

## 附 錄

## 附録 1

議題表及びこれに対するわが見解の陳述（英文及び和文）

SECRETSUGGESTED AGENDA

In addition to discussion of the general principles which should govern the future relation between Japan and the United States, the following specific topics are suggested for detailed discussion:

1. Territorial: How to carry out the Surrender Terms that “Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we may determine”.
2. Security: How to provide for security following the ending of occupation.
3. Rearmament: What, if any, provisions should restrict Japan's future rearmament.
4. Human rights, etc.: What, if any, undertakings or declarations should be made by Japan in this respect and in relation to occupation reforms.
5. Cultural relations: What, if any, continuing relations can be developed in this respect.
6. International Welfare: To what international conventions dealing with elimination of trade in narcotics, preservation of wildlife, etc. should Japan adhere.
7. Economics: What, if any, provisions should restrict Japan's future economic activities as regards certain industries, e.g. ship building.
8. Trade: What will be the post-war basis of Japan's trade with other countries, e.g. “most-favored-nation”.
9. Fisheries: Possible voluntary prohibition of Japanese use of United States conserved fisheries.
10. Reparation and war claims: What should be the treaty provisions in these respects. Japanese gold.
11. Post-war claims: How will Japan deal with Garioa indebtedness.

12. War criminals: Where should reside the future authority over those convicted by war tribunals.

13. Procedure: What should be the future procedure, having regard to the probable attitude of the Soviet Union and the status of China.

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Note: I am setting forth below my private views.—S.Y.

### Suggested Agenda

#### I. Territorial

1. It is proposed under 3 of the 7 Principles that the Ryukyu and Bonin Islands be placed under U.N. trusteeship with the United States as administrating authority. While Japan is ready to meet in any manner American military requirements, and even to agree to a lease under the Bermuda formula, we solicit reconsideration of this proposal in the interest of lasting friendly relations between Japan and the United States.

2. We ask that the following points be considered in case trusteeship is deemed indispensable.

(a) It is desired that these islands will be returned to Japan when the need of trusteeship disappears.

(b) The inhabitants be allowed to retain Japanese nationality.

(c) Japan will be made a joint authority together with the United States.

(d) Those inhabitants of the Bonin Islands and Iwojima who were evacuated to Japan proper, either during the war by Japanese authorities, or after the war's end by U.S. authorities, who number about 8,000, will be permitted to return to their respective home islands.

#### II. Security

The views of the Japanese government on security are as follows.

1. Japan will ensure internal security by herself.

2. As regards external security, the cooperation of the United Nations and, especially of the United States, is desired, through appropriate means.

3. Any arrangement for this purpose should be made apart from the peace treaty, as providing for cooperation for mutual security between Japan and America as equal partners.

### III. Rearmament

1. As a question for the immediate present, rearmament is impossible for Japan.

(a) There are Japanese who advocate rearmament. But their arguments do not appear to be founded on a thorough study of the problem, nor do they necessarily represent the sentiment of the masses.

(b) Japan lacks basic resources required for modern armament. The burden of rearmament would immediately crush our national economy, and impoverish our people, breeding social unrest, which is exactly what the Communists want. Rearmament, intended to serve the purposes of security, would on the contrary endanger the nation's security from within. Today Japan's security depends far more on the stabilization of people's livelihood than on armament.

(c) It is a solemn fact that our neighbor nations fear the recurrence of Japanese aggression. Internally, we have reasons for exercising caution against the possibility of the reappearance of old militarism. For the immediate purpose we should seek other means than rearmament for maintaining the country's security.

2. Nowadays international peace is directly tied up with internal peace and order. In this sense, we must preserve domestic peace, for which we are determined to assume full responsibility by ourselves alone. For this purpose, it will be necessary for us to increase forthwith the numbers of our police and maritime security personnel and reinforce their equipment.

3. We desire consultation on the question of Japan's specific contribution to the common defense of the free world, in which we are eager to play a positive role.

### IV. Human rights, etc.

1. Japan supports without reservation the Universal Declaration of Human Rights. The various principles set forth in that declaration are

fully embodied in our new constitution. If you should deem it necessary for Japan to make a declaration on this matter, we have no objection.

2. It is desired that the peace treaty will avoid any stipulation calculated to perpetuate rigidly and unalterably the laws and institutions established under the Occupation.

It is hoped that prior to the termination of occupation the Allied Powers will consider the abolition or modification of such measures as have been taken solely for the purposes of occupation control or those that have proved unsuited to the actual conditions of Japan. This would facilitate smooth transition from occupation rule to normal administration and serve to promote the friendly relations between Japan and America.

#### V. Cultural Relations

It is our fervent wish to be allowed to take a positive part in the cultural interchange between nations. The strengthening of cultural ties between Japan and the United States is a fundamental question that concerns the Japanese-American friendship. We would like to take all possible measures to promote cultural cooperation between the two countries.

#### VI. International Welfare

Japan will observe faithfully all the prewar international agreements in this field, to which she is a party. We are also ready to adhere to other agreements made during and after the war, such as the Constitution of World Health Organization and the International Sanitary Convention.

#### VII. Economics

It is hoped no restrictions will be imposed upon Japan's economic activities.

If for the sake of demilitarization or for elimination of war potential certain industries were to be designated as "war industries" and subjected to restriction, it would mean penalizing peace industries, and seriously hamper the progress of Japanese economy toward self-support. Take shipping, for example. To Japan as a trading nation, it is essential to possess an adequate tonnage. If on the ground that ships can be

turned to war use Japan were to be restricted in tonnage, type and speed of vessels, or the ship-building capacity, her peaceful commerce would suffer disastrously. Likewise any restrictions on the manufacture of steel, light metals, synthetic rubber or oil, etc., would mean restrictions on peace industries.

Again it would be incompatible with the principle of fair trade to restrict certain industries with a view to checking Japanese competition in international commerce.

#### VIII. Trade

1. Japan lives on trade. It is through trade that she can best contribute to world prosperity. It is earnestly desired to establish speedily with all countries trade relations based on reciprocity and on mutual extension of the most favored nation's treatment.

2. It is hoped that the peace treaty will expressly provide for this mutual extension of the most favored nation's treatment between Japan and a country concluding peace with her even prior to the signing of a treaty of commerce and navigation between them.

3. Japan will observe strictly the various prewar international treaties to which she is a signatory, providing for the promotion of trade and for the establishment of equal and intimate trade relations (e.g. the Industrial Property Protection Convention, International Labor Convention, etc.): and furthermore she desires to participate in the similar postwar international treaties (especially, the International Monetary Fund, the World Bank and the General Agreement for Trade and Tariff).

#### IX. Fisheries

1. Freedom of fishing on the high sea being a recognized principle of international law, we expect that Japan will not be subjected to special restrictions such as are not imposed upon sovereign states.

2. Japan will scrupulously observe all international law, international agreements and usages; she will cooperate wholeheartedly in all international undertakings and programs for the conservation and investigation of fishery resources.

3. Accordingly Japan will cooperate in the execution of the existing international agreements on the protection and investigation of the fishery



resources including whales, seals, halibut, salmon and tuna. With respect to United States conserved fisheries, we are prepared to reach a concrete understanding.

## X. Reparations and war claims

### 1. Reparation

It is desired that no industrial facilities will be taken away for reparation beyond those which have already been removed; and no reparations from current production or in money will be demanded.

### 2. War claims

We have no objection to the arrangement as outlined under 6 of the 7 Principles. But we submit the following.

(a) Japanese assets abroad. It is desired that all Japanese assets in those of the Allied countries, which did not actually engage in hostilities, will be returned. Of the Japanese property in the countries which engaged in hostilities, special consideration will be given, if possible, with respect to privately owned assets. In case these are also to be applied to the payment of war claims, it is requested that the question of compensations to their owners be left to the discretion of the Japanese government. This is a matter that will have a serious bearing upon Japanese economy, and the government will take an equitable measure by taking the various circumstances into consideration.

(b) Looted property. Restitution has been effected for the most part. It is desired that the matter will be considered closed with the conclusion of peace.

(c) Allied assets in Japan. It is desired that the necessary steps will be taken to complete their restoration as soon as possible.

(d) Japanese gold. It is desired that all gold, still being impounded, will be returned.

## XI. Postwar claims

It is the intention of the Japanese government to liquidate all post-war indebtedness.

## XII. War criminals

We request the following:

1. No more new arraignments.
2. An amnesty on the occasion of the conclusion of the peace treaty.
3. Transfer to Japanese authorities the execution of sentences.

Note: As of January 1, 1951, there were 1,378 war criminals serving prison terms and 2 on trial in Japan, while overseas 759 were in prison and 36 on trial.

## XIII. Procedure

1. We want and expect to conclude peace forthwith with as many countries as possible.
2. We hope that there will be no delay in the making of the treaty for procedural reasons; and that the substance of the treaty will not be sacrificed for the sake of winning more adherents.

## 議題の提案

日本と合衆国の将来の関係を律すべき一般原則の討議のほか、次の特定事項を詳細な討議の議題として提案する。

1. 領域。「日本国の主権は、本州、北海道、九州、四国及びわれらが決定する諸小島に局限される」との降伏条項をどのように履行するか。
2. 安全保障。占領の終了後における安全保障をどのように規定するか。
3. 再軍備。もし設けるとするならば、どのような規定で日本の将来の再軍備を制限するか。
4. 人権等。この点について、また、占領による改革に関連して、日本は、もしするとすれば、どのような約束又は宣言をするか。
5. 文化関係。この点について、もしあるとすれば、どのような関係を引き続いて発展させることができるか。
6. 国際福祉。麻薬の取引の禁止、天然生物の保存等を取り扱うどのような国際条約に日本は加入するか。
7. 経済。一定の産業に関する日本の将来の経済上の活動、たとえば、造船を、もし設

けるとすれば、どのような規定で制限するか。

8. 通商。何をもつて、他国との日本の戦後の通商の基礎とするか。たとえば「最恵国待遇」問題。
9. 漁業。合衆国の保存漁場を日本が使用することの自発的禁止の可能性。
10. 賠償及び戦争に基く請求権。これらの点に関する条約の規定をどのようなものとするか。日本の金。
11. 戦後請求権。日本は、ガリオアの債務をどのように取り扱うか。
12. 戦争犯罪人。軍事裁判所によつて有罪を宣告された人々に対する将来の管轄権限はどこに属するか。
13. 手続。ソヴィエト連邦のとりそうな態度と中国の地位を考慮して、将来の手続をどのようなものとするか。

注 以下に私見を開陳する。エス・ワイ

#### 提 案 議 題

##### 1. 領 土

1. 琉球及び小笠原諸島は、合衆国を施政権者とする 国際連合の信託統治の下におかれることが、7原則の第3で提案されている。日本は、米国の軍事上の要求についていかようにでも応じ、バーミュダ方式による租借をも辞さない用意があるが、われわれは、日米両国間の永遠の友好関係のため、この提案を再考されんことを切に望みたい。
2. 信託統治がどうしても必要であるならば、われわれは、次の点を考慮されるようお願いしたい。
  - (a) 信託統治の必要が解消した暁には、これらの諸島を日本に返還されるよう希望する。
  - (b) 住民は、日本の国籍を保有することを許される。
  - (c) 日本は、合衆国と並んで共同施政権者にされる。
  - (d) 小笠原諸島及び硫黄島の住民であつて、戦争中日本の官憲により又は終戦後米国の官憲によつて日本本土に引揚げさせられたもの約 8000 名は各原島へ復帰することを許される。

##### 2. 安全保障

安全保障に関する日本政府の見解は、次のとおりである。

1. 日本は、国内の安全を自力で確保する。
2. 対外的安全保障に関しては、適当な方法によつて、国際連合、とくに合衆国の協力を希望する。
3. このための取極は、平等の協同者としての日米両国間における相互の安全保障のための協力を規定するものとして、平和条約とは別個に作成されるべきである。

##### 3. 再 軍 備

1. 当面の問題として、再軍備は、日本にとつて不可能である。
  - (a) 再軍備を唱道する日本人はいる。しかし、その議論は、問題を徹底的に究明した上でのものとは思われないし、また、必ずしも大衆の感情を代表するものでもない。
  - (b) 日本は、代近的軍備に必要な基礎資源を欠いている。再軍備の負担が加えられたらば、わが国民経済は立ちどころに崩壊し、民生は貧究化し、共産陣営が正しく待ち望んでいる社会不安が醸成されよう。安全保障のための再軍備は、実は逆に、国の安全を内部から危殆におとし入れよう。今日、日本の安全は、軍備よりも民生の安定にかかることはるかに大である。
  - (c) わが近隣諸国が日本からの侵略の再現を恐れていることは、厳たる事実である。国内的には、旧軍国主義の再現の可能性に対して警戒する理由がある。さしあたつて、われわれは、国の安全維持を再軍備以外の方途に求めなければならない。
2. 今日、国際の平和は、国内の治安と直接に結ばれている。この意味において、われわれは、国内の治安を維持しなければならず、そのためには、われわれは独力で完全な責任をとる決心をしている。これがため、わが警察及び海上保安の人員を直ちに増加し、また、その装備を強化する必要がある。
3. われわれは、その中にあつて積極的な役割を演ずることを熱望している。自由世界の共同の防衛に対する日本の特定の貢献の問題について協議することを希望する。

##### 4. 人 権 等

1. 日本は、世界人権宣言に全面的に賛成する。この宣言に掲げられた諸原則は、わが新憲法に完全に取り入れられている。日本がこの事項について宣言をする必要がある

と考えられるならば、われわれとしては異存はない。

2. 占領下に樹立された諸法令及び諸制度をそのまま恒久化することを意図するような規定を平和条約に設けることは、避けられたい。

連合国は、もつばら占領管理の目的のためにのみ執られた諸措置又は日本の実情にそわなくなつた諸措置の廃止又は修正について、占領の終了前に考慮されたい。こうすることが、占領管理から平常の統治への移行を円滑ならしめ、また、日米間の友好関係の増進に資するゆえんであらう。

## 5. 文化関係

われわれは、国際の文化の交流に積極的に参加することを許されるよう熱望する。日米間の文化の連帯の緊密化は、日米の親善関係に関する根本問題である。われわれは、両国間の文化的協力を増進するようあらゆる措置を執りたい。

## 6. 国際福祉

日本は、従来から当事国であるこの分野のすべての戦前の国際協定を忠実に遵守する。われわれは、また、戦争中及び戦後締結された他の協定、たとえば、世界保健機関憲章、国際衛生条約等に参加する用意がある。

## 7. 経 済

日本の経済上の活動には何らの制限をも課せられないことを希望する。

非軍事化のために、又は、戦争能力の除去のために、ある種の産業が「軍事産業」の名を冠せられて制限を課せられるようなことになれば、事実上平和産業を罰することになり、且つ、自立に向つて進む日本経済の進歩を著しく阻害することにならう。造船業を例にとつてみよう。通商を生命とする日本にとつては、相当量の船腹を保有することは不可欠の要件である。船舶は軍用にも転用しうるとの理由で日本が船舶保有量、船型、速力又は造船能力を制限されたならば、日本の平和的通商にはなほだしい損害を受けることにならう。同様に、鋼、軽金属、人造ゴム又は人造石油等の製造の制限も平和産業の制限ということにならう。

また、国際通商における日本の競争を抑制するために、特定産業を制限することは公正取引の原則とも相容れないであらう。

## 8. 通 商

1. 日本は、通商に依存して生きている。日本が世界の繁栄に最もよく貢献できるの

は、通商によつてである。互惠主義と最恵国待遇の相互の付与とに基く通商関係をすべての国々とすみやかに確立することを切望する。

2. 通商航海条約締結前にあつても、日本と平和条約締結国との間に最恵国待遇を相互に与え合うことが平和条約に明記されることを希望する。
3. 通商の促進と平等且つ緊密な通商関係の設定のための日本が当事国である各種の戦前の国際条約（たとえば、工業所有権保護条約、国際労働条約など）を、日本は、厳格に遵守する。更に、日本は、同様の戦後の国際条約（特に、国際通貨基金、国際復興開発銀行、貿易関税一般協定）に参加することを希望する。

## 9. 漁 業

1. 公海における漁業の自由は、国際法が認めた一つの原則であるから、われわれは、普通の主権国には課せられないような特別の制限を日本に課さないことを期待する。
2. 日本は、すべての国際法、国際協定及び国際慣習を厳格に遵守する。日本は、漁業資源の保護及び調査のための国際的事業及び計画に全幅の協力をする。
3. 従つて、日本は、鯨、オットセイ、ハリバット、鮭及びマグロ等の漁業資源の保護と調査のための現行国際協定の実施に協力する。合衆国の保護漁場に関して、われわれは、具体的了解をとける用意がある。

## 10. 賠償及び戦争に基く請求権

### 1. 賠 償

工業施設による賠償については、すでに撤去された施設以上には取立が行われないこと、また、年間生産物又は金銭による賠償の要求が行われないことを切望する。

### 2. 戦争に基く請求権

7原則の第6に略述された処置に対してわれわれは異議を有するものではない。しかし、われわれは次のことを申し述べたい。

- (a) 日本の在外資産。連合国中日本と現実に関戦行為には入らなかつた諸国にあるすべての日本資産は、返還されることを希望する。現実に関戦行為に入つた諸国にある日本財産のうち、私有財産については、できれば、特別の考慮を払われんことを懇請したい。戦争に基く請求権の支払にこれらが充当されたとした場合には、これら財産の所有者に対する補償の問題は、日本政府の裁量に一任されることを要請する。この問題は、日本の経済に重大な影響を及ぼす問題であつて、政府は、諸般の

事情を勘案して公正な措置を講ずる所存である。

- (b) 掠奪財産。返還は、ほとんど終了した。この問題は、平和条約の締結とともに終了したものとみなされるよう希望する。
- (c) 在日連合国財産。在日連合国財産の返還をできる限りすみやかに完了するために、必要な措置を執られるよう希望する。
- (d) 日本の金。現在押えられているすべての金を返還されるよう希望する。

#### 11. 戦後請求権

日本政府は、すべての戦後の債務を弁済したいと考えている。

#### 12. 戦争犯罪人

次のことを懇請する。

- 1. 新しい訴追をしないこと。
- 2. 平和条約締結の機会における大赦。
- 3. 刑の執行を日本官憲に移管すること。

(注) 1951年1月1日現在、在内地受刑者1,378名同未決2名、在外受刑者759名同未決36名。

#### 13. 手続

- 1. われわれは、直ちにできる限り多くの国と平和条約を締結することを望み且つ期待している。
- 2. われわれは、手続の故に条約の締結が遅延しないこと、また、参加国の数を多くするために条約の内容が犠牲にされないことを切望する。

#### 附録 2

掠奪財産と在日連合国財産に関するわが方の要請

(2月5日午前交付)

#### Looted Property.

The time limit set by the Far Eastern Commission has already expired. Moreover, restitution has been nearly completed. Since there is some time yet before the conclusion of peace, it is believed that by then any pending case will have been settled.

It is desired therefore that the Peace Treaty will merely confirm the settlement of the problem.

#### Allied Property.

We are anxious to complete restitution as soon as possible.

We propose that:

All claims be filed within six months after the signing of the peace treaty; and all disputes settled by an arbitration commission, whose decision shall be final.

#### 附録 3

平和条約基礎案を説明した暫定覚書(2月5日午前受領)

Secret

February 3, 1951

#### PROVISIONAL MEMORANDUM

Subject to further consideration and subject to further consultation with the interested Parties, the United States contemplates a peace treaty along the following lines:

#### Preamble

The Preamble would record the determination of the Allies and of Japan henceforth to order their relations on a basis of friendly cooperation as sovereign equals. Japan would indicate her intention to conform to the principles of the United Nations Charter; to realize the high principles embodied in the United Nations Universal Declaration of Human Rights; and to develop the conditions of stability and well-being envisaged by Article 55 of the United Nations Charter, and already initiated by post-war Japanese legislation. Japan accordingly would intend to apply for membership in the United Nations and the Allies would welcome that intention.

#### Peace

The state of war between the Allies and Japan would be pronounced at an end.

Sovereignty

The Allies would recognize the full sovereignty of the Japanese people and their elected representatives over Japanese territory.

