Commission desires that the Supreme Commander for the Allied Powers make clear to the Japanese Government that the Far Eastern Commission must be given an opportunity to pass upon the final draft of the Constitution to determine whether it is consistent with the Potsdam Declaration and other controlling documents before it is finally approved by the Diet and becomes legally valid."

4. The competence of the Far Eastern Commission "to pass upon the final draft of the Constitution" is limited to determining whether the Constitution is consistent with the Potsdam Declaration and other controlling documents, including the policy decisions of the Commission. The Commission appears to have been given no authority to "pass upon" the draft Constitution in any other respect or for any other purpose.

5. The Terms

CONFIDENTIAL

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-3-

5. The Terms of Reference of the Far Eastern Commission and of the Allied Council contain no provision, either expressed or implied, that a new Japanese Constitution requires the approval of the Far Eastern Commission.

The Terms of Reference of the Far Eastern Commission state (III,3):

"The U. S. Government may issue interim directives to the Supreme Commander....provided that any directives dealing with fundamental changes in the Japanese constitutional structure....will be issued only following consultation and following the attainment of agreement in the Far Eastern Commission."

This requirement bars the United States Government from issuing an interim directive dealing with fundamental changes in the Japanese constitutional structure, and provides that any directive dealing with the subject must follow the attainment of agreement in the Far Eastern Commission. The recent directive to SCAP containing the "Basic Principles for a New Japanese Constitution" (FEC 031/19), a policy decision adopted by the Far Eastern Commission on July 2, 1946, was sent in accordance with this section of the Terms of Reference. There is nothing in this section, however, which requires that a directive must be issued to validate an action of the Japanese Government, such as the adoption of a new Constitution, which is within the competence of that Government provided the action is not inconsistent with existing requirements of the Allied Powers.

The Terms

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-4-

The Terms of Reference of the Allied Council state (section 6):

"If, regarding the implementation of policy decisions of the Far Eastern Commission on questions concerning....fundamental changes in the Japanese constitutional structure.....a member of the Council disagrees with the Supreme Commander (or his Deputy), the Supreme Commander will withhold the issuance of orders on these questions pending agreement thereon in the Far Eastern Commission".

This requirement is applicable solely to instances when the Far Eastern Commission has issued a policy decision concerning a fundamental change in the Japanese constitutional structure. It does not require the Far Eastern Commission to issue any policy decision on the subject. It therefore does not stipulate or imply that a new Japanese Constitution must receive the approval of the Far Eastern Commission.

6. Since the Japanese Government and people are competent to adopt a new Constitution provided it is not inconsistent with the provisions prescribed by the Allied Powers, a draft Constitution will in due course become effective, unless the Far Eastern Commission finds that it is not consistent with the Potsdam Declaration and other requirements. A formal approval of the Constitution by the Far Eastern Commission in the sense of acceptance, amendment or rejection by the Commission of each section or paragraph would violate the intention of the Potsdam Declaration that the new government in Japan must be established "in accordance with the freely expressed will of the Japanese people".

7. When the Far Eastern Commission passes on the draft Japanese Constitution, the Commission may conclude that it is not consistent with
the Potsdam

CONFIDENTIAL

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-5-

the Potsdam Declaration and other requirements and may insist on adequate changes in the draft. If the Commission does not find that the draft is inconsistent with these requirements, the Draft Constitution, in accordance with the competence of the Japanese Government and people to adopt a new Constitution, and without formal action by the Commission, will become effective after it has fulfilled Japanese constitutional provision.

CONFIDENTIAL

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FEC-031/239 July 1946FAR EASTERN COMMISSIONPROVISIONS FOR THE REVIEW OF A NEW JAPANESE CONSTITUTION

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

Note by the Secretary General

1. The enclosure, a proposed policy statement relative to provisions for the review of a new Japanese constitution, approved by the STEERING COMMITTEE at its twentieth meeting, 9 July 1946, is forwarded herewith for the consideration of the Far Eastern Commission.
2. The Soviet member reserved his position on the enclosure.
3. The New Zealand member took no part in the vote on the enclosure.

NELSON T. JOHNSON
Secretary General

FEC-031/23

III

E N C L O S U R EPROVISIONS 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.

STANDARD FORM NO. 64

112

Office Memorandum • UNITED STATES GOVERNMENT

TO : A-H - Mr. Heneman

DATE: July 15, 1946

FROM : FE - Mr. Reischauer *ER*

SUBJECT: Authority of the Far Eastern Commission to Approve a New Japanese Constitution

The attached policy statement entitled "United States Policy in Regard to the Authority of the Far Eastern Commission to Approve a New Japanese Constitution" has received the approval of Mr. Penfield for FE and Mr. Emmerson for JA.

OK
VHH

Mr. Moseley -
OK

B. Z

FW 894.011/7-1246

FW 894.011/7-1246

July 15, 1946

SECRET

MEMORANDUM FOR THE SECRETARY GENERAL
FAR EASTERN COMMISSION

In accordance with instructions of July 12, 1946, from the State-War-Navy Coordinating Committee, there is enclosed a directive to the Supreme Commander for the Allied Powers regarding Basic Principles for a New Japanese Constitution to be filed with the Far Eastern Commission under the provisions of paragraph III, 4, of its terms of reference.