Territory

Japan would renounce all rights and titles to Korea, Formosa and the Pescadores, and accept a United Nations trusteeship with the United States as administering authority over the Ryukyu Islands south of 29° north latitude, the Bonin Islands, including Rosario Island, the Volcano Islands, Parece Vela and Marcus Islands. The United States would retain control of these islands pending approval by the United Nations of the trusteeship agreement or agreements. Japan would further renounce all rights, titles and claims deriving from the mandate system and from the activities of Japanese nationals in the Antarctic area.

Security

Japan as a prospective member of the United Nations would accept in advance the obligations of Article 2 of the Charter, and the other parties would undertake reciprocally to be guided by those same principles with relation to Japan. The Allies would recognize that Japan as a sovereign nation possesses what the Charter refers to as “the inherent right of individual or collective self-defense”, and would agree that Japan might voluntarily enter into a collective security arrangement or arrangements participated in by one or more of them. Such arrangements would be designed solely for defense against armed attack from without, and any forces contributed by any Allied nation pursuant thereto would not have any responsibility or authority to intervene in the internal affairs of Japan. Assistance given at the express request of the Japanese Government to put down large-scale internal riots and disturbances in Japan would not be deemed intervention in the internal affairs of Japan. Japan would agree not to permit any foreign nation to have military facilities in Japan except pursuant to actions or recommendations of the United Nations or to a collective security arrangement or arrangements referred to above.

Political and Economic Clauses

(a) Japan would agree to adhere to existing multilateral treaties designed to prevent the misuse of narcotics and to conserve fish and wildlife.

(b) Japan would agree to enter promptly into negotiations with parties so desiring for the formulation of new bilateral or multilateral agreements for the regulation, conservation and development of high seas fisheries.

(c) Each of the Allies would agree to notify Japan within a year of the effective date of the treaty which of its pre-war bilateral non-political treaties with Japan it wished to keep in force.

(d) Japan would renounce all special rights and interests in China.

(e) The power to grant clemency, reduce sentences, parole and pardon with respect to war criminals incarcerated in Japan would be exercised jointly by Japan and the Government or Governments which imposed the sentences in each instance and, in the case of persons sentenced by the International Military Tribunal for the Far East, by Japan and a majority of the Governments represented on the Tribunal.

(f) Pending the conclusion of new commercial treaties or agreements, Japan, during a period of three years, would (1) extend most-favored-nation treatment to each of the Allies in all matters pertaining to the importation and exportation of goods, and (2) accord national treatment or most-favored-nation treatment, whichever is more favorable, with respect to the commercial vessels, nationals and companies of the Allies and their property, interests and business activities in Japan. Japan would be entitled to withhold from any Allied nation more favorable treatment in respect to any of the above matters than that nation, subject to the exceptions customarily included in its commercial agreements, was willing to accord it in that respect. Japan would also be entitled to apply measures dictated by its balance-of-payments position or by its essential security requirements, and to reserve the exceptions customarily contained in its commercial agreements. “National treatment” would not be deemed to include Japanese coastal and inland navigation. Pending the conclusion of civil air transport agreements, Japan, during a period of three years, would extend to each of the Allies not less favorable civil air traffic rights and privileges than those they enjoyed at the time of the coming into force of the treaty.

Claims Arising Out of the War

All parties would waive claims arising out of acts taken during the

war prior to September 2, 1945, except that (1) each of the Allied and Associated Powers would retain and dispose of Japanese property within its territories, except diplomatic and consular property and a few other limited categories; and (2) Japan would restore, upon demand, Allied property in Japan, or, if such property, whether or not taken under the control of the Japanese Government, is not restorable intact, would provide yen to compensate for the lost value. (An elaboration of these two exceptions is provided in Annex I.) Japan would waive all claims arising out of the presence of the Occupation forces in Japan since surrender.

#### Settlement of Disputes

Disputes concerning the interpretation or execution of the treaty not settled through the diplomatic channel would be referred for decision to the International Court of Justice, all of the treaty signatories undertaking to comply with the decisions of the Court. A specially established Arbitral Tribunal appointed by the President of the International Court of Justice from nationals of countries which were neutral in World War II would settle claim disputes. (An elaboration of these provisions will be found in Annex II.)

#### Final Clauses

(a) The right of adherence to the treaty would be extended to any nation at war or in a state of belligerency with Japan which had not been an original signatory thereto.

(b) The treaty would not confer any rights or benefits upon any state which did not execute and ratify or adhere to it, and Japan would not make a peace settlement with any other state which would grant that state advantages not granted to the parties to the treaty herein described.

#### General Observation

It is to be observed that if peace were made along the foregoing lines, it would involve a very complete restoration of sovereignty to Japan free of onerous restrictions. Japan would express its intention to maintain and advance the high purposes, principles and standards of the post-surrender years, but would not be subjected to treaty compulsions in these respects. There would be no restrictions upon Japan's right to

rearm. The Allies would demand no reparations either out of the industrial assets, current production or gold stocks. There would be no continuing right to reclaim looted property. There would be no treaty restrictions upon Japan's commercial activity, including shipbuilding and fishing, other than such as Japan may voluntarily adopt in the interest of promoting international good will. The Allies' right to "most-favored-nation" commercial treatment would be dependent upon reciprocity on their part. The question of any repayment of Garioa indebtedness of some \$ 2,000,000,000 is not made a matter of treaty compulsion, but left for mutual adjustment.

With respect to all of these matters, there is very considerable difference of opinion as between the Allies and there is within the United States a considerable body of opinion which questions the desirability of the kind of peace which is here outlined.

It may be that public opinion either within the United States or within the Allied Powers may render it necessary, in order to get peace, to add certain restrictions and burdens not enumerated in the above outline of projected treaty and it is suggested that the Japanese Government, in dealing with the people of Japan, should avoid giving any impression that it can now be taken for granted that the final treaty will be free of restrictions and burdens of the character mentioned in these General Observations.

### ANNEX I.

#### Elaboration of Exceptions to General Waiver of War Claims

I. Each of the Allies would have the right to retain and dispose of all property, rights and interests of Japan and Japanese nationals within its territory at any time between December 7, 1941 and the coming into force of the treaty, except (a) property of Japanese nationals permitted to reside in the territory of one of the Allies, except property subjected to special measures prior to September 2, 1945; (b) tangible diplomatic or consular property, net of any expenses incident to its preservation; (c) property of non-political religious, charitable, cultural or educational institutions; (d) property located in Japan, despite the

presence elsewhere of paper or similar evidence of right, title or interest in such property, or any debt claim with respect thereto; and (e) trademarks identifying products originating in Japan.

II. (a) Japan would restore, upon demand, within six months from the effective date of the treaty, the property, tangible and intangible, and all rights or interests of any kind in property, in Japan of the Allies and their nationals, unless the owner had freely disposed of his property without duress or fraud, and, to the extent that such property and interests, whether or not taken under the control of the Japanese Government, had been lost or damaged as a result of the war, would make compensation in yen equal to the amount necessary at the time of coming into force of the treaty (1) to purchase similar property, or (2) to restore the property to its condition on December 7, 1941. Compensation would not be made to persons whose activities and property were not subjected to special Japanese wartime restrictions applicable to Allied nationals generally. Claims of each of the Allied and Associated Powers and their nationals for compensation would be presented by its Government to the Japanese Government within eighteen months from the effective date of this treaty.

(b) If agreement on compensation should not be reached within six months after the filing of a claim, either of the governments concerned might refer the matter to the Arbitral Tribunal provided for in the treaty (see Annex II).

(c) Rights or interests in property would include directly and indirectly held ownership interests in juridical entities which were not nationals of an Allied Power, but which had suffered loss of or damage to property in Japan as a result of the war. Compensation with respect to such loss or damage would bear the same proportion to compensation payable to an owner under sub-paragraph (a) as the beneficial interests of such nationals in the corporation or association bore to the total capital thereof.

(d) Compensation in yen would be made in four equal annual installments without interest and if the total of allowed claims exceeds 40 thousand million yen, there would be a pro rata reduction so that the total would be that amount. The yen paid by way of compensation would not be convertible into foreign exchange except in accordance

with Japanese foreign exchange regulations. Compensation payments in respect to agreed claims would begin without awaiting final adjudication of contested claims.

## ANNEX II.

### Elaboration of Disputes Provisions

#### Interpretation or Execution

Any dispute between an Allied Government and Japan concerning the interpretation or execution of the treaty which is not settled through diplomatic channels would, at the request of a party to the dispute, and without special agreement, be referred for decision to the International Court of Justice. Japan and those Allied Powers which were not already parties to the Statute of the International Court of Justice would deposit with the Registrar of the International Court of Justice, on the date of the deposit of their ratification of the treaty, a general declaration accepting the jurisdiction, without special agreement, of the Court generally in respect of all disputes of the character referred to in this paragraph.

#### Claims

Disputes between an Allied Government and Japan in connection with claims matters which are not settled through the diplomatic channel or otherwise could be referred by either party to an Arbitral Tribunal, consisting of three jurists to be designated by the President of the International Court of Justice on request of the depository government made within three months from the effective date of the treaty. The designations would be made from nationals of countries which were neutral in World War II. Vacancies on the Tribunal would similarly be filled by designation by the President of the International Court of Justice upon request of the depository government. Decisions of the Tribunal would be by majority vote and would be final and binding.

The salaries of the members of the Arbitral Tribunal would be fixed by the President of the International Court of Justice, in consultation with the Government of Japan. The Government of Japan would pay the costs and expenses of the proceedings, including salaries of members

and employees of the Tribunal, but not including costs incurred by other governments in the preparation and presentation of cases.

The authority of the Tribunal, and the terms of office of its members, would terminate at the expiration of ten years from the effective date of the treaty, unless Japan and a majority of the Allies agreed to fix an earlier or later termination date.

## 暫定覚書

1951年2月3日

今後における審議と利害関係国との間における今後の協議に従うことを条件として、合衆国は、次の方針に沿う平和条約を考慮する。

## 前文

前文は、連合国と日本国が、今後主権を有する平等者としての友好的協力の基礎の上にその関係を整えてゆこうとする決意を記録するものとする。日本国は、国際連合憲章の原則を遵守し、世界人権宣言に具現せられた高遠な原則を実現し、且つ、国際連合憲章第55条が謳っており、又、既に戦後の日本の法制によつてはじめられている安定と福利の条件を発展さす意思を表示するものとする。従つて、日本国は、国際連合への加盟を申請する意思を有し、又、連合国は、右の意思を歓迎するものとする。

## 平和

連合国と日本国との間の戦争状態の終結が宣言されるものとする。

## 主権

連合国は、日本領土における日本国民の完全な主権を承認するものとする。

## 領域

日本国は、朝鮮、台湾及び澎湖島に対する一切の権利及び権原を放棄し、且つ、北緯29度以南の琉球諸島、西之島を含む小笠原諸島、火山列島、沖の島島、及び南島島に対する合衆国を施政権者とする国際連合の信託統治を受諾するものとする。合衆国は、1又は2以上の信託統治協定が国際連合によつて承認されるまでの間、右諸島の管理を維持するものとする。更に日本国は、委任統治制度及び南極地域における日本国民の活動に起因する一切の権利、権原及び請求権を放棄するものとする。

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## 安全保障

日本国は、国際連合の将来の加盟国として、憲章第2条の義務をあらかじめ受諾し、又、他の当事国は、日本国に関して右の同じ原則によつて導かれることを相互的に約束するものとする。連合国は、日本国が主権国家として、憲章が「個別的又は集団的な固有の自衛権」として規定している権利を保有していることを認め、又、日本国が、1又は2以上の連合国の参加する集団保障取極を自発的に締結することに同意するものとする。右の取極は、もつぱら外部からの武力攻撃に対する防衛を目的とし、又、右の取極に従いいずれかの連合国が提供するいかなる軍隊も、日本国の国内事項に干渉するなんらの責任又は権限を有しないものとする。日本国は、国際連合の行動若しくは勧告又は右に掲げた1若しくは2以上の集団保障取極に従う場合の外、いずれの外国に対しても日本国内に軍事施設を保有することを許さないことに同意するものとする。

## 政治的及び経済的条項

- (a) 日本国は、麻薬の濫用を防止すること、並びに魚類及び天然生物を保存することを目的とする現行の多数国間条約に加入することに同意するものとする。
- (b) 日本国は、公海における漁業の取締、保存及び発達のための2国間又は多数国間の新協定を作成するために、右を希望する当事国とすみやかに交渉を始めることに同意するものとする。
- (c) 各連合国は、条約の実施期日から1年以内に、日本国との間の戦前の2国間の非政治的条約のうちいずれを引き続き実施することを欲するかを、日本国に通告することに同意するものとする。
- (d) 日本国は、中国におけるすべての特殊権益を放棄するものとする。
- (e) 日本国に監禁されている戦争犯罪人に関し、恩赦を与え、減刑し、仮釈放し且つ赦免する権利は、日本国と個別的に刑の宣告を下した1又は2以上の政府とにより、又、極東国際軍事法廷によつて宣告を受けた者の場合には、日本国と右の法廷に代表された政府の過半数とによつて、共同に行使されるものとする。
- (f) 新しい通商条約又は協定が締結せられるまで、日本国は、3年の間、(1)各連合国に対し貨物の輸出入に関する一切の事項につき最恵国待遇を与え、且つ、(2)連合国の商船、国民及び会社並びにその財産、利益及び日本国における事業活動に関し内国民待遇又は最恵国待遇のうちいずれか有利な方の待遇を与えるものとする。日本国は、いずれの連

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合国に対しても、(右にかかけたいずれかの事項につき、その国がその通商協定に通常含まれている例外の下に、) 当該国が日本国に対して与える待遇よりも有利な待遇を与えることを差し控える権利を有するものとする。日本国は、また、その国際収支状況又は緊要な保安上の要請より必要とされる処置を執り、且つ、通商協定に通常含まれる例外事項を望保する権利を有するものとする。「内国民待遇」は、日本の沿岸及び内水航行を含むものとは解されないものとする。民間航空輸送協定の締結せられるまでの間、日本国は、3年の間、各連合国に対し条約実施期日において右の諸国が享有しているものより不利でない民間航空輸送上の権利及び特権を与えるものとする。

#### 戦争から生じた請求権

すべての当事国は、戦争中 1945 年 9 月 2 日以前に執られた行為から生じた請求権を放棄するものとする。但し、

- (1) 各連合国及び与国は、大公使館及び領事館財産並びに二三の他の限られた部類のものを除き、自国の域領内にある日本の財産を保留し、且つ処分するものとする。又、
- (2) 日本国は、日本国における連合国財産を請求により回復し、又は、右の財産が、日本国政府の管理の下に取り上げられたと否とを問わず、原状のまま回復し得ないときは、損失価格を補償するために円貨を提供するものとする。(これらの二つの例外の詳細は附屬第 1 に記述される。)

日本国は、降伏以降日本国における占領軍隊の存在から生じた一切の請求権を放棄するものとする。

#### 紛争の解決

外交的手段によつて解決せられない条約の解釈又は実施に関する紛争は、判決のため国際司法裁判所に付託され、すべての条約署名国は裁判所の判決に従うことを約束する。国際司法裁判所所長が第 2 次世界戦争における中立国の国民から任命する特設仲裁裁判所は、請求権に関する紛争を解決するものとする。(この条項の詳細は附屬書第 2 に記述されている。)

#### 最終条項

- (a) 条約に加入する権利は、日本国と戦争状態又は交戦状態にあつた国であつて、右の条約の原署名国でなかつたいずれの国に対しても与えられるものとする。
- (b) 条約は、これを作成し且つ批准しなかつたか又はこれに加入しなかつたいずれかの国

家に対して、いずれの権利又は利益をも与えないものとする。又、日本国は、ここに掲けられた条約当事国に対して与えられない利益を右の国家に与えるような平和処理を、いずれの他国ともなさないものとする。

#### 一般的陳述

平和が前記の方針に沿つて成立するときは、それは日本国に対し苛重な制限なく、きわめて完全に主権を回復することとなるものとする。日本国は、降伏後の時期における高遠な目的、原則及び標準を維持し、且つ促進する意思を表明するものとする。しかし、これらの点につき条約上の強制を受けることはないものとする。日本国が再軍備をする権利に対する制限は、設けられないものとする。連合国は、産業施設からであると、年間生産物からであると又は金の貯蔵からであるとを問わず、賠償を要求しないものとする。掠奪財産の返還を請求する権利が存続することはないものとする。日本国が国際的な好意を促進するために自発的に採用するものの外、造船及び漁業を含む日本の通商活動に対して条約上の制限は置かれられないものとする。通商上の「最恵国」待遇に対する連合国の権利は、連合国側における互惠を条件とするものとする。約 20 億ドルのガリオア債務の償還に関する問題は、条約上の強制事項とされず、相互間における調整に委ねられる。

右のすべての事項に関し連合国間に多分の意見の相違があり、又、合衆国内においてここに略述せられた種類の条約の妥当性に疑問を抱く意見が相当に存する。

合衆国内又は連合国内における輿論が、平和を勝ち得るため、予定の条約の前記の梗概に列挙されていない若干の制限及び負担を加えることを必要ならしめるかもしれない。したがつて日本国政府が、日本国民の取扱振において、終局的な条約がこの一般的陳述に掲けられた性質の制限及び負担を負わないということは、既に当然と考えてよいという印象を与えることは避けるべきであるということを示唆する。

#### 附屬第 1

##### 戦争請求権の一般的放棄に対する例外の詳解

1. 各連合国は、1941 年 12 月 7 日と条約の効力発生の間のいずれかの時にその地域内にある日本国及び日本国民の一切の財産、権利及び利益を保留し、且つ処分する権利を有するものとする。但し次のものを除く。
- (a) 1945 年 9 月 1 日以前に特別の措置を適用された財産を除くの外、連合国の一国の領域に居住することを許された日本国民の財産。

- (b) 有形の大公使館又は領事館財産、但し、その維持に要した経費は別とする。
  - (c) 非政治的な宗教的、慈善的、文化的又は教育的な団体の財産。
  - (d) 当該財産に対する権利、名義又は利益の証憑書類その他の証憑が日本国外に所在する場合においても、日本国内にある財産又はその財産に関する債権
  - (e) 日本国原産の商品を表示する商標
2. (a) 所有者が強制又は詐術によらず自由にその財産を処分したものである場合を除き、日本国は、条約の効力発生の日から6箇月以内に、要求に基き、日本国内にある連合国及び連合国民の有形及び無形の財産並びに財産に関する一切の権利又は利益を返還し、且つ、右のような財産が、日本国政府の管理に付されたか否かを問わず、戦争の結果として喪失され又は毀損された範囲において、条約の効力発生の時に (1)同様の財産を買入れ、又は (2)当該財産を1941年12月7日現在の状態に回復するに必要な額に等しい円貨による補償をなすものとする。連合国民一般に適用される日本の特別の戦時制限をその活動及び財産に適用されなかつた者に対しては、補償は、なされないものとする。連合国及び予国並びにその国民の補償請求は、この条約の効力の発生の日から18箇月以内に当該国政府から日本国政府に提出するものとする。
- (b) 補償に関する合意が請求提出後6箇月以内に得られなかつた場合には、関係国政府のいずれでも、条約に規定されている仲裁裁判所に当該案件を付託することができる(附属第2参照)。
- (c) 財産に関する権利又は利益は、戦争の結果日本国内にある財産を喪失し又はこれに対して損害を受けた連合国法人以外の法人に関して直接及び間接に保有する所有者としての利益を含むものとする。右の喪失又は損害に関する補償は、(a)項の所有者に対して支払わべき補償に対して、当該会社又は組合において本人の有する積極的利益が全資産に対して占める比率と同じ比率においてなされるものとする。
- (d) 円貨による補償は、無利子で毎年同額の4箇年賦でなされるものとし、認められた請求の総額が4百億円を超過するときは、総額が右の額となるように比率的に減額されるものとする。補償のため支払われた円貨は、日本の外国為替に関する諸規則によるの外、外国為替に転換することができないものとする。合意の成立した請求に関する補償支払は、係争ある請求の最終的裁決を待たずして開始するものとする。

附属第2

紛争に関する規定の詳細

解釈又は実施

条約の解釈又は実施に関する連合国の1国と日本国との紛争で、外交的経路によつて解決されないものは、紛争の一方の当事国の要求により、特別の合意をまたず、国際司法裁判所に決定のため付託されるものとする。日本国及び連合諸国で国際司法裁判所規程の当事国となつていないものは、この条約の批准を寄託する日に、国際司法裁判所書記に、この項に述べられているような性質の一切の紛争について全般的に、特別の合意をまたず、裁判所の管轄を受諾する旨の一般的宣言を寄託するものとする。

請求権

請求権に関する事項に関する連合国の1国と日本国との間の紛争で、外交的経路その他により解決されないものは、当事国のいずれでもこれを仲裁裁判所に付託することができるものとする。この仲裁裁判所は、この条約の効力発生の日から3箇月以内になされる寄託国政府の要求により、国際司法裁判所所長の指名する3名の法律家をもつて構成するものとする。この指名は、第2次世界戦争において中立であつた諸国の国民のうちから、これを行うものとする。裁判所の欠員は、同様に、寄託国政府の要求により、国際司法裁判所所長の指名により補充するものとする。裁判所の決定は、多数決によるものとし、最終的且つ拘束力あるものとする。

仲裁裁判所の構成員の給与は、国際司法裁判所所長が日本国政府と協議して定めるものとする。日本国政府は、裁判を行うについての経費を支払うものとする。但し、この経費は、裁判所の構成員及び職員の給与を含み、案件の準備及び提出について他国の政府が支出した経費を含まない。

裁判所の権限及びその構成員の任期は、日本及び連合国の多数がそれ以前又は以後の期日を定めることに合意しない限り、この条約の効力発生の日から10年をもつて終了するものとする。

附録 4

平和条約案第 15 条に関する 1951 年 8 月 13 日の会議要録

(りやく奪財産)

平和条約草案第 15 条に関する件 (昭、26. 8. 13 藤崎)

8 月 13 日午後、大蔵省側からの連絡により、CPC のブレイク氏を 往訪した。会議出席者、先方はブレイク氏外 CPC 係官、当方、河崎特殊財産部長、藤崎条約課長、大蔵省佐々木外国財産課長

ブレイク氏から「平和条約草案第 15 条は掠奪財産もカバーするという解釈をワシントンから示された。これに対する日本政府の意見を伺いたい」と述べた。

藤崎から、「文理解釈としては、そういうこともいえるかも知れないが、これまでの日米双方当局者間の話合いで掠奪財産はドロップされることになったと了解している。ワシントンの解釈は、第 15 条の返還に関する部分のみならず、補償に関する部分も掠奪財産に適用があるとするものであるか」と述べたところ、ブレイク氏は「われわれも第 15 条は掠奪財産を含まないと思っていた。ところが、われわれの方から掠奪財産について規定を設ける必要があることを指摘したところ、グレス氏が誰か知らないが、ワシントンから、それは第 15 条でカバーされているから心配ないといつて来た。われわれとしては、掠奪財産は、何年先になつても、はつきりそうと分つた場合には返還さるべきであり、在日連合国財産の場合のように、9 箇月というような制限を付さるべきではないと考えている。例えば、オランダは、日本が蘭領印度から莫大なダイヤモンドを掠奪したというクレイムを出しているが、それが将来発見された場合には、当然返還されるべきであろう。連合国財産補償法案は、掠奪財産をカバーしているか」と述べた。

当方から、しからざる旨を答えたところ、ブレイク氏は、この第 15 条の解釈の問題について日本政府の何分の意見を示してもらいたいと述べた。

なお、キャリントン氏は、掠奪財産の問題は、平和条約に含まれておらず、日本と当該連合国との間の協定に譲られているものと、自分は了解していたと述べた。

附録 5

連合国財産補償法案 (公表問題) 及び 平和条約案第 15 条の 解釈問

題 (りやく奪財産) に関し 1951 年 8 月 14 日先方に 提出した文書

(及びメモ)

連合国財産補償法案及び 平和条約案第 15 条の解釈問題に 関する件

(昭、26. 8. 14 藤崎)

1. 8 月 13 日午前の約束に従い、8 月 14 日午後、フィン書記官に、連合国財産補償法案の和英両文のサーティファイしたテキスト各 2 通 (邦文は、内閣官房総務課長、英訳文は、外務省文書課長がサーティファイした) をとどけ、また、この法律案の発表振りに関する日本政府の希望を述べた書きもの (別添) を手交した。
2. 8 月 13 日午後 CPC における会議の際、平和条約草案第 15 条の解釈について先方から提起された問題 (同条は略奪財産を含む趣旨なりとのワシントンの解釈が司令部側に示されたことに関連し) について、日本政府の所見を述べた書きもの (別添) をフィン書記官に手渡した。

この意見書は、日本政府のとつている解釈は、ワシントンから示されたものと違うとの趣旨であるが、これに対して、フィン書記官は、「ここに述べられている理由だけでは、第 15 条の条文の解釈について、それ程強い根拠のある議論とは思われない。ワシントンの解釈に反対のことをいつてやるということになると、非常に事面倒になる。自分の方でもブレイク氏にこれを連絡するが、貴方でも、ワシントンの解釈に従う場合にどれ程困るか、日本政府の解釈について再考の余地がないかを、さらに研究して貰えまいか」と述べた。

藤崎から「昨日の会議では、ワシントンでは、こんな解釈をしているが、日本政府の解釈はどうか、ときかれたので、ワシントンの解釈を正式に通達されて、これに対する賛否を求めるという趣旨ではなかつた。また、CPC の方でも従来日本政府のとつてきた解釈と同じ見解であつた。この略奪財産を取扱っている司令部側の主管当局たる CPC も、日本政府側の主務庁も同じ意見である。条約局長も、これまでの経緯からいつても、また、イタリア平和条約では、略奪財産についてはつきり規定しているのに、日本

の場合は、それが全くメンションされていない点からいつても、この解釈に何等疑問の余地があると思つておられなかつた次第であらう。しかし、御趣旨は分つたから、西村局長に貴方の趣旨をよくお伝えしよう」と述べておいた。

# Re. the draft Allied Powers Property Compensation Law

14 August, 1951

The Japanese Government has no objection to the text of the draft Allied Powers Property Compensation Law being made available to interested members of the public. It is requested, however, that the timing of its release to the press be decided upon further consultation between the U.S. Government and the Japanese Government. It may be some time between the date of closing of the coming session of the Diet which will open on August 16 and the opening of the session which will be convoked after the signing of the Peace Treaty.

## Looted Property and Peace Treaty Provisions

14 August, 1951

The wording of Article 15 of the draft Peace Treaty is apparently broad enough to cover cases of looted property, if such claim were ever to be made after the conclusion of peace, in so far as its restitution is concerned. However, it is the understanding of the Japanese Government that this is not what is actually meant by Article 15.

1. The Japanese Government, in a document submitted to Ambassador Dulles on January 30, 1951, stated as follows:

Looted property:

Restitution has been effected for the most part. It is desired that the matter will be considered closed with the conclusion of peace.

2. In a document submitted to Ambassador Dulles on February 5, the Japanese Government again stated as follows:

Looted property:

The time limit set by the Far Eastern Commission has already expired. Moreover, restitution has been nearly com-

pleted. Since there is some time yet before the conclusion of peace, it is believed that by then any pending case will have been settled. It is desired, therefore, that the peace treaty will merely confirm the settlement of the problem.

At the conference when the above document was submitted (U.S. participants: Ambassador Dulles, Mr. Allison, Mr. Feary; Japanese participants: Mr. Iguchi, Mr. Nishimura), a U.S. participant said that he understood this point very well.

Another U.S. participant inquired how the Japanese Government would feel if no mention were to be made of the problem of looted property in the peace treaty. The Japanese participants stated that it would be agreeable to the Japanese Government, it being understood however that this omission imply that the question be considered closed.

In view of the above exchange of opinion and also of the circumstances that the question of looted property is largely a closed issue by now and at any rate can be settled by the time of coming into force of the peace treaty, the Japanese Government understands that Article 15 of the draft Peace Treaty is to be interpreted to cover only the Allied property in Japan in the ordinary meaning of the term.

## 附録 6

平和条約案第 15 条の解釈（りやく奪財産）に関する 1951 年

8 月 15 日外交部における会談メモ

平和条約案第 15 条の解釈（略奪財産）に関する件（昭、26. 8. 15 藤崎）

8 月 15 日午前、西村条約局長に随行、DS フィン書記官を往訪した際、たまたま CPC のブレイク氏がフィン書記官のところにおいて、略奪財産の問題について話していた。その際、ブレイク氏は、「ドレス・ミッションとの話合いがあつた後で、卑金属何十(?) トンの略奪財産が発見された。外にも同様のケースが最近になつてもある。これは、賠償庁でも知つてはいるはずである。略奪財産ということが分つた場合には、何年先でも返すべきだと思ふ、日本政府もそうだろうと思ふのは、ナイーブにすぎるだろうか。」といつていた。

その後フィン書記官は、われわれとしては、この問題に余り関心をもっていないといつていた。

## 附録 7

### 平和条約案第15条の解釈（りやく奪財産）に関する1951年

#### 8月16日の会議要録

平和条約案第15条の解釈（掠奪財産）に関し会議の件（昭、26. 8. 16 藤崎）

CPCブレイク氏からの申出により、本件に関して、8月16日午前9時からCPCで会議した。出席者は、

先方 CPCデレット大佐、ブレイク氏、キャリントン氏外DSフィン氏

当方 外務省 西村条約局長、藤崎条約課長

大蔵省 佐々木外国財産課長

賠償庁 石黒次長、河崎特殊財産部長

西村条約局長から、日本政府としては、従来話合いの経緯もあり、条約案第15条は、掠奪財産を含まないと解していたが、本条の文言はこれをカバーすると解釈されると考える旨を述べた（前日、西村条約局長から石黒次長に話し、石黒次長もこの立場をとることに同意していた）。

ブレイク氏から、「しからば、第15条の所定の期間の経過後5年先、10年先に掠奪財産が発見された場合には、日本政府としては、どうするつもりか」ときいた。

条約局長から、「当該国との外交交渉により処理できると考える」と述べたところ、賠償庁次長から「掠奪財産を返還することについての法令上の根拠がなければ、どうにもならないではないか」との疑惑が提起されたが、条約局長から「正当な所有権に基づかないで物を所持している場合、日本の法令は、その者に所有権者としての保護を与えるものではない。取得時効は20年である」と説明した。

CPC側は、財産を掠奪された連合国人としては、日本の一般の国内法令により、日本の裁判所で、当該の日本人個人を相手どつて訴訟する外ないということでは、十分にその権利を保護することは到底できないから、その間に日本政府として責任をとるべきことを

明らかにするために、関係連合国と日本との間に個別的に取極を締結することを希望した。

これについては、平和条約案第26条末段（この条約で定めるところよりも大きな利益をその国に与える平和処理又は戦争請求権処理を行つたときは、これと同一の利益は、この条約の当事国にも及ぼされなければならない）の関係もあり、かたがた、他の連合国も同じ取極を締結したいといつて来るだろうということで、当方としては、賛成し難い旨を述べた。

後から会議に出席したDSのフィン書記官は、第15条の期限を延長（現在9箇月のところを例えば18箇月）してはどうかといつた（その後同書記官は、藤崎に「平和条約案の修正をワシントンに提議しても到底許さないだろうから、本件をあまり重要視する必要はない」と耳打ちした）。

結局、(1) 個別取極の締結、(2) 第15条の期間延長、(3) 外交交渉の3つの方法があるわけであるが、日本側としては、そのいずれをとるかということになり、日本政府としては、第3の方法をとりたいと答えた。

先方は、これに対しては不満ながらも、これでこの問題は一応打ち切りになりそうである。

## 附録 8

### 1951年2月7日総理・ダレス会談録（2月7日午前外交局において）

2月7日午前10時半ないし11時少し前まで外交局において

ダレス、シーボルト、フィアリー、ジョンソン、マグルーダ、バブコック

総理、井口、西村

総理より、昨6日マ元帥との会談にて、条約その他に日本が再軍備すべきことをはつきりだされぬことを希望したり。と述べ、

ダレスより、同意見であり、われらはどこにも日本の再軍備をいわぬことにした。米国は、日本に再軍備を強制せずと答う。

総理より、将来日本が自発的に軍隊をもつことになる場合には、全く新しい軍隊をもちたい。とくに参謀本部には気を付け、軍国主義の復活を阻止しなければならぬと考える。

かつての日本が独乙式をとり独乙人メッタル將軍を顧問としたあの過誤を重ねぬよう米国の方式にならいて機構をも考え人も考えたい念願であり、米国の好意ある援助を期待す。と述べ、

ジョンソン次官補は、米式と独式との相違は、米国では軍人が文官の下にあることなり。三軍の最高指揮者は文官たる大統領にして、大統領が国防長官や三軍の長官や次官などには、みな文官を任命し、しかも、コングレスの承認を必要とする。文官より独立して行動しうる軍人も軍隊もなし。総理の御気持は正に了承し華府責任者に伝達すべし。と答えたり。

総理、漁業に関する書翰をダレスに手交せらる。

ダレスより、直ちに返簡をさし上ぐべし。なお、往復文書は、適当なる時機に公表いたしたし。漁業問題については西海岸の業者が極めて神経質にして、どう取極られるか注視しおれり。平和条約を成功裡に締結さすには、かれらの支持をうくること必要なり。本文書は、かれらを満足させるにたるものなれば、よく考えて適當の時日と場所において発表することといたしたし。と述べ、

総理より、本件は、いまのところ、農相と官房長官のみ了承しおれり。発表前に内部的に内閣の議を経ておきたきにつき、発表の日時と場所については事前に御連絡を願いたし、と希望し、ダレス同意したり。

次いで、ダレス大使より、条約の基礎案、日米集团的自衛協定案と実施協定案の三つについて、何か御意見はなきやと総理の感想を求む。

総理より、マ元帥にもいえるとおおり、自分が領土問題をとりあけたるは、対内考慮よりいでたるものにして他意なきを了とせられたし。と述べ、

ジョンソン次官補は、米側において沖縄諸島の範囲を一度だけさけて北緯 29 度以南としたることを指摘したり。

ついで、ダレスより

(イ) 内乱の場合駐屯軍の日本政府の要求による援助が内政干渉とみなされざるべき規定について、第 3 国よりの教唆又は干渉により惹起されたる内乱の場合とするに異存なし。

(ロ) 条約の基礎案の戦犯に関する部分において、条約後新規の訴追が許されぬことは、とくに規定せずとも、さようになるべし。比と豪とに少数懸案があるのみなり。(総理よ

り、ソ連関係からみても、条約で、この点に言及しないのでいてよろしからんと述べらる。)

内地服役の実現について、米国のあつせんを希望せられたる点は、従来どおり米国で努力すべし。米國を信頼されたし。

(ハ) 経済条項のうち「最恵国待遇」とあるは有条件なりや無条件なりやとの質問に対しては、有条件なり。文書を読まれれば、その意味のことがだしてあり。

(ニ) 在外資産について、戦闘行為をせざりし連合国にある分を免除されたしとの点は、これらの国はいずれも宣戦しており現実に戦闘行為をしたるものとせざるものとを区別すること困難なり。戦時及び戦後の長い期間にそれぞれ措置をとれるものもあり。希望のように取り計らうことはむづかしい実情なり。

(ホ) 在日連合国財産に対する補償について、わが方より質問したる部分「その活動及び財産が一般に連合国人に適用される日本の戦時特別制限に服せざりし者には補償の要なし。」とあるは、敵人として取り扱われず友邦人として取り扱われたる者には補償の要なしという意味なり。

と説明し、その他には、別にこれという意見はです。

最後にダレスより、米國はこの 3 つの文書に現わされた大方針（それは、条約基礎案に付属のゼネラル・オブザーベーションのところに明記してあり。）を体して、他の連合国と交渉を進める所存なり。但し、この方針を貫きとおせるかどうかは疑問あり。

できあがる条約は、米國の考えておる程自由なものとならざるやも知れず。ある程度の妥協が必要となるにはあらずやを恐る。

例えば船舶のごとし。日本に過度の船舶と造船力をもたすことを危惧する国あり。(ここに、当方より提出したる造船力 45 万トン、ストライク報告等の数字と相違すとて、再検討方要望あり。)

例えば、賠償のごとし。在日連合国財産に対する賠償を 400 億円（4 年間に、円貨にて支払う）にて打ち切り、しかも、この円は外貨にならず日本内地に再投資する外なし。これらの事情を考えれば、賠償打切について比その他の同意をとりつけるには、困難なきにしもあらず。イタリア条約の例にあるごとき生産物賠償をある程度考えざるべからざるやも知れず。研究しておかれんことを希望す。

また、日本の金についても、問題あり。と述べたり。

シーボルト大使より、漁業に関連し補鯨取締条約の方はどうなつてゐるやとの問あり。近く正式加入につき国会の承認手続をとる筈なりと答う。ドレスより、オットセイはいかがと質問あり。

米加協定ありてこれに加入することが可能なりや否や、または、米加協定に代わる条約の締結に参加するかを調査する必要あり。

参考のため米加協定をシーボルト大使におとどけいたすべしと答う。

辞去するに当り、総理より、米国の日本に対する寛大にして好意ある方針を謝し、その努力の速かに結実せんことを希望せられたり。

(付 記)

この会談の席上

「漁業問題に関する総理発ドレスあて書翰」を交付す。

会談後(午後)

船舶関係資料(訂正版)と米加オットセイ保護協定(原文と和文)とを先方に送付す。

## 附録 9

1951年3月14日付米側覚書(修正及び追加の申出)

SECRET

### MEMORANDUM

#### 1. Preamble

In view of wide concern on this subject a trade practices problem clause has been added to the Preamble under which Japan declares its intention in public and private trade and commerce to conform to internationally accepted fair practices. The Allies welcome this and other statements of intention in the Preamble and promise that they will seek to facilitate their realization. The scope of paragraph (a) under Political and Economic Clauses is also extended to include treaties and conventions for the promotion of fair trade practices.

( 98 )

#### 2. Territory

Unless and until the Soviet Union removes itself from the treaty picture it appears preferable in a draft treaty to assume its participation. The draft accordingly provides for the return by Japan of South Sakhalin and all islands adjacent thereto to the Soviet Union and the handing over to the Soviet Union of the Kurile Islands as they may be defined by bilateral agreement or by judicial decision under the treaty disputes procedure. This provision would be operative only if the Soviet Union signs and ratifies the treaty.

#### 3. Security

It is not considered necessary to include the last six and one-half lines of the above-headed paragraph, beginning with "and any forces", in this bilateral treaty, and they have accordingly been deleted from the treaty draft.

#### 4. Political and Economic Clauses

Paragraph (c): In addition to provision for notification of bilateral non-political treaties, the draft provides that Japan will accept the annulment, as a consequence of the war, of its rights under pre-war political treaties to which Japan and one or more of the Allied and Associated Powers were parties.

#### 5. Claims Arising Out of the War

In view of the complications involved in the question of compensation, it is considered advisable to minimize this aspect of the matter in the treaty. The best solution would appear to be for Japan voluntarily to enact compensation legislation, which might follow the lines of Annex I of the Provisional Memorandum. The treaty would merely provide that compensation would be made in accordance with Japanese domestic legislation, in yen subject to Japanese foreign exchange regulations, and that in no event would nationals of the Allied and Associated Powers receive less favorable treatment than that accorded to Japanese nationals.

#### 6. Submarine Cables

The best solution to this problem would appear to be to divide the cables equally between Japan and the Allied Powers to whose territories the Japanese cables run. Equally divided ownership and operation of submarine cables has proved successful where employed (e.g., the Italian

( 99 )

cable from Italy to the Azores to the United States) and is believed preferable to dividing ownership at the outer limits of the territorial waters of the Allied Powers, as in the Italian Treaty. The draft accordingly provides that Japanese submarine cables connecting Japan with territory removed from Japanese control in pursuance of the treaty shall be equally divided, with Japan retaining the Japanese terminal and adjoining half of the cable and the detached territory retaining the remainder of the cable and the connecting terminal facilities.