894.011/7-1246

Enclosure:

Copy No. 1 (certified) of
Directive to Supreme Com-
mander for the Allied Powers,
Serial No. 54.

JA:ALDunning/pm
a&D
ALD

DCR NE Unit	
Anal.	<i>[Signature]</i>
Rev.	
Cat.	KK
Dist.	

[Handwritten signature]

Confidential File

894.011/7-1246

July 13, 1946

*Signed & rec'd in
SWNCC 7/12/46
JHM*

Memorandum for the Secretary of SWNCC

From: The State Member

RE: United States Policy in Regard to the
Adoption of a New Japanese Constitution
Reference: SWNCC 288/3

It is recommended that the Enclosure be substituted for Appendix "C" of SWNCC 288/3. It is further recommended that the paper be revised to eliminate Appendix "D", paragraph 5 b of the Recommendations and any other references to Appendix "D" appearing in the paper.

JOHN H. HILLDRING
State Member

894.011/17-1346

	OCF NE Unit
	<i>[Signature]</i>
	<i>[Signature]</i>

JHM
SWNCC:HWMoseley:djf

894.011/7-1346

~~TOP SECRET~~

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

5365910
~~FE~~

SWN-4552
16 July 1946

DIVISION OF JAPAN
JUL 19 1946
DEPARTMENT OF STATE

memo for US member
20 July 46
FEC
HLD

DC/R
File
7-25-46

MEMORANDUM FOR THE SECRETARY OF STATE:

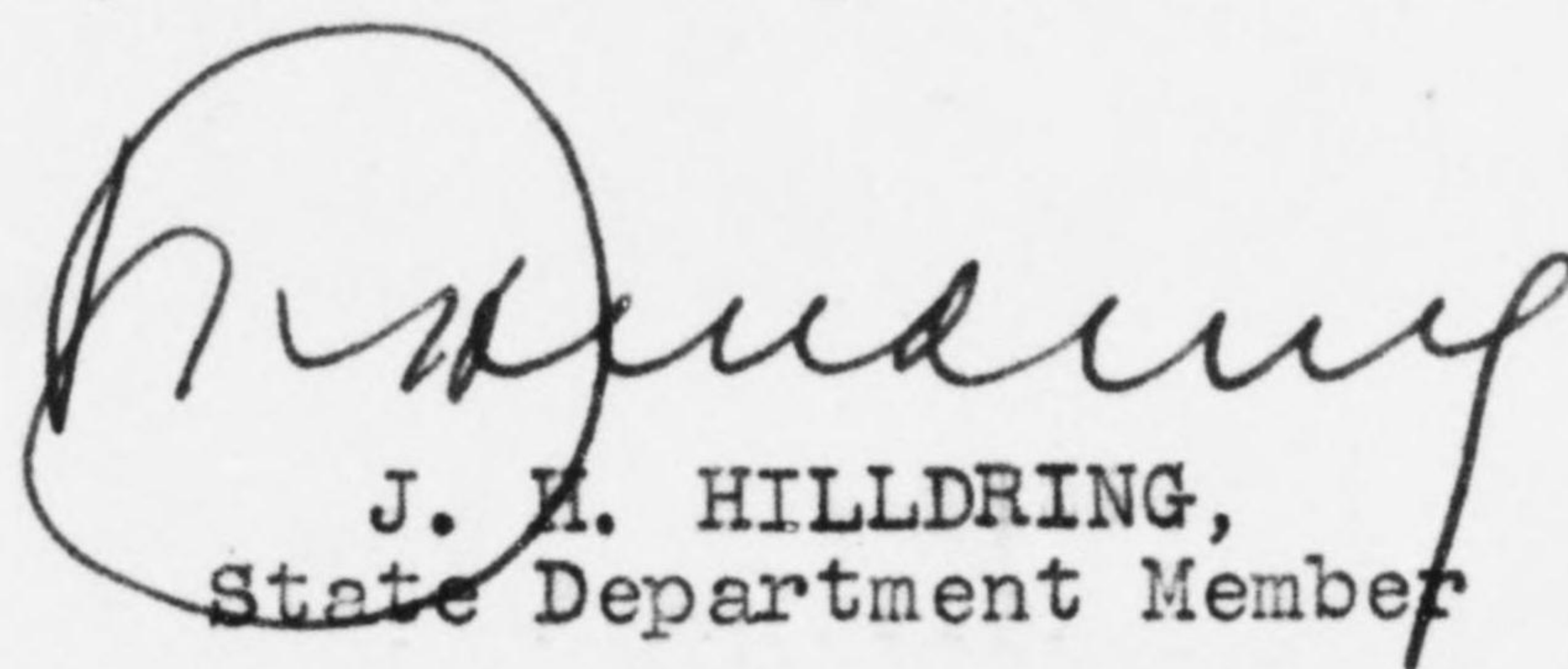
Subject: United States Policy in Regard to
the Adoption of a New Japanese
Constitution.