Tokyo, March 14, 1951

## 覚 書

### 1. 前 文

トレード・プラクセスの問題について広く関心を持たれているので、前文に、この問題について1項を加えることにした。同項によつて日本は、公私の貿易と商業において国際的に承認された公正な慣行に従う意志を声明する。連合国は、前文におけるこの及び他の意志の表明を歓迎し、且つ、その実現を容易ならしめるよう努めることを約束する。「政治及び経済条項」のa項の範囲は、公正なトレード・プラクセスの促進を目的とする条約を含むように拡張するものとする。

### 2. 領 域

蘇連邦が対日講和の外交舞台から退場するのではない限り、又それまでは、条約案では、蘇連の参加するものと仮定しておくほうがよいと思われる。よつて草案は、日本による南樺太及びすべての近隣諸島の蘇連邦への返還と千島列島の蘇連邦への引渡とを規定する。千島列島は（日蘇）2国間の協定又は平和条約の紛争処理手続による司法的決定によつて劃定せられるべきものとする。この規定は、蘇連邦が平和条約に署名しこれを批准する場合にのみ実施せられるべきものとする。

### 3. 安全保障

この両国間条約に、and any forces で始まる最後の6行半を設ける必要はないと考えられる。よつて条約案から削除した。

### 4. 政治及び経済条項

C 2 国間の非政治的条約についての通告に関する規定に加えて、草案は、日本が日本

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及び1又は2以上の連合国及び与国が当事者であつた戦前の政治条約に基いて有する権利が、戦争の結果として無効となつたことを承認することを規定する。

### 5. 戦争から生じた請求権

補償問題に含まれる複雑な事情に鑑み、平和条約では補償の複雑性をできるだけ少くすることが望ましいと考えられる。最善の解決方法は日本が自発的に仮覚書附属書1の趣旨に副う補償法を制定することであると考えられる。平和条約は単に、補償は日本の国内法に従つて、日本の為替管理規則に従う円貨によつてなされること、及び如何なる場合にも連合国及び与国の国民は、日本国民に与えられる待遇に比し不利な待遇を受けてはならないことを規定するにとどめる。

### 6. 海底電線

この問題の最善の解決は、日本と日本の海底電線の到達先である領域を有する連合国との間に電線を平等に分属することであると思われる。海底電線の所有権と運営を平等に分属することは、この方式が採用された場合（イタリア国からアゾーレス諸島、合衆国に至るイタリア国の海底電線の場合）に成功であつた。そしてイタリア平和条約の場合のように連合国の領水の外辺で所有権を分つ方法に比して優つておると考えられる。よつて草案は、日本と条約によつて日本の管理から分離された地域とを連結する日本の海底電線は平等に分属するものとし、日本は、日本の終点と当該電線のこれにつながる半分を保有し、分離された領域は、電線の残部とそれに連結する終点施設とを保有するものとする。

## 附録 10

1951年3月16日付わが方の回答

## ON MEMORANDUM

(March 14, 1951)

### 1. Preamble

No objection.

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## 2. Territory

(a) The proposed provision for the return of South Sakhalin and the handing over of the Kuriles to the Soviet Union under the assumption that it will participate in the peace treaty is agreeable. However, it is desired to have the passage in question read: "as they may be defined by the Powers concerned, including Japan."

(b) In case the Soviet Union goes definitely out of the picture, it is hoped such stipulation regarding South Sakhalin and the Kuriles will be omitted.

## 3. Security

Agreed.

## 4. Political and Economic Clauses

No objection.

## 5. Claims Arising Out of the War

There is no objection to leaving the matter to Japanese domestic legislation. However,

(a) The deletion is desired of the part of the draft text reading, "in no event would nationals of the Allied and Associated Powers receive less favorable treatment than that accorded to Japanese nationals." The Japanese government is not contemplating the payment of any compensation for war damage to Japanese property within Japanese territory. Compensations for other kinds of damages, if paid, would be very small. It is feared that the above-mentioned clause might raise vain hopes among Japanese or force the government to pay out compensations it cannot afford.

(b) In case of a dispute between the government and a claimant, it might be a more practical solution to have the dispute settled once and for all by a mixed commission instead of an arbitration court mentioned in Annex, (1) and (2).

## 6. Submarine Cables

No objection.

Tokyo, March 16, 1951

## 覚書について

### 1. 前 文

異存ない。

### 2. 領 域

(イ) ソ連邦が平和条約に参加するという仮定の下に、南樺太及びその近隣諸島のソ連返還並びに千島列島のソ連引渡しを規定せられることは、日本の国民感情（とくに千島列島に対する。）はともかく、やむを得ないとして諦める。

(ロ) 千島列島の範囲が、日ソ両国間の協定によつて劃定されるとの考案をとる場合には、日本が、単独で、列島の範囲に関するその公正な主張を貫徹することは到底できないことである。日本は、米国の絶対な支援を必要とする。よつて、「日本を含めた関係国間の協定で劃定されるべき」趣旨の文言にされたい。

(ハ) ソ連邦が平和条約に参加しないことが明らかになった場合には、南樺太及び千島列島に関する規定は削除されることを希望する。

### 3. 安全保障

賛成である。

### 4. 政治及び経済条項

異存ない。

### 5. 戦争から生じた請求権

補償の実施を日本が附属書(1)に含まれている原則に従つて、自発的に制定する国内法に委任されることに異存はない。但し

(イ) 条約文において in no event, ..... would nationals of the Allied and Associated Powers receive less favorable treatment than that accorded to Japanese nationals. なる条項は削除されたい。けだし日本国内における、日本人財産に対する戦争損害については何ら補償を考慮していないし、その他の戦争損害に対する補償は、たとえ行うとしてもきわめて僅少なもののしか与えられないことをおそれる。しかるに連合国人に対する待遇が日本人に対する待遇よりも不利でないことを条約にうたえば、自然日本人に対する補償をつりあけざるを得ない結果となるからである。

(ロ) 補償について、請求者と日本政府との間に合意が成立しない場合は、附属書の(1)及

び(2)に掲げている仲裁裁判の代りに、混合委員会をして最終的に決定せしめることが  
 实际的であろう。

6. 海底電線

異存ない。

附録 11

1951年3月23日の米側文書

We have received from Mr. Dulles and the State Department certain comments on the two memoranda which you left with me last week. With regard to your first memorandum commenting on ours of March 14th, the following comments are made with regard to paragraph 2 on Territory: With reference to 2(a) it is stated that we now plan to omit any reference to the definition of the Kuriles, thereby leaving this automatically to decision of the World Court.

With regard to 2(b), it would be provided that the Soviet Union would get no benefits unless it accepts the treaty; if it is apparent in advance that the Soviet Union is definitely out of the picture, we would be prepared to reconsider the question of whether reference to Sakhalin and the Kuriles should not be entirely omitted from the treaty.

The next comments have to do with paragraph 5 of the same memorandum. With regard to the question of compensation for damage to property of allied nationals in Japan raised in 5(a), it would be agreeable to us to omit reference to treatment to be accorded Japanese nationals.

With regard to paragraph 5(b), we see no objection to the settlement of disputes by a mixed commission as you suggest, but we are not at the present time in a position to give a definite commitment on that point.

Turning to your other paper entitled "The Japanese Government's Views and Requests on the Initialed Documents" the following comments are made on the Section I covering the Provisional Memorandum: With regard to paragraph (1), it is stated that we plan to use the term "Allied Powers" throughout, with appropriate definition to avoid confusion.

With regard to paragraph (2), it is not our understanding that the proposed treaty would accord rights to property succession in Japan, but rather that the matter is one which would be dealt with according to International Law and Municipal Law as they apply to particular cases as they may arise.

With regard to paragraph (3), we do not believe that it is feasible at the present time to try to get agreement on the Gatt formula which you suggest.

Regarding the question of Japanese property within allied territories raised in paragraph (4), we do not believe that the Italian Treaty formula would serve a useful purpose inasmuch as it would tend to lead to demands that any excess beyond the limits which you suggest be regarded as constituting reparations funds. We also feel that each of the Allied Powers concerned would in fact consider that it has claims at least equal to the Japanese property within its territories.

With regard to paragraph (5)—the final paragraph of Section I—it is contemplated providing that for a period of nine months after Japanese ratification the treaty could be brought into force only by the deposit of ratifications by a majority of the FEC members including the United States, but that after nine months any Allied Power which ratifies the treaty could thereby bring the treaty into force as regards itself and Japan. It is also planned to suggest that the right of adherence be maintained for a period of three years.

This concludes the comments which we have so far received. Sections II and III of the second of your two memoranda referred to above are understood to be still under study, upon the conclusion of which it is anticipated that further comments will be forthcoming.

All the points of your observation set forth in your paper received on March 23rd are agreeable.

With regard to the General Agreement on Tariffs and Trade, however, it is hoped to solve the problem by negotiating bilaterally with the countries concerned after the Peace Treaty in accordance with the purport of our proposal.

The deepest gratitude is expressed to the U.S. Government for the

consideration it kindly paid concerning the points stated in our two memoranda dated March 16th.

1951年3月23日の米側文書（訳文）

先週貴官が持参された2つの覚書に対する意見をダレス氏及び国務省から受領した。3月14日付外交局の覚書に対し意見を開陳された貴方の第1覚書に関しては、領域に関する第2項に関して次の意見が開示されてある。

第2項(a)については、われわれは、千島列島の範囲に言及せず、従つてこの問題を自動的に国際司法裁判所の決定に委すことを、目下、企図していると述べられている。

第2項(b)に関しては、ソ連邦は条約を受諾しなければ、いかなる利益も得ることができなと規定されるであろう。もしソ連邦が確定的に講和問題の圏外に去ることが事前に明らかになれば、樺太及び千島列島に対する言及を条約から全然省いてしまうかどうかの問題を考慮したいと思つている。

次の意見は、右の覚書の第5項に関するものである。第5項(a)にとりあけられた在日連合国財産に対する損害補償の問題については、日本国民に与える待遇に言及しないことに同意する。第5項(b)については、貴方の提議するように、混合委員会による紛争の処理に反対しない。但し、現在、この点について、最終的コミットメントを与えることはできない。

「イニシアルされた文書に対する日本政府の意見及び要請」と題する貴方の文書については、仮覚書に関する第1節について次のような意見が開示されている。

第1項に関しては、紛糾を避けるために適当な定義を付して、“Allied Powers”なる用語をすべての場所に使用する考えである。

第2項に関しては、提案された条約は、日本における財産に対する相続の権利を与えるとは考えない。むしろ本問題は発生する個々の事件について個々に適用される国際法と国内法によつて処理されるものであると考えている。

第3項に関しては、貴方の提案された関税貿易一般協定に関する方式について合意を得ることは現在のところ可能であるとは信じない。

第4項にとりあけられた連合国領域内の日本財産の問題に関しては、イタリア平和条約の方式は役立つとは思わない。けれどこの方式は、貴方の提案する範囲を超える余剰は賠償資金を構成するものと認められるべきであるとの論を招来するであろう。なお、各関係

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連合国は事実上その領域内にある日本財産と同額の請求権を持つと考えるであろうと感じる。

第5項に関しては、日本の批准の後9箇月間は、条約は合衆国をふくむ極東委員会構成国の多数の批准書の寄託によつてのみ効力を生ずる。しかし9箇月の後においては、条約を批准する連合国は、批准によつて日本と自国に関して条約を実施することができるように規定することを考えている。なお、加入の権利は3年の間維持せられることを提案する考えである。

これが今日まで受領した意見の全部である。前述の貴方の2つの覚書のうち第2覚書の第2節及び第3節はなお研究中であつて、研究の終了次第、さらに意見が開示されるものと了解する。

(回答案) (提出せず)

(1951. 3. 24)

3月23日受領した文書に開示された貴方の意見はすべて賛成である。

もつとも一般関税貿易協定に関する問題については、平和条約後わが提案の趣旨にそうて関係国と2国間交渉を行つて解決をはかるようにしたいと考える。

3月16日付のわが方の2つの覚書によつて取あけた諸点について、合衆国政府が考慮を払われたことについて深甚の謝意を表する。

## 附録 12

1951年4月23日提出の大蔵省作成「連合国財産に生じた損害額」

### 連合国財産に生じた損害額

#### 1. 総括表

有体財産	61 億
出 資	60 億乃至 100 億
外貨債務	59 億
そ の 他	10 億
計	190 億乃至 230 億

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2. 有体財産の滅失毀損による損害

	敵産管理された財産				敵産管理されなかつた財産(注5)	計(注7)
	管理当初の価額(注1)	推定時価(注2)	損害率(注3)	推定損害額(注4)		
	1,000 円	100 万円		100 万円	100 万円	100 万円
建物	32,945	4,035	33 %	1,331	26	1,358
動産	35,267	5,395	80 %	4,316	431	4,748
計	68,212	9,431		5,648	458	6,106

(注)1. 敵産管理人の提出した管理財産目録の数字を集計したもの(個々の財産について現在調査中であるから若干の変更があるかも知れない)

2. 日本銀行統計局調「戦前基準指数表」昭和16年、17年の平均と昭和25年12月との比較により、敵産管理当時の価額に対し、

建物については、建築材料指数(122・5倍)  
動産については、総平均指数(153倍)を乗じたもの

3. 建物の分 個々の連合国財産である建物についての今までの調査における損害率概数

動産の分 推定による。

建物損害調査表

国籍	原坪数	損害坪数	損害率
米	60,446 坪	23,287 坪	38 %
英	75,269	20,709	28
加	5,716	1,241	22
比	106	—	—
蘭	399	78	20
仏	1,770	1,682	95
その他	976	109	11
計	144,686	47,111	33

4. 推定時価に損害率を乗じたもの

5. 敵産管理されなかつた連合国財産とは、開戦当時連合国人が有していた財産で戦時中政府又は日本人の手により不当な圧迫が加えられたと最高司令官によつて認定されたものである。

6. 敵産管理されなかつた連合国財産は敵産管理されたものに比べて建物については約2%動産については約10%あると考えられる。敵産管理された建物及び動産の損害推定額にこの率を乗じたもの

7. 推定損害額計のうち、スタンダード石油会社及びシェル石油会社の分が約40%を占めていると推定される。

3. 連合国人が出資している企業の資産又は営業内容の変動に起因する連合国人の持分

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の内容低下による損害

この損害額は、連合国人の出資している各企業の開戦時と現在の内容を比較し、更に物価の変動を考えなければならないから、簡単に算出出来ない。開戦時における連合国人の出資額は138,998 千円(注)であるが、仮に物価の変動を150倍とし、企業の損害率を30%乃至50%と見れば、その損害は、60億乃至100億位のものと考えられる。

(注) 出資額は、連合国人が100%出資のものについては、大蔵省外資局調査(昭和16年9月)により、その他の企業については、日本興業銀行外事部「外国会社の本邦出資」(昭和23年6月)による。

4. 外貨債務に対する弁済がS・P・Aa/cに円貨を払い込むことによつて行われたことによる連合国人の損害

S・P・Aa/cに払い込まれた外貨債務金額(注)

	原債務額(外貨)		払い込まれた円貨額(換算率)		現在の円貨相当額(換算率)	
			円		円	
一般債務	391,813 弗		1,665,900 円	(4・25)	141,052,683 円	(360円)
	22,127 磅		374,289	(16・84)	22,304,652	(1,008)
	2,091 ルピー		2,686	(1・286)	158,244	(75・70)
	計		2,042,875		163,515,580	
外債利払	5,985,098 弗		15,495,604	(4・25及び2・06)	2,154,633,481 円	(360・)
	3,631,418 磅		54,142,552	(16・84及び9・763)	3,660,470,276	(1,008・)
	計		69,638,156		5,815,105,758	
合計			71,681,032 (A)		5,978,619,338 (B)	

右の(A)と(B)との差額5,906,938,305円が円貨の下落による連合国人の損害となる。

(注) 右の表は、S・P・Aa/cに払い込まれた円貨の中、外貨債務に対する弁済であることが明記されているものの累計である。従つて右の表以外にも外貨債務に対する円貨弁済は、多少ありうと考えられる。

5. その他

以上の外、無体財産権で戦後措置によつて回復されなかつたものの損害額、連合国財産から生ずべき利益又は果実(配当、賃貸料、利子等)の損害額は、全く不明であるが一応10億を計上した。尙、開戦時連合国人が有していた債権の円貨下落に伴う損害は、こゝでは考慮していない。

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連 合 国 財 産 の 数 量 表

(昭和26年4月3日作成)

財 産 種 別	昭和17年3月31日現在 金 額 (註1)	昭和20年9月13日現在 数 量 (註2)	昭和25年12月31日現在 返還完了数量	返還率 (%)	備 考
土 地	35,970 千円	(米) 385,312 坪 (英) 445,655 (加) 126,599 (蘭) 5,014 (仏) 2,303	213,113 坪 256,794 102,091 4,796	55.3 57.6 80.6 95.6	(註1) 本欄の金額は、敵産管理人から提出された管理財産目録及び外国人関係取引取締規則に基づく報告書により集計したものである。
		計 964,885	576,796	59.7	(註2) 土地及び建物の昭和20年9月13日現在数量は昭和25年末の調査による。
建 物	32,945 千円	(米) 37,158 坪 (英) 54,560 (加) 4,474 (比) 106 (蘭) 320 (仏) 88 (その他) 867	24,361 坪 31,454 4,015 — 320 88 41	65.5 57.6 89.7 0 100.0 100.0 4.7	(註3) 建物の戦時中の損害数量(戦災等による)は、47千坪である。
		計 97,575 (註3)	60,281	61.7	(註4) 本欄中「不明」とあるのは、調査困難のため数量未確認のものである。
					(註5) 電話の金額は、動産の中に計上されている。

動 産	不	明 (註4)	49,910 点		(註6) 子株の譲渡数量を含まない。
船 舶	(米) 9 隻 (英) 19 隻	9 隻 12 隻	9 隻 12 隻	100.0 63.0	子株の譲渡数量 (米) 351,335 株 (英) 17,078 (蘭) 950 (仏) 73,500 442,863
自 動 車	不	明	73 台		
営業用商品	不	明	247 こん包 708 打		(註7) 貸付金、取引先勘定、受取手形を含む。
			520 組		(註8) 預金、特殊財産管理勘定は返還の形をとらず、連合国人により自由に引き出され、又管理人により税金等の支払のために引き出されているため、返還金額の確定は困難であるから、その残高を記載した。
電 話	不	明 (註5)	333 口		
株 式	(米) 2,081,711 株 (英) 1,537,041 株 (蘭) 45,857 株 (その他) 646 株	522,892 株 571,808 株 2,096 株 81 株	522,892 株 571,808 株 2,096 株 81 株	25.1 37.2 4.5 1.2	
	計 3,665,225	1,096,877 (註6)	1,096,877 (註6)	29.9	
公 社 債 等	不	明	5,783 枚		
現金・預金	189,938 千円 (註7)	1,719 千円	残高 29,492 千円 (註8)		
特殊財産 管理勘定	23,792 千円	418,273 千円	残高 247,510 千円		

# DAMAGE IN VALUE AND AMOUNT OF ALLIED PROPERTY IN JAPAN

A Summary of Investigations by the Finance Ministry,  
as of 3 April 1951  
(Figures not final)

21 April 1951  
Japanese Government

Confidential

## Estimated Value of Damage on Allied Property.

1. Total Value of damage	
Tangible property .....	¥ 6,100,000,000
Investments .....	Ranging from
	¥ 6,000,000,000 to
	¥ 10,000,000,000
Liabilities in foreign currencies .....	¥ 5,900,000,000
Others .....	¥ 1,000,000,000
Total.....	Ranging from ¥ 19,000,000,000 to
	¥ 23,000,000,000

## 2. Damage to tangible property due to loss or deterioration:

### Enemy property placed under custody

	Price at the commencement of custody(cf. 1)	Estimated current value(cf. 2)	Percentage of damage (cf. 3)	Estimated value of damage (cf. 4)
	(In ¥ 1,000)	(In ¥ 1 million)		(In ¥ 1 million)
Buildings	32,945	4,035	33%	1,331
Movables	35,267	5,395	80%	4,316
Total	68,212	9,431		5,648

( 112 )

Enemy property not placed under custody (cf. 5)	Total (cf. 7)
Estimated value of damage (cf. 6)	Estimated value of damage
(In ¥ 1 million)	(In ¥ 1 million)
Buildings	1,358
Movables	4,748
Total	6,106

cf. 1 Computed from the figures appearing in custodial inventories submitted by the enemy property custodian. (Slight changes may occur as item by item investigation is now being conducted.)

cf. 2 By comparing the average of "Pre-War Standard Index Number Chart" of 1941 and 1942 prepared by the Statistics Bureau of the Bank of Japan with that of December 1950, the price at the time of placing the enemy property into custody has been multiplied by:

on buildings, construction material index (122.5 times);  
on movables, general average index (153 times).

## cf. 3 On buildings:

Obtained from the average of the approximate figures of damaged rate which had been revealed by the investigation conducted on each building of Allied property.

On movables: by estimation.

### Chart of Investigation Conducted on the Damage of Buildings

Nationality	Original number of tsubos	Damaged number of tsubos	Rate of damage
U.S.A.	60,446 tsubos	23,287 tsubos	38%
Gt. Britain	75,269 "	20,709 "	28%
Canada	5,716 "	1,241 "	22%
Philippines	106 "	—	—
Netherlands	399 "	78 "	20%
France	1,770 "	1,682 "	95%
Others	976 "	109 "	11%
Total	144,686 "	47,111 "	33%

cf. 4 Estimated current value multiplied by the rate of damage.

cf. 5 Enemy property not placed under custody—this is property

( 113 )

which had been owned by Allied nationals at the time of the outbreak of the war and which had been recognized by the Supreme Commander to have received unjust treatment by the Japanese Government and people during the war.

cf. 6 It is estimated that the ratio of Allied property not held under custody when compared with the one held under custody reveals a percentage of about 2% on buildings and about 10% on movables. The foregoing percentage have been multiplied by the estimated value of damage on the buildings and movables which were held under custody.

cf. 7 It is estimated that in this column showing the total of estimated value of damage, 40% is occupied by the loss of the Standard and Shell Oil Companies.

3. Loss inflicted upon Allied nationals caused by the actual decline in their shares due to the change in assets or in the conduct of business of the enterprises in which they have invested.

This amount of damage cannot be computed easily as the present condition of the enterprise may differ from that at the time when the investment was made by an Allied national. Furthermore, the fluctuation in the price of commodities must be also considered. The amount invested by Allied nationals at the time of the outbreak of war was ¥138,998,000 (note), but if the fluctuation of the price of commodities is considered to be around 150 times and if the rate of damage of the enterprise ranges between 30% to 50%, it is estimated that the value of damage would be around ¥ 6,000,000,000 to ¥ 10,000,000,000.

(Note) Enterprise which had been invested 100% by an Allied national was referred to the investigation conducted by the Foreign Investment Bureau of the Finance Ministry (Sept. 1941) and on other enterprise, the reference was made on the research conducted by the Foreign Division of the Industrial Bank of Japan, entitled, "Investment in Our Country by Foreign Companies" (June 1948).

4. Loss incurred by Allied nationals which results from the repayment of liabilities in foreign currencies conducted through the payment in Yen to Special Property Administration Account.

### Value of Liabilities in Foreign Currencies Paid to the Special Property Administration Account (Note)

	Value of original liabilities (foreign currency)	Value paid in Yen (conversion rate)	Present corresponding value in Yen (Rate of conversion)
General liabilities	\$391,813 £ 22,127 2,091 Rupees Total	¥1,665,900(¥ 4.25) ¥ 374,289( 16.84) ¥ 2,686( 1.286) 2,042,875	¥141,052,683(¥360) 22,304,652(1,008) 158,244(75.70) 163,515,580
Payment of interest on foreign loans	\$5,985,098 £3,631,418 Total	15,495,604(4.25 & 2.06) 54,142,552(16.84 & 9.763) 69,638,156	2,154,633,481(360) 3,660,470,276(1,008) 5,815,105,758
Total		71,681,032(A)	5,978,619,338(B)

The value of difference between (A) and (B) mentioned in the foregoing chart, ¥ 5,906,938,305, shall be the loss incurred by the Allied nationals due to the decline of the value in yen.

(Note) The above chart is computed from items clearly stated as payment for liabilities in foreign currencies mentioned in the payment in yen made to the Special Property Administration Account. Therefore, it is felt that there may be some other payment, aside from the foregoing chart, made in yen for liabilities in foreign currencies.

### 5. Others

Aside from the foregoing, the value of damage which results from intangible property which has not been restored by post-war measures and the damage to profit and returns such as dividends, rents and interests is totally unknown at present, but is tentatively estimated here to be around ¥ 1,000,000,000. As to credit held by Allied nationals at the time of the outbreak of war, the damage of such credit due to the decline in the value of yen is not considered here.

(Prepared on 3 April 1951) Chart Showing the Amount of Property of Allied Nations

Classification of property	Value as of 31 Mar. 1942 (cf. 1)	Amount as of 13 Sept. 1945 (cf. 2)	Amount already restored, as of 31 Dec. 1950	Percentage of restoration	Remarks
Lots	¥35,970,000	(USA) 385,312 tsubos (Gt. Btn.) 445,655 " (Canada) 126,599 " (Nether.) 5,014 " (France) 2,303 " Total 964,885 "	213,113 tsubos 256,794 " 102,091 " 4,796 " —	(cf. 1) 55.3 57.6 80.6 95.6 0	This column has been computed from the custodial inventories presented by enemy property custodians and from reports based on the regulation governing the transaction of foreigners.
Buildings	¥32,945,000	(USA) 37,158 tsubos (Gt. Btn.) 54,560 " (Canada) 4,474 " (P. I.) 106 " (Nether.) 320 " (France) 88 " Others 867 " Total 97,575 " (cf. 3)	24,361 " 31,454 " 4,015 " — 320 " 88 " 41 " 60,281 "	65.5 57.6 89.7 0 100.0 100.0 4.7 61.7	(cf. 2) Amount of lots and buildings as of 13 Sept. 1945 is the result of investigation made at the end of 1950.
Movables		Unknown (cf. 4)	49,910 items		(cf. 3) Amount of wartime damage (fire, etc) on buildings is 47,000 tsubos.
Ships	¥13,400,000	(USA) 9 ships (Gt. Btn.) 19 " Unknown	9 ships 12 " 73 autos	100.0 63.0	(cf. 4) Unknown in this column is due to the difficulty involved in ascertaining the correct amount.
Automobiles					
Retail merchandise	¥21,867,000	Unknown	247 packs 708 dozens 520 sets		

(116)

Telephones	Unknown (cf. 5)	Unknown	333 sets		(cf. 5) The amount of the cost of phones is computed in the movables.
Stocks		(USA) 2,081,711 shares (Gt. B) 1,537,041 " (Nether.) 45,857 " (Others) 646 " Tl. 3,665,255 " Unknown	522,892 shares 571,808 " 2,096 " 81 " 1,096,877 " (cf. 6) 5,783 sheets	25.1 37.2 4.5 1.2 29.9	(cf. 6) Not including the transfer of new shares. Amount of new shares already transferred : (USA) 351,335 shares (Gt. Bt) 17,078 " (Nether.) 950 " (France) 73,500 " Total 442,863 " (cf. 7) Including advance account, transaction account and bills receivable.
Public and corporation bonds					(cf. 8) Deposit and special property control account are being drawn out, not in the form of restoration, by Allied nationals without any restriction or by custodians for such limited purposes as payments of taxes. It being difficult to ascertain the amount thus restored, balances of the deposit and the account are indicated herein.
Cash and deposits	(cf. 7) ¥189,938,000	¥1,719,000	(cf. 8) ¥29,492,000		
Special Property Custody Account	¥23,792,000	¥418,273,000	(cf. 8) ¥247,510,000		

(117)



## 附録 13

1951 年 7 月 2 日 アリソン公使に提出した平和条約案に対するわ  
が意見書（和文及び英文）

### 1. 第4条について

- (1) (a)項の第1文章は、次のような意味に解釈する。

The disposition of property of Japan and its nationals in the areas referred to in Articles 2 and 3, and their claims, including debts against the authorities presently administering the areas referred to above and the residents (including juridical persons) thereof, and the disposition of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities.

この規定は、われわれの見るところでは、適用することは、事実上不可能であると思う（終戦以来朝鮮における事態の推移を見られれば御了解つくと思う）。だから、われわれは、今なお、前に提議したフォーミュラ（財産・積極及び消極一の相続は、現地限りで終結すること）が唯一のプラクティカルなフォーミュラであると考えてる。もし、提案された方式を維持される場合には、その実施に当つて、合衆国政府の絶対なる外交的支援がない限り、具体的な効果はもたらしえないと確信する。

- (2) ここにいう「クレイム」には、当然ウォア・レパレイションは含まれないことを明らかにする必要がある
- (3) これらの地域の連合国財産の返還については、(a)の第2文章）、現在のアドミニス  
タリング・オーソリティがなすものであることを明記されたい。

### 2. 第14条について

- (1) 賠償支払の義務を、本条(a)に定められた条件の下においてでも、認めることは、日本政府の苦痛とするところである。しかし、絶対に必要とあらば、やむを得ないと考える。

しかし、本条(a)の1. に予定する arrangements を日本が関係国と商議するについては、米政府の絶大なる外交的支援を希望するものであることを申し述べておきたい。

- (2) 第2項は、各連合国が、1941 年 12 月 7 日と平和条約の実施の日との間に何時でも各自国の管轄に服した日本財産を、押収、保留、清算する権利を有することを規定する。

これは、日時に関してイタリア平和条約第79条1（平和条約実施のとき連合国の領域にあつたイタリア財産とする）と著しく異なるところである。

1941 年 12 月 7 日と平和条約実施の日との間何時にても連合国の管轄に服した日本財産というときは、絶えず移動する船舶のごとき、この期間中に一度でも連合国の港湾に停泊し、又は、その海域で航海に従事した事実のみで、連合国により押収その他の処置をうけ得ることとなる。かようにして、同条の適用をうける日本財産の範囲が不当に拡大される危険が大きい。

日本政府は、イタリア平和条約と同一の原則を採用して、草案のこの部分を次のように読み替えることを考慮されるよう要請する。

「この条約の実施のときに、その領域内に存在し又はその管轄の下にある」。

### 3. 第15条について

- (1) 補償については、原案のように平和条約調印後に国会をして国内法を制定せしめることとするよう配慮されたい。

右が困難な場合には、政府は目下協議中の補償法案を政令として制定することを SCAP に要請しそのオーソライゼーションありたる上政令としてすみやかに公布し、本条約には、この政令を引用して、本条(b)項におけると同様に、「補償は、この政令で与えられるよりも不利でない条件でなされなければならない」と規定することとすることも1案ではないかと思ふ。

又、政府より合衆国政府に対し、書簡をもつて、目下協議中の補償法案を添えてこれを国会に提出して法律として制定する意向なることを通告し、合衆国政府は正式に右書簡に対し受領の返簡をよせられ、しかして、平和条約には「1951 年 7 月 日付日本政府書簡に言及せられたる補償法に従い云々」と規定することも1案でないかと思ふ。

- (2) 第15条(a)は、日本が、1941 年 12 月 7 日と 1945 年 9 月 2 日との間に何時でも日本内にあつた連合国財産を請求に応じて返還する義務あることを規定する。

これは、イタリア平和条約に 1940 年 6 月 10 日—イタリア参戦日—にイタリアにあ

つた連合国財産とすると規定されているのと著しく異なるところである。

日本の返還義務は、第14条について述べたと同じ理由によつて、不当に拡大される危険が大きい。

同一原則の採用方を考慮あらんことを切望する。

#### 4. 第16条について

(1) 在中立国敵国財産を戦勝国が処分することは、先例もない国際法の原則違反であつて、日本政府としては、遺憾の意を表せざるをえない。

(2) 少くとも、在中立国資産の引渡しは、公有財産に限定されたい。いかなる場合にも、在中立国資産の引渡しに際しては、当該資産に対するクレームを弁済した後の純資産を引渡すこととせられんことを望む。

なお、第14条連合国内にある資産処分についての例外規定は準用されるものと了解する。

#### 5. 第17条について

捕獲審検に関する書類は、すべて、占領軍当局によつて、占領当初に接收された。そして、捕獲審検の判決は、占領軍当局によつてレビューされた。捕獲審検の手続を経て日本により没収された船舶で返還可能のものは、ほとんど占領軍当局の命により、原状回復の上原所有者に返還済みである。

従つて、平和条約においては、レビューの結果返還さるべきもので返還不能な船舶と貨物に対する補償について第15条の規定を準用することを規定すれば足るのではないかと思う。

### Observations

2 July, 1951

#### 1. Article 4.

(1) The first half of (a) is understood to mean:

The disposition of property of Japan and its nationals in the areas referred to in Articles 2 and 3, and their claims, including debts against the authorities presently administering the areas referred

to above and the residents (including juridical persons) thereof, and the disposition of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities.

It seems to us the execution of this Article will prove impossible in practice. (What has happened in Korea since the war's end serves to illustrate our point). Accordingly, we still believe that our formula submitted before (Property succession—positive or negative—terminates in the respective areas concerned) is the sole practical formula. In case the provision as proposed were to be retained, we would need in its execution absolute diplomatic support from the American government, without which it would be impossible to achieve any concrete results.

(2) It will be necessary to specify that “claims” mentioned herein do not include war reparations.

(3) As to the restitution of Allied property in these areas (Second half of Article 4), we should like to have it clearly stipulated that restitution is to be made by the authorities presently administering the areas.

#### 2. Article 14.

(1) It is exceedingly painful for the Japanese government to shoulder the reparations responsibility even on the terms such as are stipulated under (a) of this Article. But we will, as we must, bow to necessity. And in so doing, we should like to state that when negotiating the necessary “arrangements” with the Powers concerned, Japan would have to look to the United States for powerful diplomatic support.

(2) Paragraph 2 provides that each of the Allied Powers shall have the right to seize, retain, liquidate or otherwise dispose of all Japanese property, rights and interests, which at any time between December 7, 1941, and the coming into force of the peace treaty, were subject to its jurisdiction.

There exists a notable difference between this provision and the provision of the Italian Peace Treaty, which simply stipulates: which on the coming into force of the present Treaty are within Allied territory

(Article 79, 1).

The stipulation of this Article, all Japanese property, etc., which at any time between December 7, 1941 and the coming into force of the present Treaty were under its jurisdiction, is liable to extend unduly the scope of the property to seize, by including mobile property such as ships, that had stopped even only once at an Allied port, or navigated the territorial waters of any Allied Power during the specified period.

Consideration is requested for the adoption of the same principle as in the Italian treaty making this part of the draft read :

Which on the coming into force of the present Treaty are within its territory.

### 3. Article 15.

(1) It is desired that the peace treaty will so provide as to allow the Diet, as in the original draft, to enact a domestic law on compensations after the signing of the peace treaty.

If it should prove difficult to make such a provision, we could request SCAP authorization for issuing of a Cabinet Order embodying the contents of the Compensation Law now under discussion and promulgate it promptly. Then the peace treaty could refer to this Cabinet Order and stipulate, as under (b) of the Article, that "Compensation shall be made on terms not less favorable than those provided for by this Cabinet Order." This might be a workable alternative.

Another alternative would be :

The Japanese government will communicate in writing to the American government its intention of having the Compensation Bill, currently under consideration, enacted by the Diet and send a copy of the bill. The American government will formerly acknowledge the receipt of the communication. The Peace Treaty will then stipulate : "according to the compensation law, mentioned in the Japanese government's communication dated July , 1951."

(2) The Article provides that Japan undertakes to return upon application all Allied property which was within Japan at any time between December 7, 1941 and September 2, 1945.

This differs again from the provisions of Article 78, 1, of the Italian Peace Treaty which provides for the restoration of Allied rights and interests as they existed on June 10, 1940 (date of Italian participation in the war).

For the same reason, as stated in connection with Article 14, the Article is liable to extend unduly the scope of the Japanese government's obligation for property restitution. Consideration is requested for the adoption of the same principle as in the Italian Treaty.

### 4. Article 16.

(1) For the victor nation to dispose of the assets of the vanquished, situated in neutral countries, is contrary to the established practice of international law, unprecedented in history. The Japanese government cannot but express its regret.

(2) It is desired that at least, the transfer of assets be limited to public assets, and that in any case the transfer of Japanese assets in neutral countries be effected after liquidation of all claims against such assets.

It is understood that the exceptions stipulated under Article 14, Paragraph 2, regarding the disposition of Japanese property in Allied countries will be likewise recognized in the present case.

### 5. Article 17.

All records and documents of the Japanese Prize Courts were turned over to the Occupation authorities, who then reviewed the Japanese court decisions. Of the vessels that had been confiscated by Japan through due processes of law, most of those which could be returned, were restored to their original conditions and returned to their original owners on orders from the Occupation authorities.

Accordingly, it would seem sufficient for the peace treaty only to stipulate that with respect to compensation for the vessels and cargoes, which are due to be returned, but of which restitution is impossible, the provisions of Article 15 shall apply.

附録 14

公表された平和条約案に関し 7 月 12 日提案したわが意見書

附、わが意見書（英文）の基礎となつた「平和条約

案に対するオブザーヴェーション」（和文）

Observations on the Draft of the Peace Treaty

July 12, 1951

1. Article 3

Your attention is requested to (a) of our Observations dated 4 April, 1951. While “the Nansei Islands” includes all islands south of 29° north latitude, “the Ryukyu Islands” do not.

2. Article 4

The first sentence of paragraph A would seem properly to read as stated in the Observations dated July 2, 1951, since “..... property ..... of such authorities and residents against Japan and its nationals .....” would make no sense.

3. Article 14

The proviso of (a) 2 (1) V (“provided that this exception shall only apply to obligations of Japan and its nationals expressed in Japanese currency”) seems to refer only to the first part of this paragraph (“obligations of Japan or Japanese nationals”). If so, the proviso might better be placed immediately after the words to which it refers.

4. Article 15

It is suggested that in the last part of paragraph A, “In cases where such property was within Japan on December 7, 1941, and cannot be returned, or has suffered injury or damage, compensation will be made in accordance with Law No. ....”, the words “as a result of the war” be inserted after “damage”. These words are found in the corresponding sentence of Article 78, 4(a), of the Italian peace treaty, and the wording will also conform to the provisions of the draft Compensation Law.

5. Article 16

In the first sentence, there is a passage, “..... Japan will transfer its assets and those of its nationals in countries which were neutral during the war, or which were at war with any of the Allied Powers, or the equivalent of such assets, .....”. The insertion herein of the words “or the equivalent of such assets” is construed to mean that, in lieu of the transfer of those assets of Japan and its nationals which now exist, the equivalent thereof may be transferred if the Government so desires. It is not considered to mean that if the assets which were owned previously by Japan and its nationals in such countries are impossible of transfer in their status quo ante for certain cause (subsequent decrease in value, use in Japan’s interest, etc.), Japan should transfer the equivalent thereof. It is suggested the word “existent” be inserted between “its” and “assets”.

6. Article 17

The requirements of the first sentence have mostly been put into practice during the Occupation, as stated in the Observations dated July 2, 1951. Its purport will become more clear if the defining term “if it has not done so” is added.

7. Article 21

This Article entitles China to the benefits of Article 14 (A) 2. It may be pointed out that the benefits are counterpoised by the waiver of claims by the Allied Powers under paragraph (B) of the same Article. Korea is entitled to the benefits of Articles 9 and 12. Article 9 envisages the desire of the Allied Powers to conclude an agreement. Article 12 envisages the Allied Powers themselves according Japan most-favored-nation treatment or national treatment. In other words, these provisions envisage the existence of a counterpart on the part of the Allied Powers. The Government believes that such will be the case with China and Korea. Therefore, with regard to Article 14, it is believed more advisable either to include (B) in referring to this article or to drop Article 14, (A) (2). The phraseology of Article 21 seems to leave room for misunderstanding.

## 8. Declaration concerning International Instruments

### Regarding 1:

- a. It is contemplated therein that Japan declares that she recognizes the full force of all presently effective multilateral international instruments to which she was a party on September 1, 1939. The Japanese Government believes that such declaration should be confined to the multilateral international instruments of non-political character. Otherwise such treaties as the Nine Power Pact and the Four Power Pact of 1922 would be recognized as in full effect, which would be contrary to the actual situation.
- b. With regard to participation in certain international instruments, there is a passage to the effect that if such participation involves membership in an international organization, the provisions of the present paragraph shall take effect upon Japan's readmission to membership in the organization concerned. So far as the Japanese Government is aware, there is no international organization of which Japan was a member as of September 1, 1939 and has ceased to be a member thereafter. Accordingly, the sentence beginning with "Where, however," might be deleted.

### Regarding 2:

The Government is entirely willing to accede to all of the international instruments herein mentioned. However, some of them are voluminous (e.g. International Convention relating to Economic Statistics with Protocols, Convention on safety of life at sea, Conventions for the protection of war victims). Some require domestic legislation or its amendment in advance (e.g. International convention relating to the simplification of customs formalities, Convention on safety of life at sea, Conventions for the protection of war victims). Therefore, it is actually impossible to complete the procedure of accession to all of these instruments within six months of the coming into force of the treaty of peace. It is hoped that the term will be defined as "within the shortest practicable period".