References: a. SWNCC 228/3
b. SWNCC 228/7

By informal action on 16 July 1946 the State-War-Navy Coordinating Committee approved the Appendix of SWNCC 228/7 as a United States policy in regard to the adoption of a new Japanese Constitution.

It is requested that Copy No. 51 of the approved policy (SWNCC 228/8) be forwarded to the United States Member on the Far Eastern Commission for his guidance in the preparation of a statement for the Commission regarding the adoption of a new Japanese Constitution. Copy No. 50 of the approved policy is attached herewith for information and guidance of the Department of State and for appropriate implementation.

For the State-War-Navy Coordinating Committee:


J. H. HILLDRING,
State Department Member

JUL 25 1946

FILED

894.011/7-1646
Confidential file

Enclosure:
Copy Nos. 50 & 51,
SWNCC 228/8

Form with fields for Name, Title, and other administrative information. Includes handwritten initials 'JH'.

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

~~TOP SECRET~~

~~TOP SECRET~~COPY NO. 51SWNCC 228/816 July 1946Pages 54 - 57, incl.~~TOP SECRET~~STATE-WAR-NAVY COORDINATING COMMITTEEUNITED STATES POLICY IN REGARD TO THE
ADOPTION OF A NEW JAPANESE CONSTITUTIONReferences: a. SWNCC 228/3
b. SWNCC 228/7Note by the Secretaries

1. The enclosure, a United States policy in regard to the adoption of a new Japanese Constitution, is circulated for information and guidance.

2. This policy was approved by the State-War-Navy Coordinating Committee on 16 July 1946 and was forwarded to the United States member on the Far Eastern Commission for his guidance in the preparation of a statement for the Commission regarding the adoption of a new Japanese Constitution.

3. In view of the action taken by the Committee in this matter, reference a is hereby removed from the SWNCC agenda.

ALEXANDER D. REID

B. L. AUSTIN

RAYMOND E. COX

Secretariat

~~TOP SECRET~~SWNCC 228/8~~TOP SECRET~~

TOP SECRET

E N C L O S U R E

UNITED STATES POLICY IN REGARD TO THE
ADOPTION OF A NEW JAPANESE CONSTITUTION

1. The Japanese Government and people are competent to adopt a new Constitution provided it is enacted in accordance with Japanese constitutional requirements and is consistent with the provisions of the Terms of Surrender, including the Potsdam Declaration and of the policy decisions of the Far Eastern Commission.

The Potsdam Declaration contains the following statements which describe certain features which must characterize a new Japanese Constitution: (1) "The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion and of thought, as well as respect for the fundamental rights, shall be established"; (2) "The occupying forces of the Allies shall be withdrawn from Japan as soon as these objectives have been accomplished and there has been established, in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible Government".

2. The Far Eastern Commission has the function "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".

The Far Eastern Commission, therefore, has the authority to determine the principles and standards in accordance with which the new Japanese Constitution should fulfill the provisions of the Potsdam Declaration.

The Far Eastern Commission determined these principles and standards by a policy decision, FEC 031/19, adopted on July 2, 1946.

3. The Far Eastern Commission has the right to pass upon a new Constitution to determine whether it is consistent with the

TOP SECRET

provisions of the Potsdam Declaration and of pertinent policy decisions of the Far Eastern Commission.

The Secretary of State, on March 12, 1946, stated that "before the Constitution becomes constitutionally effective it will in some way or other come before the Far Eastern Commission". The United States representative on the Far Eastern Commission joined with the other representatives on the Commission in voting for the following provision: "The Commission desires that the Supreme Commander for the Allied Powers make clear to the Japanese Government that the Far Eastern Commission must be given an opportunity to pass upon the final draft of the Constitution to determine whether it is consistent with the Potsdam Declaration and other controlling documents before it is finally approved by the Diet and becomes legally valid."

4. The competence of the Far Eastern Commission "to pass upon the final draft of the Constitution" is limited to determining whether the Constitution is consistent with the Potsdam Declaration and other controlling documents, including the policy decisions of the Commission. The Commission appears to have been given no authority to "pass upon" the draft Constitution in any other respect or for any other purpose.

5. The Terms of Reference of the Far Eastern Commission and of the Allied Council contain no provision, either expressed or implied, that a new Japanese Constitution requires the approval of the Far Eastern Commission.

The Terms of Reference of the Far Eastern Commission state (III,3):

"The U.S. Government may issue interim directives to the Supreme Commander....provided that any directives dealing with fundamental changes in the Japanese constitutional structure....will be issued only following consultation and following the attainment of agreement in the Far Eastern Commission."

TOP SECRET

This requirement bars the United States Government from issuing an interim directive dealing with fundamental changes in the Japanese constitutional structure, and provides that any directive dealing with the subject must follow the attainment of agreement in the Far Eastern Commission. The recent directive to SCAP containing the "Basic Principles for a New Japanese Constitution" (FEC 031/19), a policy decision adopted by the Far Eastern Commission on July 2, 1946, was sent in accordance with this section of the Terms of Reference. There is nothing in this section, however, which requires that a directive must be issued to validate an action of the Japanese Government, such as the adoption of a new Constitution, which is within the competence of that Government provided the action is not inconsistent with existing requirements of the Allied Powers.

The Terms of Reference of the Allied Council state (section 6):

"If, regarding the implementation of policy decisions of the Far Eastern Commission on questions concerning..... fundamental changes in the Japanese constitutional structure.... a member of the Council disagrees with the Supreme Commander (or his Deputy), the Supreme Commander will withhold the issuance of orders on these questions pending agreement thereon in the Far Eastern Commission".

This requirement is applicable solely to instances when the Far Eastern Commission has issued a policy decision concerning a fundamental change in the Japanese constitutional structure. It does not require the Far Eastern Commission to issue any policy decision on the subject. It therefore does not stipulate or imply that a new Japanese Constitution must receive the approval of the Far Eastern Commission.

6. Since the Japanese Government and people are competent to adopt a new Constitution provided it is not inconsistent with the provisions prescribed by the Allied Powers, a draft Constitution will in due course become effective, unless the Far Eastern Commission finds that it is not consistent with the

TOP SECRET

Potsdam Declaration and other requirements. A formal approval of the Constitution by the Far Eastern Commission in the sense of acceptance, amendment or rejection by the Commission of each section or paragraph would violate the intention of the Potsdam Declaration that the new government in Japan must be established "in accordance with the freely expressed will of the Japanese people".

7. When the Far Eastern Commission passes on the draft Japanese Constitution, the Commission may conclude that it is not consistent with the Potsdam Declaration and other requirements and may insist on adequate changes in the draft. If the Commission does not find that the draft is inconsistent with these requirements, the Draft Constitution, in accordance with the competence of the Japanese Government and people to adopt a new Constitution, and without formal action by the Commission, will become effective after it has fulfilled Japanese constitutional provision.

113

5365-910

~~SIGNED & RECEIVED
IN SWNCC~~

7/24/46
RECOK

TOP SECRET

July 22, 1946

MEMORANDUM FOR UNITED STATES MEMBER,
FAR EASTERN COMMISSION

In accordance with instructions of July 16, 1946 from the State-War-Navy Coordinating Committee, there is enclosed for the guidance of the United States Member, Far Eastern Commission, in preparing a statement of United States Policy for the Commission regarding the adoption of a new Japanese Constitution, a copy of SWNCC 228/8 on United States Policy in Regard to the Adoption of a New Japanese Constitution, informally approved by the State-War-Navy Coordinating Committee on July 16, 1946.

894.011/7-1646

J. H. Hildring
Assistant Secretary

Enclosure:

Copy of SWNCC 228/8.

Anal.	DCR	NE Unit
Encl.		
Dist.		

WJG

A true copy of the signed original. *SOZ*

OK
JUL 24 1946 *signed*

JA:ALDunning:mls
7-22-46 *ALD*

JH
FE A-M
TOP SECRET

Confidential File

894.011/7-16

SECRET

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

FE
JA

SWN-4589
23 July 1946

DC/R

Office of
FAR EASTERN AFFAIRS
JUL 23 1946
Department of State
file

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

Subject: Message transmitted to SCAP by
the Joint Chiefs of Staff.

Enclosed are three copies of a message dated
15 July 1946 transmitted to SCAP by the Joint
Chiefs of Staff. Copy No. 1 is for transmittal
to the Far Eastern Commission and Copies No. 2
and 3 for the files of the State Department.

For the State-War-Navy Coordinating Committee:

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

Enclosure

DIVISION OF JAPANESE AFFAIRS
Memo for Secy Gen *FEE*
JUL 24 1946 *23 July 46*
DEPARTMENT OF STATE *ALD*

894.011/7-2346

DCR NE Unit
To: *WJ*
By:
Date:
Dist:

JUL 31 1946

FILED

Confidential
894.011/7-2346

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SECRET

SWN-4589

Memo for Sec State
(Mr. Penfield)

For signature of
COLONEL REID

SECRET

Confidential File

S E C R E TCOPY NO. 3

15 July 1946

MESSAGE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSCONSULTATION WITH THE SUPREME COMMANDER REGARDING
RELEASE TO PRESS OF POLICY STATEMENT ON BASIC
PRINCIPLES FOR A NEW JAPANESE CONSTITUTION

At the request of the State, War and Navy Departments there is transmitted to you the following message, received from the State Department with the statement that the Far Eastern Commission, acting under the final sentence of paragraph VI, 1, of its terms of reference, requested its chairman on 11 July 1946 to consult with you on the matter referred to therein:

"The substance of your recommendation that the Far Eastern Commission's policy decision on basic principles for a new Japanese constitution should not be released to the press at this time was circulated by the Commission on 10 July 1946 and was considered by the Commission at its 19th meeting on 11 July 1946.