### Regarding 3:

The Government will willingly participate in the international organizations mentioned therein. It is hoped, however, that the term will be defined as "within the shortest practicable period", for the same reason

as mentioned in reference to 2 above.

## 9. Declaration concerning War Graves

- a. This Declaration concerns a matter of humanity, which requires no discriminatory treatment as between the victor and the vanquished. It is hoped that the feelings of the Japanese people will be taken into consideration. It would be appreciated if the declaration could be made jointly, by adding that the Allied Powers also intend to treat in a proper manner the graves and cemeteries of Japanese war dead in their territory, or at least if a passage which may read "The Japanese Government expects that the Allied Powers will treat in a proper manner the graves and cemeteries of Japanese war dead in their territory" could be added in this paragraph.
- b. The words "Allied and Associated Powers" and "Allied or Associated Power" used in the declaration should be "Allied Powers" or "Allied Power".

( 附 属 )

平和条約案に対するオブザーベーション (1951. 7. 11. 作成)

### 1. 第4条

(a)項の第1文章は、1951年7月2日付オブザーベーションで述べたように読むべきものと思う。ただし「日本国若しくはその国民<sup>ノダシ</sup>に対する右の当局及び住民の財産」は、意味をなさないからである。

### 2. 第15条

(a)の末段の

"In cases where such property was within Japan in December 7, 1941, and cannot be returned, or has suffered injury or damage, compensation will be made in accordance with Law No. ...." の damage の後に、as a result of the war を入れるようサゼストする。イタリア平和条約第78条4(a)の当該文章にもこれらの文字があり、又、「補償法」の内容と合致させるためである。

### 3. 第16条

第1文章に、"..... Japan will transfer its assets and those of its nationals in

countries which were neutral during the war, or which were at war with any of the Allied Powers, or the equivalent of such assets, .....” とある。ここに「of the equivalent of such assets」が挿入されているのは、政府が希望するならば、現存する日本国及び日本国民の「資産」の引渡に代えてその「対価物」を引渡してもよいとの意味と解する。このような国に存在していた日本の資産及び国民の資産が、何らかの理由（減損、日本のための使用など）で引渡が不可能となつており、日本から、新たに、その equivalent を引渡すべきことを意味するのではないと考える。後者の意味とすれば、政府の極めて困難とするところである。

#### 4. 第17条

この項の第1文章で要求されていることは、1951年7月2日付のオブザーヴェーションで述べたとおり、占領下において大部分実行済みである。「まだそうしていない限り」という限定の語を挿入された方がはつきりすると思う。

#### 5. 第21条

中国は、第14条a2の利益を受ける資格を有するとあるが、この利益は、同条bの連合国による請求権の放棄と対応するものであることを忘れてはならない。韓国は、第9条及び第12条の利益を受ける資格を有するとあるが、第9条は、連合国において協定締結を希望することを予想してゐる。第12条は、連合国自らが日本に最恵国待遇ないし内国民待遇を与える場合を予想している。いいかえれば、これらの条項は、連合国側におけるカウンターパートの存在を予想する。政府は、中国及び韓国についても同様であると思う。だから、第14条については(b)にも言及するかあるいは第14条(a)(2)をドロップした方がいいと考える。第21条の文言は、誤解を招く余地があると思う。

#### 6. 国際条約に関する宣言

##### 1. について

- a. 日本国は1939年9月1日現在日本が加盟していた一切の現存の多数国間国際文書が完全に有効であることを承認するよう宣言することが考慮されてゐる。日本政府の見解によれば、この宣言は、「非政治的性質の」多数国間国際文書に限定されるべきである。しからざれば、1922年の9国条約や4国条約のごときまで完全に有効とみとめられることとなり、現実にはそぐわないからである。

- b. ある文書に対する参加について、日本国が1939年9月1日以後加盟国でなくなつた国際機関の加盟国であることが要件となつてゐる場合には、本項の規定は、日本国の当該機関への再加盟をまつて発効するとの文句がある。日本政府の関知する限りにおいて、1939年9月1日現在加盟していた国際機関で同日以後日本国が加盟国でなくなつたものはない。「しかし」以下の条項はなくてよいと考える。

##### 2. について

政府は、本項に掲げられたすべての国際文書に欣然加入する用意がある。しかし、これら文書のうちには著しく膨大なものがあり（たとえば、経済統計に関する国際条約及び諸議定書、海上における人命の安全のための条約、戦争犠牲者の保護のための条約）、あるいは、事前に国内立法又はその修正を必要とするもの（たとえば、税関手続の簡捷に関する国際条約、海上における人命の安全のための条約、戦争犠牲者の保護のための条約等）がある。従つて、平和条約の実施後6箇月以内にこれら文書のすべてにつき加入手続を了することは事実上不可能である。「実行可能な最短期間に」というようにされることを希望する。

##### 3. について

政府は、本項に掲げられた国際機関に欣然加入する用意がある。しかし、2.について述べたと同様の事由から、「実行可能な最短期間に」とされることを希望する。

#### 7. 戦争墳墓に関する宣言

- a. 本項は、人道に関するものであつて、戦勝国と、戦敗国とによつて取扱振を異にする要のない事項である。また、日本人の国民感情をも考慮にいれられるよう希望する。従つて、「連合国においてもその領域内に所在する日本人戦死者の墳墓及び墓地を適当に取扱う意向のある」趣旨を加えて共同の宣言とするか、少くとも、「日本政府は連合国政府がその領域内に所在する日本人戦死者の墳墓及び墓地を適当に取扱われることを期待する」趣旨の文句を末尾に付加することに同意されたい。
- b. この宣言に用いられている“ Allied and Associated Power ”及び“ Allied or Associated Power ”という語は、本条約の用語と統一するため“ Allied Power ”とすべきである。

附録 15

連合国財産補償法案に関し 1951 年 8 月 13 日 フィン書記官から  
受領した文書（及びメモ）

連合国財産補償法案に関する件（昭.26.8.13 藤崎）

8 月 13 日、西村条約局長に随行、DS フィン書記官を往訪した。別添の書ものを渡された。第 1 及び第 2 の点了承。第 2 の法案日本文及び英文のサーティファイしたもの各 2 部は、明日（14 日）とどけるべきことを約した。第 3 の秘扱の解除の点については、わが方の希望を書ものとして提出すべきことを約した。

August 13, 1951

It has been agreed that Article 15(a) of the draft treaty should read as follows: "Compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951."

Two copies of the Japanese text of this draft law identified by the signatures of the appropriate Japanese officials as the text approved by the Cabinet on July 13, as well as two copies of an English translation certified by the appropriate officials of the Japanese Government as a correct translation of the approved text, are requested.

It is also requested that the Japanese Government declassify the text of this draft law so that the text may be made available to interested members of the public.

附録 16

1951 年 5 月 4 日 外交局に提出した在日連合国財産補償に関する  
新資料

Revised Report  
on  
Damage in Value and Amount  
of  
Allied Nationals' Property in Japan

A Summary of Investigations by the  
Finance Ministry, as of 3 April 1951

(Figures not final)

3 May 1951

Japanese Government

Preface

This report is a revision of the report "Damage in Value and Amount of Allied Property in Japan" dated 21 April 1951, newly prepared for the purpose of correction and better clarification of the former. The property owned by the governments of the Allied Nations are not considered in the present report.

ESTIMATED VALUE OF DAMAGE ON ALLIED  
NATIONS' PROPERTY

A. Total Value of Damage

I	Tangible Property .....	¥ 6,100,000,000
II	Investments ..... Ranging from	¥ 6,000,000,000
	to	¥ 10,000,000,000
III	Liabilities in Foreign Currencies .....	¥ 200,000,000

IV Others .....	¥ 1,000,000,000
Total	¥ 13,300,000,000
Ranging from	to
	¥ 17,300,000,000

## (Remarks)

Above figures indicate the value of damage caused to those Allied nationals' property which came under the Enemy Property Custody Law—by which all the property owned or controlled by nationals of the United States, the United Kingdom and the Netherlands were actually placed under custody—or to such property of Allied nationals other than of the above three as were treated discriminately because they belonged to Allied nationals. However, it being practically impossible to investigate and estimate the damage on Allied nationals' property which were not treated discriminately (for instance, property of French or Chinese nationals), such damage are not included here.

## B. Brief Explanation By Item

## I Damage to Tangible Property Due to Loss or Deterioration

Damage to "Tangible Property" were computed by multiplying their intact current value (obtained by multiplying the then value by their price indices) by the average rate of physical damage which buildings and movables such as furniture, utensils, machines, merchandise, detained cargoes etc. suffered from. Damage to land are deemed to be negligible and are not considered here.

This damage may be broken down as follows:

	Property Placed under Enemy Property Custody Law (a)			Property Not Placed under E. P. C. Law (b)		Total (h)
	Price at the Commence-ment of Custody (c)	Estimated Intact Current Value (d)	Damage Rate (e)	Estimated Current Value of Damage (f)	Estimated Current Value of Damage (g)	Estimated Current Value of Damage
(Unit)	(1,000 yen)	1 million yen	%	1 million yen	1 million yen	1 million yen
Buildings	32,915	4,035	32	1,291	26	1,317
Movables	35,267	5,395	80	4,316	431	4,748
Total	68,212	9,431	—	5,607	458	6,065

( 132 )

(a) These property are only such as were owned or controlled by nationals of the United States including the Philippines, the United Kingdom including Canada, Australia and India or the Netherlands (hereinafter termed as enemy countries), or juridical persons established in accordance with laws and regulations of the above enemy countries. Some property owned by nationals or juridical persons of Allied but not of the enemy countries and cared in the hands of enemy nationals were likewise shifted to the custody under this law. These property are also counted in this column.

(b) Those property of Allied nationals which are decided by the Supreme Commander as having been wrongfully transferred by the Japanese Government or Japanese nationals are treated as the property suffering from damage. Such decision by the Supreme Commander may hereafter be made as to some property formerly owned by Allied nationals.

(c) Computed from the figures appearing in custodial inventories submitted by enemy property custodians. Slight changes may occur after the present investigation on each individual item is completed.

(d) By comparing the average of "Pre-war Standard Index Number Chart" of 1941 and 1942 with that of December 1950, prepared by the Statistics Bureau of the Bank of Japan, the values in this column were obtained by multiplying respectively the price as of the commencement of custody by:

on buildings — 122.5, the construction material index;

on movables — 153, the general average index.

(e) The rate on buildings was obtained from the damage rate revealed by the investigation conducted on each building of Allied nationals' property while that of movables is based on estimation.

Damage of buildings shown by area is given below for reference.

Nationality	Total of Original Area in "Tsubo"	Total of Damaged Area in "Tsubo"	Damage Rate
U.S.A.	60,446	23,287	38%
U.K.	75,269	20,709	28%
Canada	5,716	1,241	22%
Philippines	106	—	—

( 133 )



Netherlands	399	78	20%
France	540	452	85%
Others *	976	109	11%
Total	143,452	45,876	32%

\* Property of juridical persons established by joint investment of nationals of U.S., U.K. and the Netherlands.

(f) Obtained by multiplying the Estimated Intact Current Value by the Damage Rate.

(g) The ratio of the damage on the property in this column to that in the foregoing column is estimated about 2% on buildings and about 10% on movables. The values of damage on buildings and movables here were obtained by multiplying the figures in the next left column by 2% and 10% respectively.

(h) Of the total of the estimated current value of damage, it is estimated that about 40% is occupied by the damage suffered by the Standard Vacuum Oil Co. and the Shell Oil Co. in Japan.

## II Loss Relative to Investments

This loss cannot easily be computed as the present condition of the enterprise may differ from that at the time of the outbreak of the war. Furthermore, the fluctuation in the price of commodities must also be taken into account. This figure was obtained by multiplying the whole physical damage inflicted upon the assets of the companies in which Allied nationals invested by the percentage of their share holding against the whole shares of such companies. If the amount of investment by Allied nationals at the time of the outbreak of the war was ¥ 138,998,000, the current price index against that at that time is tentatively set at 150 times and the damage rate of such enterprises 30 to 50%, the loss may be estimated to be around ¥ 6,000,000,000 to ¥ 10,000,000,000. The above Allied investment was computed according to the Investigation by the Foreign Investment Bureau of the Finance Ministry (September 1941) as per 100% Allied invested enterprises, and to the Research by the Foreign Division of the Industrial Bank of Japan (June 1948) as per other enterprises.

It may be added that such profit as Allied nationals might have expected as investors, for instance dividend on shares which might have

been expected but for their wartime disposal by sale, is not considered in this item.

## III Loss to Liabilities in Foreign Currencies

The seeming loss to Allied nationals incurred by the settlement of liabilities in foreign currencies through payment in yen into the Special Property Administration Account is given here. Such loss, however, may better be understood as the burden either the Japanese Government or Japanese national have to eventually bear in yen to fill up the balance of foreign exchange rate and hence separated from the present report. This loss may be broken down as follows:

Value of Original Liabilities	Value Paid in Yen (Conv. Rate)	Current Corresponding Value in Yen (Conv. Rate)
\$ 391,813	¥ 1,665,900 (¥ 4.25)	¥ 141,052,683 (¥ 360)
£ 22,127	¥ 374,289 (¥ 16.84)	¥ 22,304,652 (¥ 1,008)
2,091 Rupees	¥ 2,686 (¥ 1.286)	¥ 158,244 (¥ 75.70)
	¥ 2,042,875 (X)	¥ 163,515,580 (Y)

Foreign Currency liabilities are those which are denoted in foreign currencies mostly comprising of royalties on patent rights. Article 3 of the Enemy Property Custody Law provided that liabilities to enemy nationals denoted in foreign currencies shall be settled by payment in yen into the Special Property Administration Account of the sum at the foreign exchange rates designated by the Japanese Government. If such liabilities are to be settled in their respective foreign currencies, the balance between yen fund now deposited in the Special Property Administration Account and that required to buy such foreign currencies has to be raised anew at the burden either of the Japanese Government or of individuals who made such payment in yen. Such sum, therefore, is tentatively enumerated here as a sort of loss to Allied nationals' property.

The balance between (X) and (Y) is the sum to be borne by the Japanese Government or Japanese nationals.

The figures given here are exclusively the total of yen paid into the Special Property Administration Account with a clear statement as paid for foreign currency liabilities. Besides above, there may be found additional payment which was intended, but not accompanying any clear statement, for foreign currency liabilities.

During the period from the outbreak of the war to March 1943 when the Law relating to the Treatment of Foreign Currency Bonds was enforced, interests of foreign currency bonds were paid in yen into the Special Property Administration Account to have them settled. The current value of such interest amounts to ¥5,815,105,758. Since the enforcement of the Law upwards, payment of such interests has been suspended. This sum, being to be disposed of as a part of payment for foreign currency bonds, is omitted from the present report.

#### IV Others

The amount of money which might have been expected as profit or returns (dividend, rent, interest etc.,) accruing from Allied industrial property rights which have not been restored by post-war measures and from Allied nationals' property which were disposed of by enemy property custodians is enumerated here. Therefore, this sum is computed only as per the period after the property were disposed of. Such damage of credit held by Allied nationals at the outbreak of the war as is due to the decline of value of yen is not considered; neither is profit or return accruing from Allied property while placed under custody of enemy property custodians, because such profit or return is deposited in the Special Property Administration Account in the name of respective original owners and can be freely withdrawn therefrom.

#### C. Conclusion

The total value of damage, however, may best be estimated by increasing the figures enumerated at the beginning of this report by 50 to 70%, that is, ¥19,950,000,000 to ¥29,410,000,000 in view of the following facts:

- the rate of damage to tangible property and to Allied invested companies, the rate of the rise in prices are based upon broad estimates,
- the scope of the Allied property is limited, as a rule, to nationals and juridical persons of the United States, the United Kingdom and/or the Netherlands nationality, and
- the property of the Allied governments are not included.

(Prepared on  
3 April 1951)

Chart Showing the Amount of Allied Property

Classification of property	Value as of 31 Mar 1942 (cf. 1)	Amount as of 13 Sept 1945 (cf. 2)	Amount already restored, as of 31 Dec 1950	Percentage of restoration	Remarks
Lots	¥35,970,000	(USA) 385,312 tsubos (Gt. Btn.) 445,655 " (Canada) 126,599 " (Nether.) 5,014 " (France) 2,303 " Total 964,885 "	213,113 tsubos 256,794 " 102,091 " 4,796 " — 576,796 "	(cf. 1) 55.3 57.6 80.6 95.6 0 59.7	This column has been computed from the custodial inventories presented by enemy property custodians and from reports based on the regulation governing the transaction of foreigners.
Buildings	¥32,945,000	(USA) 37,158 tsubos (Gt. Btn.) 54,560 " (Canada) 4,474 " (P. I.) 106 " (Nether.) 320 " (France) 88 " Others 867 " Total 97,575 " (cf. 3)	24,361 " 31,454 " 4,015 " — 320 " 88 " 41 " 60,281 "	65.5 57.6 89.7 0 100.0 100.0 4.7 61.7	(cf. 2) Amount of lots and buildings as of 13 Sept 1945 is the result of investigation made at the end of 1950.
Movables		Unknown (cf. 4)	49,910 items		(cf. 3) Amount of wartime damage (fire, etc) on buildings is 47,000 tsubos.
Ships	¥13,400,000	(USA) 9 ships (Gt. Btn) 19 "	9 ships 12 "	100.0 63.0	(cf. 4) Unknown in this column is due to the difficulty involved in ascertaining the correct amount.
Automobiles		Unknown	73 autos		(cf. 5) The amount of the cost
Retail merchandise	¥21,867,000	Unknown	247 packs 708 dozens 520 sets		

Telephones	Unknown (cf. 5)	Unknown	333 sets	of phones is computed in the movables.
Stocks	¥137,084,000	(USA) 2,081,711 shares	522,892 shares	(cf. 6) Not including the transfer of new shares to be ac- quired at the exercise of pre-emptive right. A- mount of such new shares already transferred:
		(Gt. B) 1,537,041 "	571,808 "	(USA) 351,335 shares
		(Nether.) 45,857 "	2,096 "	(Gt. Bt) 17,078 "
Public and corporation bonds		(Others) 646 "	81 "	(Nether.) 950 "
		Tl. 3,665,255 "	1,096,877 "	(France) 73,500 "
Cash and deposits		Unknown	(cf. 6) 5,783 sheets	Total 442,863 "
Special Property Administration Account	(cf. 7) ¥189,938,000	¥1,719,000	(cf. 8) ¥29,492,000	(cf. 7) Including loan, customer's account and bills receiv- able.
	¥23,792,000	¥418,273,000	(cf. 8) ¥247,510,000	(cf. 8) Deposit and special prop- erty administration ac- count are being drawn out, not in the form of restoration, by Allied na- tionals without any re- striction or by custodians for such limited purposes as payments of taxes. It being difficult to ascertain the amount of money already restored to Allied nationals, balances of the account are indicated herein.

附録 17

1951 年 5 月 5 日 ボンド参事官より受領したダレス特使の要望及  
び 5 月 10 日 付総理の回答

With reference to Article 15 of the United States provisional peace treaty draft, we are now convinced that it will be necessary for Japan actually to adopt domestic legislation to cover Yen compensation in satisfactory form, with the provision that it shall be operative as regards nationals of the Allied powers as of the respective dates on which the peace treaty comes into force between Japan and each of those powers. It is thought that the treaty could then provide, in substance, that "compensation will be made in accordance with Japanese domestic legisla- tion embodied in Diet Law Number\_\_\_\_\_". We do not now believe that it will be sufficient for the right to compensation to rest merely upon the promise of future domestic legislation.

条約案第 15 条に関する新提案（在日連合国財産補償問題）

1951 年 5 月 5 日 ボンド参事官より受領（訳文）

合衆国の平和条約仮草案（第 15 条）に関し、われわれはいまでは、日本が、満足すべ き形で円補償を規定する国内立法を現実採択することが必要であろうと信じる。この立 法は、連合国民に関して、日本とその連合国の各々の間で平和条約が効力を生じたそれぞ れの日から、この法律が実施されるという規定を伴うものとする。この場合には、条約で は「補償は、法律第 号に規定された日本の国内法に従つて行われる」と、具体的に規 定することができる。われわれは、補償を受ける権利について、将来の国内立法 の約束のみに安んじることが充分であるとは今や信じない。

May 10, 1951

My dear Ambassador,

Through Ambassador Sebald, I was informed on the Fifth instant of your opinion with reference to Article 15 of the United States provi- sional peace treaty draft to the effect that it will be necessary for Japan actually to adopt domestic legislation to cover Yen compensation in a

satisfactory form so that the treaty could provide that “compensation will be made in accordance with Japanese domestic legislation embodied in Diet Law Number \_\_\_\_.”