"The Commission agreed to accept your recommendation not to release the policy statement at this time but it was also of the opinion that the statement should, as a matter of principle, be released at an early date and instructed its chairman to consult with you with a view to determining the date when release to the press would be appropriate. You are therefore requested to advise in advance the date, which you would approve for release of the policy decision."

REGISTERED

July 25, 1946

895005

894.011/7-2346

SECRET

MEMORANDUM FOR THE SECRETARY GENERAL,
FAR EASTERN COMMISSION

In accordance with instructions of July 23, 1946, from the State-War-Navy Coordinating Committee, there is enclosed a copy of a message dated July 15, 1946, transmitted to the Supreme Commander for the Allied Powers by the Joint Chiefs of Staff with reference to Consultation with the Supreme Commander Regarding Release to Press of Policy Statement on Basic Principles for a New Japanese Constitution, to be filed with the Far Eastern Commission.

946162111

CS/V

J. H. Hilldring
Assistant Secretary

894.011/7-2346

Enclosure:

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

JA:ALDunning/pm
7/25/46

FE

Confidential File

JUL 25 1946
JUL 26 1946

114

SIGNED & RECEIVED
IN SWNCC

7/29/46
H. W. Mowley

MEMORANDUM FOR THE SECRETARY, SWNCC

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

The Far Eastern Commission, acting under paragraph VI of its Terms of Reference, which provides that the Commission "may make such arrangements through the chairman as may be practicable for consultation with the Supreme Commander for the Allied Powers", requested its chairman on July 25, 1946 to consult with the Supreme Commander for the Allied Powers on the matter referred to in the enclosure.

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

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

Enclosure.

TO: []
FROM: []
SUBJECT: []
DATE: []
DIST: []

JA:ALDunning:mls
7-26-46
HOB

YCP
FE A-H

894.011/7-2946

894.011/7-2946
CONFIDENTIAL FILE

115

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 arrange 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.

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 sufficiently specific to fulfill the requirement of FEC 031/19. Furthermore, it might be pointed out

that,

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

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.

SP
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PREPARING OFFICE
WILL INDICATE WHETHER
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OUTGOING TELEGRAM

PREPARING OFFICE WILL
TYPE HERE CLEARLY THE
CLASSIFICATION OF THE
MESSAGE:

Charge Department:

Department of State

Charge to

Washington

CONFIDENTIAL

No paraphrase necessary.
CONFIDENTIAL

SUPREME COMMANDER FOR THE ALLIED POWERS
TOKYO
INFO: WAR DEPT CHIEF OF STAFF
FOR POLITICAL ADVISER

1135
AUG 6 1946
5pm

CINCAFPAC C 63473 "For Secretary of State", ~~extremely~~
~~valuable~~ extremely valuable and useful both ~~to~~ DEPT and
US delegation FEC. Substance ~~was~~ immediately made
available FEC.

FEC Committee on Constitution ~~was~~ gratified that
attempts ~~to~~ secure amendment ~~to~~ present draft would be
made as indicated ~~in~~ (B) and (C). ~~xxxxxxx~~
Question was raised ~~in~~ FEC meeting July 25 concerning
method by which SCAP would inform appropriate officials
~~of~~ Jap GOVT of FEC policy decision on basic principles
for Constitution. Chairman Pro Tem General Hildring
assured Commission ~~that~~ SCAP would take such steps as
he might deem appropriate ~~xxxxxxx~~ and that informal
inquiry would be made of SCAP to ascertain what action
had been taken. We have assumed here that where
appropriate SCAP has communicated FEC policy with respect
~~to~~ Constitution in form of suggestions to appropriate
Jap officials so that any necessary changes might be
incorporated

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(OFFICES ONLY)

894.011/8-646

CS/V

894.011/8-646

SP
JA

PREPARING OFFICE
WILL INDICATE WHETHER

Collect

OUTGOING TELEGRAM ¹²²

PREPARING OFFICE WILL
TYPE HERE CLEARLY THE
CLASSIFICATION OF THE
MESSAGE:

Department of State

Charge Department:

Washington

CONFIDENTIAL

Charge to

No paraphrase necessary.
CONFIDENTIAL

1135

AUG 6 1946

5pm

SUPREME COMMANDER FOR THE ALLIED POWERS

TOKYO

⁴³⁰
INFO: WAR DEPT CHIEF OF STAFF

FOR POLITICAL ADVISER

CINCAFPAC C 63473 "For Secretary of State", ~~xxx~~
~~xxxxxx~~ extremely valuable and useful both ~~to~~ DEPT and
US delegation FEC. Substance ~~xxx~~ immediately made
available FEC.

FEC Committee on Constitution ~~xxx~~ gratified that
attempts ~~to~~ secure amendment ~~to~~ present draft would be
made as indicated ~~to~~ (B) and (C). ~~xxxxxxxxxxxxxxxx~~
Question was raised ~~to~~ FEC meeting July 25 concerning
method by which SCAP would inform appropriate officials
~~xxx~~ Jap GOVT of FEC policy decision on basic principles
for Constitution. Chairman Pro Tem General Hilldring
assured Commission ~~that~~ SCAP would take such steps as
he might deem appropriate ~~xxxxxxxxxxxx~~ and that informal
inquiry would be made of SCAP to ascertain what action
had been taken. We have assumed here that where
appropriate SCAP has communicated FEC policy with respect
~~to~~ Constitution in form of suggestions to appropriate
Jap officials so that any necessary changes might be
incorporated

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894.011/8-646

CS/V
894.011/8-646

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PREPARING OFFICE
WILL INDICATE WHETHER

OUTGOING TELEGRAM

PREPARING OFFICE WILL
TYPE HERE CLEARLY THE
CLASSIFICATION OF THE
MESSAGE:

Collect

Department of State

Charge Department:

Washington ¹²³

CONFIDENTIAL

Charge to

-2-

incorporated into draft before its final passage by Diet.

Further comments this matter would be helpful ~~to~~

US delegation.

War DEPT advises no answer yet received tels W94544
and W94701.

*Acheson
acting
(JEP)*

DISTRIBUTION
DESIRED
(OFFICES ONLY)

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JA:JKEmmerson:mls
8-2-46

JEP
FE

NHH
A-H

DE ✓ *sm*
AUG 6 6 46 P.M.

ROUTING SLIP

- A-H
- Gen. Crain
- Mr. Gross
- Mr. Cameron
- G-A Secretariat
- J-K Secretariat
- Messrs. Mosely & Gardner
- SWNCC Directorate
- Division I
- Division II
- Division III
- Mr. Cramer
- Mr. Forno
- Mrs. Buckley
- Mr. Heneman
- Mr. Hemmendinger
- Mr. Rudlin
- Mr. Frank
- Mr. Stout
- Mr. O'Sullivan
- Mr. Collins
- Mr. Fierst
- Mr. Weidman
- Mr. Claxton
- Mr. Easton
- Mr. Lewis

A. J. H. D. Concur
& set up date on form

- Records Section
- (2) Appropriate Action
- Preparation of Reply
- Information
- Comment or Concurrence
- See Note
- Further Assignment
- Note and send to file
- Dispatch to: _____
- File
- Log
- ORIGINATOR *LWS*

DATE: *1/8/46*

Suspense 1/8/46

~~FE~~
A-H

CR

In reply refer to
JA

My dear General Echols:

There is enclosed a draft message which refers to a CINCAFPAC telegram "For the Secretary of State" commenting on the request of the Far Eastern Commission for consultation on matters pertaining to the Japanese draft Constitution. The message informs General MacArthur of a query raised at the Commission meeting of July 25 regarding the methods used to make known to the Japanese Government the Commission's policy decision on basic principles for the Japanese Constitution and requests further comment.

It would be appreciated if this message could be transmitted by the War Department to General MacArthur.

Sincerely yours,

J. H. Hildring
Assistant Secretary

Enclosure:

Draft message.

Major General Oliver P. Echols,
Director, Civil Affairs Division,
War Department,
Washington 25, D.C.

JA:JH
7-31-45

JKP
FE

A-H

EB

104

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON, D. C.



DEPARTMENT OF STATE
WASHINGTON

In reply refer to
JA

My dear General Echols:

There is enclosed a draft message which refers to a CINCAFPAC telegram "For the Secretary of State" commenting on the request of the Far Eastern Commission for consultation on matters pertaining to the Japanese draft Constitution. The message informs General MacArthur of a query raised at the Commission meeting of July 25 regarding the methods used to make known to the Japanese Government the Commission's policy decision on basic principles for the Japanese Constitution and requests further comment.

It would be appreciated if this message could be transmitted by the War Department to General MacArthur.

Sincerely yours,

J. H. Hilldring
Assistant Secretary

Enclosure:

Draft message.

Major General Oliver P. Echols,
Director, Civil Affairs Division,
War Department,
Washington 25, D.C.



CINCAFPAC C 63473 "For Secretary of State", has proved extremely valuable and useful both to STATE DEPT and US delegation FEC. Substance was immediately made available FEC.

FEC Committee on Constitution was gratified that attempts to secure amendment to present draft would be made as indicated in (B) and (C). In this connection question was raised in FEC meeting July 25 concerning method by which SCAP would inform appropriate officials of Jap GOVT of FEC policy decision on basic principles for Constitution. Chairman Pro Tem General Hilldring assured Commission that SCAP would take such steps as he might deem appropriate in this matter and that informal inquiry would be made of SCAP to ascertain what action had been taken. We have assumed here that where appropriate SCAP has communicated FEC policy with respect to Constitution in form of suggestions to appropriate Jap officials so that any necessary changes might be incorporated into draft before its final passage by Diet.

SCAP's further comments this matter would be helpful to US delegation.

STANDARD FORM NO. 64

Office Memorandum · UNITED STATES GOVERNMENT

DATE: 8/2/46

TO :

Mr. Zimmerman JA

FROM :

Blout

SUBJECT :

Blue copy has W. D. suggested
text.