Although the matter cannot be submitted to the present session of the Diet because that would necessitate premature disclosure of the contents of the draft treaty, I desire to state on behalf of my government that the necessary steps will be taken to see that a Diet Law, based upon the principles set forth in Annex I of the Provisional Memorandum of February 8, 1951, is enacted in time to meet fully your expectation.

I avail myself of this occasion to express my profound thanks for your tireless labors in the interest of an early Japanese peace and my confident hope that they will be crowned with success.

Yours sincerely,

Shigeru Yoshida

His Excellency

Mr. John Foster Dulles,  
Department of State,  
Washington, D.C.,  
U. S. A.

円補償に関する吉田ダレス往復書簡（英文を交付）

親愛なる大使

シーボルト大使を通じて、本月5日、私は、合衆国の平和条約草案第15条に関して、条約に「補償は、国会法律第 号に規定された日本の国内法に合致して行われる。」と規定するように、日本国が満足すべき形における円補償を規定する国内立法を現実に採択することが必要であろうという貴下の御意見を通報されました。

この件は、条約草案内容の過早な発表を必要とすることになるので、今会期の国会には提出することができないのでありますが、私は、政府を代表して、1951年2月8日の暫定覚書の附属書第1に規定された原則に基く国会法律を、完全に貴下の御期待に副うの間に合うように立法するのに必要な措置が執られるであろうということを申し述べたいと存じます。

私は、この機会に、対日早期講和のための貴下のたゆまない御骨折に対する私の深い感

謝と、その御骨折が成功をもつて飾られるということについての心からの希望を表明いたします。敬具

1951年5月10日

吉 田 茂

アメリカ合衆国ワシントン市国務省

ジョン・フォスター・ダレス大使殿

## 附録 18

1951年5月21日外交局に提出した在日連合国財産の滅失又は毀損に対する補償法要綱（英文及び和文、英文のみ提出）

在日連合国財産の滅失又は毀損に対する補償法要綱（昭和26年5月18日）

総 則

1. 連合国及び連合国人が開戦時本邦（平和条約により日本国の主権が回復される地域）内に有していた財産が、戦争の結果滅失又は毀損したことに因る損害は、日本国政府が補償する。但し、敵産管理法その他一般に連合国又は連合国人に課せられた戦時特別措置の適用を受けなかつた者に属する財産に関する損害はこの限りでない。

定 義

2. 連合国とは、日本国と戦争した国又は交戦状態にあつた国で平和条約の当事国となる国をいう。
- 2 連合国人とは連合国の国籍を有する者又は連合国の法令に基いて設立された法人その他の団体であつて開戦時及び平和条約の効力発生時においてその地位を有する者をいう。
- 3 開戦時において連合国又は連合国人が資本の全額を出資していた会社及びこれに準ずる法人その他の団体は、連合国人とみなす。
3. 財産とは、動産、不動産、それらのものの上の権利、無体財産権、債権、株式、出資に基く権利その他のあらゆる財産権をいう。

損失額の算定基準

4. 損失額は、当該財産が戦争の結果滅失又は毀損した範囲内において、その財産を開

戦時の状態と同様の状態に回復するため必要な金額（その財産が滅失しているときは同様の財産を平和条約の効力発生時において買い入れるに必要な金額）とする。

#### 株式、出資等に関する補償

5. 連合国人でない会社又はこれに準ずる法人その他の団体（以下「会社等」という。）であつて戦争の結果本邦にある財産の滅失又は毀損によつて損害を被つたものに対し、開戦時に株式又は持分を有していた連合国人の損失は、補償を受ける。この損失額は、当該会社等が被つた損害に対して、その連合国人がその会社等において開戦時に有していた株式又は持分がその会社等の総資本に対して有すると同一の比率とする。

2 右の場合連合国人の損失の算定に当つては、その連合国人が開戦時に所有していた株式の開戦時における時価総額と右の株式の平和条約の発効の時における時価総額との差額をその損失額とみなすことができる。

#### 補償金の請求方法

6. 補償金の請求は、請求者の属する国の政府を経て、平和条約が最初に効力を発生した日から 18 箇月以内に、日本政府に提出しなければならない。

#### 特殊財産補償委員会

7. 損害額の査定その他補償に関する事務は、大蔵省に置かれる特殊財産補償委員会（仮称）において行う。

#### 補償金の支払方法

8. 補償金の支払は、請求期限の満了した後開始され、無利子で毎年同額の 4 箇年賦でなされる。但し、支払うべき補償額の総額が 400 億円をこえるときは、請求者に支払われる金額は、その総額が 400 億円となるように比率的に減額されるものとする。

2 補償金は円貨で支払われ、その外国向送金については外国為替に関する法令に従うものとする。

3 補償金については、租税その他の賦課金は課せられない。

4 紛争のない補償金支払は、他の補償に関する紛争の解決を待たずに、開始される。

#### 補償金よりの控除額

9. 左の各号に掲げる金額は、請求者に支払われる補償金額から控除するものとする。

(1) S・P・Aa/c の資金で連合国人が引出した金額

(2) 開戦時連合国人が負つていた債務で、開戦時その連合国人が有していた財産又はそ

の処分代金等より弁済されたものに相当する金額

(3) 返還された財産が開戦時その財産を有していた連合国人以外の者による有益費の投下により返還時において開戦時よりも価値の増加をしているときは、その価値の増加分に相当する金額

#### 紛争の解決

10. 補償について生じた紛争の解決について連合国との間に協定がある場合はその協定の定めるところによる。

#### 施行期日

11. 施行期日は平和条約が最初に効力を発生する日とする。

### Law relating to Compensations for the Loss or Damage of Allied Property in Japan (An Outline)

#### General Provision

1. The Japanese Government will compensate for the loss or damage suffered by the property as a result of the war, which was owned in Japan (the territory over which the full sovereignty of the Japanese people is recognized by the peace treaty) by Allied powers or their nationals at the date of commencement of the war. This provision, however, will not apply to the property belonging to persons who had not been subject to the Enemy Property Custody Law or any other special wartime measures applied to Allied powers or their nationals in general.

#### Definitions

2. (1) “Allied powers” means the states which were at war, or in a state of belligerency with Japan, and which have become parties to the peace treaty.

(2) “Allied nationals” means the individuals of Allied nationality, or corporations or associations which were organized under the laws of any of Allied powers, provided that such individuals, corporations or associations had the status at the date of commencement of the war and

also at the date of coming into force of the peace treaty.

(3) Corporations or associations, in which Allied powers or their nationals held whole capital investments at the date of commencement of the war, are considered as Allied nationals.

3. "Property" means all movable or immovable property and the rights thereon, intangible property rights, debts, shares, and all other property rights.

#### Basis for Calculating Compensations

4. A compensation shall be the amount of money necessary to restore a property at the date of coming into force of the peace treaty to the same condition as at the date of commencement of the war, within the scope of the loss or damage suffered by the property as a result of the war, or, in case of a total loss of property, the amount necessary to purchase a similar property at the date of coming into force of the peace treaty.

#### Compensation for Ownership Interests

5. (1) As regards corporations or associations (called "companies" hereinafter) which are not Allied nationals, and whose property in Japan suffered a loss or damage as a result of the war, the loss of Allied nationals who held ownership interests in such companies at the date of commencement of the war shall be compensated for. This compensation shall bear the same proportion to the loss or damage suffered by the companies as the beneficial interests of such nationals in the companies at the date of commencement of the war bear to the total capital thereof.

(2) In the above case, the loss of the claimant may be fixed at a figure representing the difference between the market price of his stocks at the date of commencement of the war and the market price of the same at the date of coming into force of the peace treaty.

#### Manner of Claiming Compensations

6. All claims for compensation shall be filed with the Japanese government by the claimants through their respective governments within

18 months from the date of the first coming into force of the peace treaty.

#### Special Property Compensation Commission

7. The appraisal of loss or damage and all other affairs relating to the payment of compensations shall be in charge of a Special Property Compensation Commission (name, tentative) to be set up in the Ministry of Finance.

#### Manner of Compensation Payment

8. (1) The payment of compensations will begin after the expiration of the period for compensation application, and will be paid in four annual instalments of an equal sum and without interest. However, in case the total amount of compensations to be paid exceeds 40,000 million yen, the amounts to be paid to individual claimants will be reduced proportionately so as to bring the total sum to 40,000 million yen.

(2) The compensations will be paid in the Yen currency. Remittances abroad will be made according to the laws and regulations governing foreign exchange.

(3) No taxes or other charges shall be levied on compensations.

(4) Payment of compensations involving no dispute will be undertaken without awaiting the settlement of the cases where disputes exist.

#### Deductions from Compensation

9. The amounts of money under the following heads shall be deducted from the compensation to be paid to a claimant.

(1) The amount withdrawn by the claimant from the Special Property Administration Account funds.

(2) The amount corresponding to the sum paid out of the claimant's property, or the proceeds of the sale thereof, to pay the debt he owed at the date of commencement of war.

(3) In the case where a restored property of a claimant had increased in value, through profitable investment thereof by a person other than the claimant, the amount corresponding to such an increment of value.

Settlement of Disputes

10. In the case where there exists an agreement with any of Allied powers concerning the settlement of disputes arising in connecting with compensations, disputes shall be settled in accordance with such an agreement.

Date of Enforcement

11. The present law shall come into effect on the day the peace treaty comes into force for the first time.

## 附録 19

1951年5月28日受領したダレス特使の在日連合財産の滅失  
または毀損の補償に関する法律案要綱についての質問及び予備  
的批評

MEMORANDUM

Queries and preliminary comments in connection with the outline of the proposed law relating to compensation for loss or damage of Allied property in Japan:

1. Paragraph 1, General Provision. How much yen does the Japanese Government estimate would be necessary to compensate (a) for damage to property of Allied nationals which was not subject to the Enemy Property Custody Law or to other special wartime measures, and (b) for damage to property of each Allied government, as distinguished from Allied individuals?

2. Paragraph 3, Definition of "Property". Would compensation be provided for foreign currency debts or for yen debts only? Under what circumstances would compensation for debts be payable; for example, would a creditor have to demonstrate inability to collect from a debtor? What measure would be used to determine the amount of damage to or loss of intangible property rights, such as patents and trademarks?

3. Paragraphs 4 and 8, Basis for Calculating Compensation and

Manner of Compensation Payment. Since damage is computed as of the date of the coming into force of the peace treaty and since compensation is to be paid in four annual installments, claimants are subjected to possible loss from depreciation in the value of yen before their compensation is received, and it is therefore suggested that compensation be computed as of the date payment is made and that compensation be paid in a lump sum. The total compensation required of Japan would in the normal course be spread over several years, thus relieving the Japanese Government of the burden of making excessive payments in any one year. It was the understanding of the Dulles Mission that the Japanese Government desired to omit from Section 8 the limitation upon total compensation of forty billion yen, and elimination of this limit would be satisfactory to the United States Government.

4. Paragraph 5, Sub-paragraph 2, Compensation for Ownership Interests. The method of computing losses of shareholders by comparing the market prices of shares at the date of the commencement of the war and at the date of the coming into force of the peace treaty is considered impracticable in view of the general rise in share prices as a consequence of the decline in the purchasing power of the yen. It is recommended that Sub-paragraph 2 be omitted.

5. Paragraph 6, Manner of Claiming Compensation. It is suggested that claims be filed within 18 months from the date of the coming into force of the peace treaty between Japan and the government of the country of which the claimant is a national.

6. Paragraph 9, Sub-paragraph 3, Deductions from Compensation. It is considered that a provision for deduction from compensation in cases where property has increased in value through profitable investment is impracticable and undesirable.

7. It is suggested that the Japanese Government undertake to pay the expenses incurred in Japan by claimants in establishing claims, including assessment of the amount of loss or damage. Under the provisions of the Italian Peace Treaty, the Italian Government assumed such expenses.

8. Was there any property of Allied nationals on Japanese ships at the time of the commencement of the war? If so, would compensation be provided for the loss of such property?

9. Would the successors in interest of Allied nationals be eligible to receive compensation if they were of Allied nationality on specified dates?

10. It is believed that the legislation should provide for furnishing of documents required by the claimants.

11. The view of the Japanese Government is requested on the desirability of providing in the legislation for the establishment of an independent tribunal, which might be composed of nationals of neutral countries, for the purpose of deciding disputes arising under the legislation.

It would be appreciated if the Japanese Government could comment by June 1 on the above queries and preliminary observations.

Tokyo, May 28, 1951.

## 附録 20

1951年5月31日ボンド参事官に交付したわが回答

The views of the Japanese government on your queries and observations concerning the outline of our proposed "Law relating to Compensations for the loss or Damage of Allied Property in Japan" are as follows.

### 1. Damage under (a).

It is not quite clear just what your query refers to here.

(1) If the query refers to the property excluded from compensation under the latter half of General Provision of the Outline, we cannot now estimate the amount because the Japanese government does not possess the necessary data.

(2) If the query refers to the loss or damage of the property, which, though it was not subject to special wartime measures, may become entitled to compensation under the General Provision, the amount is roughly estimated to be some ¥ 500 million.

### Damage under (b).

As the property owned by Allied governments was placed in the custody of the respective Protecting Powers, the Japanese government has no records. It would be difficult to assess the amount of damage.

The Allied embassies, legations and consulates were mostly rented property. The buildings which were owned by Allied governments, and which were burned down, are about 20 in number. In these circumstances, the total amount of damage is estimated not to exceed ¥ 1,000 million.

## 2. Definition of Property.

(1) Foreign currency bonds. It is the intention of the Japanese government to take appropriate steps separately by consultation with bond holders.

(2) Compensation will be provided for foreign currency debts as well as for yen debts.

Debts to be compensated shall be limited to those which have been liquidated under the Enemy Property Control Law or other special wartime measures imposed upon Allied nationals. Compensation will be paid: in case of a yen debt, the same amount of the debt in the yen currency; in the case of a foreign currency debt, the amount of the debt converted into yen at the exchange rate prevailing at the time of payment. With respect to such debts as will not have been liquidated by the above measures, the creditor should demand a settlement directly from the debtors. The Japanese government will not assume responsibility for non-settlement due to a decline in the paying capacity of the debtors.

### (3) Intangible property rights.

#### A. Patents.

(i) As regards the royalties to be paid by a person entitled to a right of working by the contract in effect at the commencement of the war, compensation will be paid as under 2 (2).

(ii) In the case of a patent, which the Japanese government under special wartime measures had caused a person other than the person having the right of working to use, the Japanese government will pay a sum corresponding to the amount of royalties to be calculated as being payable by the users on the basis of the royalties stipulated in the contract existing at the time of the commencement of the war (in the case where no contract existed, the royalties stipulated in such contracts as existed for similar patents).



(iii) In the case of a patent which was used within Japan after its right had lapsed through non-payment of patent fee or expiration of term, the government will pay a sum corresponding to the royalties, as determined according to the method of calculation mentioned in the preceding Paragraph, for the duration in which the patent right would have normally continued after the date of lapse.

(iv) From compensation under the two preceding Paragraphs, there will be deducted the sum corresponding to the diminution of the patent value because of non-enjoyment of such benefits as the furnishing of new technology as provided for in the original contract.

(v) Under the Industrial Property Postwar Disposition Ordinance (Cabinet Order No. 309, 1949) enacted in accordance with SCAP Memorandum concerning the restoration of the patent rights etc. owned by Allied nationals, the Allied nationals have been given the option either to extend term or to receive royalties or compensation. Accordingly, those persons who chose term extension under the said Ordinance will not be compensated.

#### B. Trade Marks.

As regards the trade marks which have lapsed through cancellation by special wartime measure or expiration of term, in case a trade mark was used within Japan after its cancellation or lapse, the Japanese government will pay compensation for the loss suffered by its Allied owner (a sum corresponding to the benefits derived from its use; and, in case the reputation of the trade mark has suffered through the use, the necessary expenses for the restoration of the reputation to the condition as at the time of the commencement of the war).

### 3. Basis for Calculating Compensation and Manner of Compensation Payment.

(1) It is according to your Draft Memorandum that we have provided that damage shall be computed as of the date of the coming into force of the peace treaty. We have no objection to computation being made as of the date of payment in conformance to your present suggestion and also to the precedent set by the Italian Peace Treaty.

(2) We have no objection to a lump sum payment. But in order

to avoid the possible danger of being obliged to pay excessive sums in one year, it is desired to provide for a maximum total sum of payment within a fiscal year to be set at ¥ 10,000 million or thereabout.

(3) If necessary for achieving an early peace, we would not be averse to omitting the ceiling of ¥ 40,000 million. But in that case, Japan would be shouldering 100 per cent of compensation obligation, which means a harsher term than has been imposed upon Italy. It is desired to be allowed that a provision be inserted, limiting the Japanese compensation to two-thirds of the damage.

### 4. Compensation for Ownership Interests.

(1) In view of the complexity of calculation involved in method of computing losses under sub-paragraph 1 of Paragraph 5 (we understand that Italy is encountering enormous difficulties in this respect), and also the excessive amounts of money and time required for investigating all of the vast assets of large corporations in order to compensate small shareholders, it is considered beneficial to both Japanese government and Allied shareholders to adopt a simple procedure for compensation. We hope there will be left room for applying the formula given in Sub-paragraph 2.

(2) Even if compensation for ownership interests is computed according to Sub-paragraph 1, the fact should be noted that most companies after having cut down capital on the basis of war losses, have supplemented their assets by capital increase, while not a few are argumenting their assets through good management. It is thought proper to compute the amount of damage by deducting from the war damage of a company such assets added as mentioned above.

### 5. Manner of Claiming Compensation.

No objection to the suggestion. A new wording of Paragraph 6 of the Outline will be as follows:

“All claims shall be filed with the Japanese government within 18 months from the date of the coming into force of the peace treaty between Japan and the government of the country of which the claimant is a national”

6. Deductions from Compensation.

This Sub-paragraph provides for such cases as for instance, where an Allied national owns two houses, of which one remains damaged and calls for compensation, but the other has been so thoroughly repaired and renovated by Japanese that its value is greater than at the time of the commencement of the war. In such a case it would seem a matter of simple equity that the amount of increased value on the latter house should be deducted from the compensation to be paid for the former. Reconsideration is requested.

7. Our draft stands on the principle that assessment of loss or damage shall be made by a Special Property Compensation Commission. Accordingly, it is desired that the bill be limited to providing that the reasonable expenses incurred in Japan by claimants in establishing claims shall be borne by the Japanese government.
8. Compensation will be paid for damage on Allied cargoes which were on board Japanese vessels at the commencement of the war, and which were shipped back to Japan (Japan as defined in Paragraph 1 of the Outline).
9. The successors in interest of Allied nationals at the commencement of war will be eligible to receive compensation if the successors are of Allied nationality at the date of the coming into force of the peace treaty.
10. Documents required by a claimant in preparing and establishing claims will be provided free of charge, if requested through the government of the country to which he belongs.
11. It would be unconstitutional to set up an independent tribunal by domestic legislation (Article 76, Japanese Constitution). Paragraph 10 of the Outline envisages the conclusion of agreements with individual Allied power concerned with a view to establishing a mixed Commission composed of Allied, Japanese and neutral nationals, and whose findings will be final.

Tokyo, May 31, 1951.

## 附録 21

1951 年 6 月 19 日の米側覚書

MEMORANDUM

Following are comments on Japanese Government's outline of a proposed "Law relating to Compensations for the Loss or Damage of Allied Property in Japan", as modified and expanded in its memorandum of May 31, 1951:

1. Since the Japanese Government is undertaking to compensate only for losses in respect to sequestered property, it is believed unnecessary for the owner to demonstrate that loss occurred "as a result of the war". It is suggested that the phrase "as a result of the war" be eliminated as one of the conditions of compensation, or that the phrase be defined to include loss from natural causes against which the owner could have insured himself and loss resulting from the failure of persons in possession of the property to take proper care.

2. "Allied nationals" should be defined to include corporations or associations wherever incorporated in which Allied Powers held the entire capital, apart from qualifying shares, at the commencement of the war.