To keep

Confidential

CINCPAC C 63473 "For Secretary of State", has proved extremely valuable and useful both to ~~STATE~~ DEPT and US delegation FEC. Substance was immediately made available FEC.

FEC Committee on Constitution was gratified that attempts to secure amendment to present draft would be made as indicated in (B) and (C). In this connection question was raised in FEC meeting July 25 concerning method by which SCAP would inform appropriate officials of Jap GOVT of FEC policy decision on basic principles for Constitution. Chairman Pro Tem General Hilldring assured Commission that SCAP would take such steps as he might deem appropriate in this matter and that informal inquiry would be made of SCAP to ascertain what action had been taken. We have assumed here that where appropriate SCAP has communicated FEC policy with respect to Constitution in form of suggestions to appropriate Jap officials so that any necessary changes might be incorporated into draft before its final passage by Diet.

~~SCAP's~~ Further comments this matter would be helpful to US delegation.

Refer RE

~~Remarks W 94544 and W 94701~~ Was Dept advised

~~that~~ no answer yet received ~~RE~~

telegrams W 94544 and W 94701

Agreed to by Colo. Oliver and Fahy CAD (per Hott. A.H. 8/2/46)

118

Be/R

August 12, 1946

MEMORANDUM FOR THE CHAIRMAN,
FAR EASTERN COMMISSION

On July 30, 1946 the Chairman of the Far Eastern Commission sent a consultative message to the Supreme Commander for the Allied Powers regarding points raised by members of the Far Eastern Commission in their preliminary study of the draft of the new Japanese Constitution. The Supreme Commander for the Allied Powers on July 26, 1946 made certain comments on the subject which were communicated to the Chairman of the Far Eastern Commission on July 29, 1946. There is enclosed a message dated August 2, 1946 from the Supreme Commander for the Allied Powers which further discusses the points raised in the Chairman's consultative message.

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

J. H. Hilldring
Assistant Secretary

Enclosure:

Message from SCAP,
August 2, 1946

DCF NE Unit

ms

JT

Dis.

297
JA:ALDunning:mls

FE
[Signature]

12 1946

A true copy
the signed orig-
nal.

CS/V

EOR

894.011/8-646

894.011/8-646

E N C L O S U R E

2 August 1946

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

(2A) 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.

(2B) 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 provides 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.

(2C) 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

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-2-

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 probable 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:

(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 SCAP to determine that they are not inconsistent with any principle laid down at Potsdam nor with the constitution itself;

(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;

(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

121

-3-

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.

JH

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

DC/R

SWN-4655
6 August 1946

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

Subject: The Views of the Supreme Commander
for the Allied Powers on the Text
of the New Japanese Constitution.

The enclosed message from the Supreme
Commander for the Allied Powers in reply to
the communication from the Chairman of the
Far Eastern Commission is forwarded to the
Department of State for transmittal to the
Far Eastern Commission at the request of the
Joint Chiefs of Staff.

For the State-War-Navy Coordinating Committee:

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

Enclosure
Copy MC IN 51728

894.011/8-646

DIVISION OF JAPANESE AFFAIRS
memo for Chairman, FEC
AUG 7 1946
12 Aug '46
DEPARTMENT OF STATE
all

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Anal.	<i>MH</i>
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AUG 16 1946

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894.011/8-646

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

SWN-4655
6 August 1946

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For the State-War-Navy Coordinating Committee:

A. D. REID,
Secretary

Enclosure
Copy MG IN 51728

COPY TO ACCOMPANY ORIGINAL

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

From: CINCPAC, Tokyo, Japan signed MacArthur
To: War Department for WARCOS for Joint Chiefs of Staff
Nr: Z 11571 2 August 1946

Reurad WCL 31783 August 1st, the following comments are made with respect to the points raised by members of the Far Eastern Commission:

(2A) 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.

MC IN 51728

(4 Aug 46)

UNCLASSIFIED

FW: 894,011/8-6-46

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

Page 2

From: CINCPAC, Tokyo, Japan signed MacArthur

Nr: Z 11571

2 August 1946

(2B) 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 provides 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.

(2C). In the course of the unrestrained debate on the proposed constitution now proceeding in the National Diet, considerable argument has been advanced supporting the proposition that a restatement 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 probable that the Japanese will amend the Draft

MC IN 51728

(4 Aug 46)

UNCLASSIFIED

WAR DEPARTMENT
CLASSIFIED MESSAGE CENTER
INCOMING CLEAR MESSAGE

Page 3

From: CINCAFPAC, Tokyo, Japan signed MacArthur

Nr: Z 11571

2 August 1946

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:

(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 SCAP to determine that they are not inconsistent with any principle laid down at Potsdam nor with the constitution itself;

(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;

(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

MC IN 51728

(4 Aug 46)

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WAR DEPARTMENT
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INCOMING CLEAR MESSAGE

Page 4

From: CINCAFPAC, Tokyo, Japan signed MacArthur

Nr: Z 11571

2 August 1946

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

MC IN 51728

(4 Aug 46)

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WAR DEPARTMENT
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INCOMING CLEAR MESSAGE

Page 5

From: CINCAFPAC, Tokyo, Japan signed MacArthur

Nr: Z 11571

2 August 1946

only expresses the free will of the Japanese people but
which will command their allegiance long after the with-
drawal of Allied Forces.

End.

* As received.

ACTION: JCS

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

MC IN 51728

(4 Aug 46) DTG 021229Z SVC

UNCLASSIFIED

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

SWN-4658
7 August 1946

FE
DC/R

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

Subject: Message transmitted to SCAP by
the Joint Chiefs of Staff.

Enclosed are three copies of a message dated
30 July 1946 transmitted to SCAP by the Joint
Chiefs of Staff. Copy No. 1 is for transmittal
to the Far Eastern Commission and Copies No. 2
and 3 for the files of the State Department.

For the State-War-Navy Coordinating Committee:

A. D. Reid.

A. D. REID,
Secretary

Enclosure

894.011/8-746

DIVISION OF JAPAN
memo to Sec Gen, FE
12 Aug 46
AUG 12 1946
DEPARTMENT OF STATE
ALD

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Dist.	

FILED
AUG 20 1946

894.011/8-746

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

SWN-4658
7 August 1946

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

Subject: Message transmitted to SCAP by
the Joint Chiefs of Staff.

Enclosed are three copies of a message dated
30 July 1946 transmitted to SCAP by the Joint
Chiefs of Staff. Copy No. 1 is for transmittal
to the Far Eastern Commission and Copies No. 2
and 3 for the files of the State Department.

For the State-War-Navy Coordinating Committee:

A. D. REID,
Secretary

Enclosure

COPY TO ACCOMPANY ORIGINAL

COPY NO. 2

30 July 1946

MESSAGE TO THE SUPREME COMMANDER FOR THE ALLIED POWERSCONSULTATION WITH THE SUPREME COMMANDER FOR THE
ALLIED POWERS ON THE TEXT OF THE CONSTITUTION

The following communication from the Far Eastern Commission, forwarded through its chairman under the provisions of paragraph VI, 1, of its terms of reference, is transmitted to you at the request of the State, War and Navy Departments:

"The Far Eastern Commission requests the chairman of the Commission to arrange 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:

1. The Far Eastern Commission is making a preliminary study of the draft of the new Japanese constitution, which is now before the Diet, to determine whether the present

* Serial No. 54.

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 39 states that 'both Houses shall consist of elected members, representative of all the people' it is a question whether this provision is sufficiently specific to fulfill the requirement of FEC 031/19. Furthermore, it might be pointed out that, though it is provided in Article 40 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 '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 1 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 2 and 5), the composition and methods of election of the two Houses (Chapter 4), and the joint committees of both Houses (Articles 56, 57 and 63). 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 54 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 63, 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 65."

August 12, 1946

SECRET

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

In accordance with instructions of August 7, 1946, from the State-War-Navy Coordinating Committee, there is enclosed for the files of the Far Eastern Commission a copy of the consultative message, dated July 30, 1946, sent by the Chairman, Far Eastern Commission, to the Supreme Commander for the Allied Powers, regarding points raised by members of the Far Eastern Commission in their preliminary study of the draft of the new Japanese Constitution.

894.011/8-746

**J. H. Hildring
Assistant Secretary**

Enclosure:

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

AKD
JA:ALDunning/pm
SUG 12 1946 P.M.

DCE NE Unit	
<i>AKD</i> FE	<i>ms</i>
<i>mm</i>	
DATE	

2. The copy of the signed original.

Confidential File

894.011/8-746



DC/R

August 9, 1946

SECRET

MEMORANDUM FOR THE CHAIRMAN,
FAR EASTERN COMMISSION

With reference to the consultative message of the Chairman, Far Eastern Commission, to the Supreme Commander for the Allied Powers regarding points raised by members of the Far Eastern Commission in their preliminary study of the draft of the new Japanese Constitution and to the answer of the Supreme Commander for the Allied Powers of July 26, 1946, on the subject, there is enclosed for the information of the Chairman, Far Eastern Commission, a further message from the Supreme Commander for the Allied Powers comprising his additional comments on these points.

894.011/8-946

It is requested that the Chairman, Far Eastern Commission, take whatever action he may deem appropriate regarding the enclosed message.

J. H. Hilldring
Assistant Secretary

Enclosure:

Message from SCAP,
August 2, 1946.

JA:ALDunning/pm
H13

DOR NE Unit	
Mr. Tolson	<i>[Signature]</i>
Mr. E.A. Tamm	
Mr. Clegg	
Mr. Glavin	
Mr. Ladd	
Mr. Nichols	
Mr. Rosen	
Mr. Tracy	
Mr. Carson	
Mr. Egan	
Mr. Gurnea	
Mr. Harbo	
Mr. Hendon	
Mr. Pennington	
Mr. Quinn	
Mr. Nease	
Miss Gandy	

Confidential File

894.011/8-946

[Signature]

AUG 12 1946