3. In regard to compensation for ownership interests, the use of the difference between pre-war and current prices of shares of stock as the measure of compensation for shareholders is not acceptable in view of the general rise of the prices of shares as a consequence of the decline in the purchasing power of the yen.

4. Limitation upon total compensation or the fixing of compensation at anything less than the full extent of the damage is not acceptable.

5. Deduction from compensation for physical improvement made to damaged property is acceptable, but deduction from compensation for one piece of property based on improvement of a second piece of property owned by the same claimant is not acceptable.

It would be appreciated if the Japanese Government, having the foregoing comments in mind, could be prepared to submit a complete

text of the proposed legislation for consideration by Minister Allison, who is expected to arrive in Tokyo on June 24, 1951.

Tokyo, June 19, 1951.

## 附録 22

1951年6月26日ボンド参事官に交付した連合国財産補償法

(案)(和文及び英文、英文のみ交付)

### 連合国財産補償法(案)

#### 第1章 総 則

##### (目 的)

第1条 この法律は、連合国との間の平和の回復に伴い、連合国又は連合国人が本邦内に有していた財産について戦争の結果生じた損害に対し、補償を行うことを目的とする。

##### (定 義)

第2条 この法律において「連合国」とは、日本国と戦争した国又は交戦状態にあつた国で日本国との平和条約の当事国となるものをいう。

2 この法律において「連合国人」とは、左の各号に掲げるものをいう。

- 一 連合国の国籍を有する者
- 二 連合国の法令に基いて設立された法人その他の団体
- 三 前号に掲げるものを除く外、株式若しくは持分の全部が前2号に掲げるものに属する法人その他の団体

3 この法律において「本邦」とは、本州、北海道、四国、九州その他平和条約により日本国の主権が回復される地域をいう。

4 この法律において「戦時特別措置」とは、旧敵産管理法(昭和16年法律第99号)の適用その他の対敵措置であつて、連合国の国籍を有する者の逮捕、抑留若しくは拘禁又は連合国人の財産の処分若しくは売却その他の日本政府又はその代理機関による公権力の行使としてとられた措置をいう。

5 この法律において「財産」とは、動産、不動産、これらのものの上の権利、特許権、商標権、債権、株式、その他これらに準ずる財産上の権利及び利益をいう。

#### (補償の原則)

第3条 連合国又は連合国人が開戦時において本邦内に有していた財産につき戦争の結果損害を被つたときは、日本政府はその損害につき補償をするものとする。但し、連合国人については、戦時特別措置の適用を受けた場合に限る。

2 返還できる状態にある財産について、平和条約に規定される期限内に返還の請求がされなかつた場合には、その財産の滅失又は毀損に対する補償はなされない。但し、右の期限内に返還の請求がされなかつたことにつき、日本政府が相当と認める理由があるときは、この限りでない。

3 第1項の補償の請求をすることができる者は開戦時及び平和条約効力発生時において連合国人たる地位を有するものでなければならない。

4 開戦時における連合国人の財産の承継人が平和条約効力発生時において連合国人である場合には、その承継人は第1項の補償を請求することができる。

#### (損害の範囲及び財産の所在)

第4条 前条の戦争の結果被つた損害は、左の各号に掲げる損害とする。

- 一 戦闘行為に基因する損害
- 二 戦時特別措置その他日本政府又はその代理機関の措置に基因する損害
- 三 当該財産の管理者又は所持人が善良な管理者の注意を怠つたことによる損害
- 四 当該連合国人が当該財産について保全措置をとることができなかつたことにより被つた損害

2 前条第1項の規定の適用について、財産が本邦内にあつたかどうかについては、政令で定める。

3 開戦時公海を航行中の日本船舶に船積されていた運送品又は手荷物であつて本邦内に直接陸揚されたものは、開戦時本邦内にあつた財産とみなす。

#### 第2章 損害額の算定

##### (有体物の損害)

第5条 有体物で返還されたものの損害額は、その財産が返還時において開戦時の状態まで回復するため、補償時において必要な金額とする。但し、その財産がその返還後政府の支出によつて補修されたときは、補修された時の状態を返還時の状態とみなす。

2 有体物でその滅失、著しい毀損又は所在不明のため返還できないものの損害額は、

補償時においてその財産と同様の財産を買い入れるため必要な金額とする。

（用役物権及び不動産の賃借権の損害）

第6条 地上権、永小作権、地役権又は不動産の賃借権で、これらの権利の目的物の滅失又は著しい変動のため返還することができないものの損害額は、これらの権利と同様の内容の権利を補償時において取得するため必要な金額とする。

（金銭債権の損害）

第7条 金銭債権の損害額は、戦時特別措置により譲渡又は消滅させられた債権額に相当する金額とする。

2 抵当権、質権、留置権又は先取特権又はその目的物が戦時特別措置に因り消滅させられた場合の金銭債権の損害額は、その消滅により債権者が弁済を受けられなくなった額に相当する金額とする。

3 前2項の債権が円貨以外の通貨（以下「外貨」という。）によつて表示されていたもの又は外貨で支払われるべきものであつたときは、その債権の額を補償時における為替換算率によつて円貨額に換算して損害額を算出する。

（公債等の損害）

第8条 戦時特別措置の適用を受けた公債、社債、特別の法律により法人の発行した債券又は外国若しくは外国の法人の発行する公債若しくは社債（以下「公債等」という。）で補償時まで償還期限の到来のため返還できないものの損害額は、その償還の際元金の償還として支払を受けるべきであつた元本とその公債等に附属していた利札の金額の合計額とする。

2 補償時まで償還期限の到来していない公債等で返還できないものの損害額は、その公債等の補償時における時価と補償時までの利札の金額に相当する金額との合計額とする。

3 第7条第3項の規定は、前2項により支払を受けるべきであつた金額が外貨によつて表示されている場合について準用する。

（特許権の損害）

第9条 専用権（旧工業所有権戦時法（大正6年法律第21号）第5条の規定により専用することの免許をうけた者の権利をいう。以下同じ。）を設定された特許権で連合国人工業所有権戦後措置令（昭和24年政令第309号）の規定により回復されなかつたもの

の損害額は、その専用権者がその特許権の存続期間中その特許を実施した場合において支払うべき特許実施料に相当する金額から納付されるべき特許料に相当する金額を差し引いた金額とする。

2 戦時特別措置によつて取り消された特許権で連合国人工業所有権戦後措置令の規定により回復されなかつたものの損害額は、その特許権が存続すべかりし期間中に、その特許を実施した者が支払うべき特許実施料に相当する金額から同期間中に納付されるべき特許料に相当する金額を差し引いた金額とする。

3 特許料の不納又は存続期間の満了によつて消滅した特許権で連合国人工業所有権戦後措置令の規定により回復されなかつたものの損害額は、その特許料が納付されていたならば又はその特許権の存続期間の延長が申請されていたならばその特許権が存続すべかりし期間中にその特許を実施した者が支払うべき特許実施料に相当する金額から同期間中に納付されるべき特許料に相当する金額を差し引いた金額とする。

4 前3項において、特許を実施した者がその実施した特許につき支払うべき特許実施料は、その特許権について、開戦時において、実施契約が存していたときはその実施契約に定められた実施料、存していなかつたときは、その特許権と類似の特許権について、開戦時において存していた実施契約に定められた実施料の計算方法に準じて算出する。

5 前項の実施契約中に特許権者が実施権者に対し履行すべき義務又は実施権者が特許権者から受けることができる利益について定めがあるときは、第1項から第3項までに規定する期間中その義務が履行されず又はその利益を受けることができなかったことにより実施者が被つた不利益に相当する金額は、その者が支払うべき特許実施料から差し引くものとする。

6 第7条第4項の規定は、第4項の実施契約に定められた実施料が外貨によつて表示されている場合について準用する。

（商標権の損害）

第10条 戦時特別措置による取消又は存続期間の満了によつて消滅した商標権の損害額は、その商標を使用した者がその商標をその使用によつて受けた利益に相当する金額及びその商標の信用を補償時において開戦時の状態に回復するために必要な費用に相当する金額との合計額とする。

（株式の損害）

第 11 条 株式に関する損害額は、当該株式の発行会社について、第 12 条の規定により計算した損害額に開戦時における会社の総資産に対する資本の割合を乗じた金額を、補償時における株式の総数をもつて除して得た金額とする。

2 会社が清算中にある場合においてその株式について返還前に残余財産の分配が行われたときは、その株式の損害額は、返還時前の分配額に相当する金額を前項の金額に加算することができる。

（会社の損害額の計算）

第 12 条 会社の損害額は、開戦時において当該会社が本邦内に有していた財産につき第 4 条第 1 項に規定する損害を第 5 条から第 10 条までの規定に準じて算出した金額から左に掲げる金額を差し引いた金額とする。

一 会社が企業再建整備法（昭和 21 年法律第 40 号）又は金融機関再建整備法（昭和 21 年法律第 39 号）により特別損失又は確定損を生じたものである場合において、負債の切捨てによつてこれを補填したものであるときは、そのうち資本以外の債務の切捨て額

二 会社が戦争の結果被つた損害を補填するため減資した場合において、連合国人以外の株主の払込による増資をもつてその資本の補充を行つたときは、その補充した金額

三 会社が開戦時以後良好な経営により会社財産を増加したものがあるときは、その増加した金額

（他の損害）

第 13 条 前各条の規定する損害額以外の損害額の計算については、前各条の趣旨に従い政令で定める。

第 3 章 補償金の支払

（補償金額）

第 14 条 第 3 条の第 3 項又は第 4 項の規定により、政府に対し補償を請求することができる者（以下「請求権者」という。）に対して支払われる補償金額は、第 2 章の規定により算出された損害額から左の各号に掲げる金額を差し引いた金額とする。

一 旧特殊財産資金特別会計法（昭和 18 年法律第 86 号）第 14 条の規定により管理せ

られ、現に一般会計に属する保管金として日本銀行に管理する特殊財産管理勘定に属していた資金のうち、請求権者又は、その代理人によつて引き出された金額

二 請求権者が開戦時において有していた連合国財産又はその果実によつて戦時特別措置として弁済された債務の額に相当する金額

三 開戦時において請求権者が有していた財産で返還されたものが返還時において開戦時よりもその価値を増加していたときは、その増加分の補償時における価額に相当する金額

（補償請求の方法及び期限）

第 15 条 請求権者は、その者が個人である場合は、その所属する本国の政府を経てその国と日本国との間の平和条約の発効時から 18 月内に、政府に対し、補償金支払請求書を提出しなければならない。

2 前項の補償金支払請求書には、第 3 条の規定により補償の請求をすることができるものであること並びに請求権者が請求する補償の内容を明らかにする書類を添付しなければならない。

3 請求権者が第 1 項の期間内に補償金支払請求書を提出しないときは、その請求権者は、補償金の支払請求権を放棄したものとみなす。

（補償金額の支払）

第 16 条 政府は、前条第 1 項の規定により補償金支払請求書が請求権者から提出されたときは、これを審査し、その請求金額を支払うべきものであると認めたときは、遅滞なく、本邦内においてその金額を請求権者に支払わなければならない。

2 政府は、補償支払請求書を審査した結果、その請求金額が請求権者に支払うべき金額と異ると認めたときは、支払うべきであると認めた金額を請求権者に通知しなければならない。

3 前項の規定によつて通知された金額に異議がないときは、請求権者は、その金額の支払を政府に請求することができる。

4 政府は、前項の規定により同項の金額の支払を請求されたときは、遅滞なく、その金額を請求権者に支払わなければならない。

（補償金の円貨による支払）

第 17 条 前条の規定により支払うべき補償金は円貨で支払われるものとし、その外国向

送金については外国為替に関する法令に従うものとする。

（補償金額に対する異議）

第18条 請求権者が第16条第2項の規定により通知された金額に異議があるときは、同項の通知をうけた日後5週間内に第20条に定める連合国財産補償審査会に再審査を請求することができる。

2 前項の規定は、日本国と連合国との間に特別の協定がある場合には適用しない。

（会計年度の支払制限）

第19条 政府は、第16条第1項及び第4項の規定により支払うべき金額の合計額が1会計年度において100億円を超過するときは、その超過額についての支払を翌会計年度においてすることができる。

#### 第4章 補償審査会

第20条 政府は、第18条の規定に基く再審査の請求を審査させるため、大蔵省に連合国財産補償審査会を置く。

2 連合国財産補償審査会の組織及び運営に関し必要な事項は政令で定める。

#### 第5章 雑 則

（課税上の特例）

第21条 この法律により連合国人の受領する補償金には、租税を課することができない。

（書類の提供）

第22条 請求権者は、補償金を請求するため必要がある場合においては、その請求権の立証のため必要な書類をその所属する国の政府を経て、日本政府に対し要求することができる。

2 政府は、前項の要求があつたときは、その要求に係る書類を無償で請求権者に提供しなければならない。

（費用の支払）

第23条 請求権者が、その請求権の立証のため、本邦内で必要な費用を支出したときは、その所属する国の政府を経て、日本政府に対しその支払を請求することができる。

2 政府は前項の請求があつた場合において、その金額が合理的なものであると認めたときは、その金額を請求権者に支払わなければならない。

（報告等の徴収及び立入検査）

第24条 政府は、連合国人の財産に生じた損害額の調査に関し必要があると認めるときは、その必要の範囲内において、その財産について権利若しくは義務を有していた者若しくは有している者から報告若しくは資料を徴し、又は当該職員をしてこれらの者の事務所その他これらの者の管理する場所に立ち入り、業務若しくは財産の状況若しくは帳簿書類その他の業務若しくは財産に関係のある物件を検査させることができる。

2 当該職員は、前項の規定により立入検査をする場合には、その身分を示す証票を携帯し、且つ、関係人の請求があつたときは、これを呈示しなければならない。

（実施に関する政令）

第25条 この法律の実施に関し必要な事項は、政令で定める。

#### 第6章 罰 則

第26条 第24条第1項の規定に違反して報告をせず、資料を提出せず、若しくは虚偽の報告をし、又は当該職員の立入若しくは検査を拒み、妨げ、若しくは忌避した者は、10万円以下の罰金に処する。

第27条 法人の代表者又は法人若しくは人の代理人、使用人その他の従業者が、その法人又は人の業務又は財産に関して、前条の違反行為をしたときは、行為者を罰する外、その法人又は人に対しても前条の罰金刑を科する。但し、法人又は人の代理人、使用人その他の従業者の当該違反行為を防止するため当該業務に関し相当の注意及び監督が尽くされていることの証明があつたときは、その法人又は人については、この限りでない。

#### 附 則

この法律の施行期日は、平和条約の最初の効力発生の日とする。

### Allied Powers Property Compensation Law

#### Chapter I General Provisions

(Purpose)

Article 1. The purpose of this Law is to compensate, following the restoration of peace with the Allied Powers, for the damage suffered as:

a result of the war by the property owned in Japan by the Allied Powers and their nationals.

(Definitions)

Article 2. In this Law, “the Allied Powers” means the states which were at war or in a state of belligerency with Japan and which become parties to the Peace Treaty with Japan.

2. In this Law, “Allied nationals” means the following :

(1) Individual persons of Allied nationality ;

(2) Corporations and other associations established under the laws and orders of any of the Allied Powers ;

(3) In addition to those mentioned in the preceding item, those corporations and other associations in which the individuals or corporations or associations mentioned in the preceding two items hold the whole stock or capital investments.

3. In this Law, “Japan” means Honshu, Hokkaido, Shikoku, Kyushu, and other territory, over which the sovereignty of Japan is restored by virtue of the Peace Treaty.

4. In this Law, “the war-time special measures” means the measures toward the enemy, including the application of the Enemy Property Custody Law (Law No. 99 of 1941—abolished), which were adopted by way of exercise of official authority by the Japanese Government or its agencies, such as the apprehension, internment, or detention, of individual persons of Allied nationality, the disposal or sale of the property of Allied nationals, etc.

5. In this Law, “property” means movable or immovable property, the rights on such property, patents, trade marks, debts, shares, and other property rights and interests of a similar nature.

(Principles of Compensation)

Article 3. If the property owned in Japan by the Allied Powers or their nationals at the time of the commencement of the war has suffered damage as a result of the war, the Japanese Government shall compensate for such damage, provided that such Allied nationals shall have been subjected to the war-time special measures.

2. In cases where a claim for restitution has not been filed for a piece of property in a state capable of restitution within the term fixed

in the Peace Treaty, no compensation shall be made for its loss or damage, provided, however, that this shall not apply to cases where this failure in filing a claim is deemed by the Japanese Government as due to unavoidable circumstances.

3. The individual persons who may claim the compensation mentioned in the preceding paragraph shall be those persons who had and shall have the status of Allied nationals at the time of the commencement of the war and at the time of the coming into force of the Peace Treaty.

4. In cases where the successors in interest of Allied nationals are Allied nationals at the time of the coming into force of the Peace Treaty, they may claim the compensation mentioned in paragraph 1.

(Scope of Damage and Location of Property)

Article 4. The damage suffered as a result of the war mentioned in the preceding Article shall be the damage listed in the following items :

(1) Damage caused by acts of hostility ;

(2) Damage caused by the war-time special measures or other measures of the Japanese Government and its agencies ;

(3) Damage on account of the administrator or possessor of the property concerned having neglected the good administrator's care ;

(4) Damage suffered owing to the inability of Allied nationals concerned to take preservative measures for the property concerned.

2. Whether a piece of property was in Japan shall be determined by Cabinet Order for the application of paragraph 1 of the preceding Article.

3. The cargo or baggage which had been loaded on board the Japanese ships navigating the high seas at the time of the commencement of the war and which was unloaded directly in Japan shall be regarded as property which was in Japan at the time of the commencement of the war.

## Chapter II Calculation of the Amount of Damage

(Damage to Tangible Property)

Article 5. The amount of damage to restituted tangible property shall be a sum of money required at the time of compensation for the

restoration of such property as of the time of restitution to its status as of the time of the commencement of the war; provided that, if such property has been repaired by government expenditure after its restitution, its status upon repair shall be regarded as its status as of the time of restitution.

2. The amount of damage to tangible property which is incapable of restitution on account of its loss, substantial destruction, or its location being unknown, shall be a sum of money required at the time of compensation for the purchase of similar property.

(Damage to Use and to Lease of Immovable Property)

Article 6. The amount of damage to the superficies, perpetual tenant-right, servitude, or lease of immovable property, which is incapable of restitution on account of the loss or substantial alteration of the objects of such rights shall be a sum of money required at the time of compensation for the acquisition of the rights of the same substance as such rights.

(Damage to Debts)

Article 7. The amount of damage to debts shall be a sum of money equivalent to the amount of the debts transferred or liquidated by the war-time special measures.

2. The amount of damage to debts in cases where mortgage, pledge, lien, or priority, or the object thereof, has been liquidated or extinguished by the war-time special measures shall be a sum of money equivalent to the amount due to the creditor which has been defaulted on account of its liquidation or extinction.

3. In cases where the debts mentioned in the preceding two paragraphs have been designated in terms of currencies other than the Yen (hereinafter referred to as "foreign currency") or should have been paid in foreign currency, the amount of damage shall be calculated by fixing the amount of debts in terms of Yen at the exchange rate as of the time of compensation.

(Damage to Public Loans, etc.)

Article 8. The amount of damage to those public loans, debentures, bonds issued under special laws by juristic persons, or public loans or debentures issued by foreign states or juristic persons (hereinafter referred

to as "the public loans, etc.") which have been subjected to the war-time special measures and which are incapable of restitution on account of the time of their redemption having arrived before the time of compensation shall be the total of the amount of the principal which should have been repaid by way of the redemption of principal at the time of their redemption and the amount of the interests coupons which accompanied such public loans, etc.

2. The amount of damage to those public loans, etc. whose time of redemption has not arrived by the time of compensation and which are incapable of restitution shall be the total of their current price as of the time of compensation and the amount of the interest coupons up to the time of compensation.

3. The provisions of Article 7, paragraph 3, shall be applied mutatis mutandis in cases where the sum of money payable in accordance with the provisions of the preceding two paragraphs are designated in terms of foreign currency.

(Damage to Patents)

Article 9. The amount of damage to a patent which has had the exclusive license (meaning here and hereinafter the right of persons who have received the license of exclusive use in accordance with the provisions of Article 5 of the Industrial Property Rights War-time Law (Law No. 21 of 1917—abolished)) established and which has not been restored in accordance with the provisions of the Order for Post-war Dispositions of Industrial Property Rights Owned by Allied Nationals (Cabinet Order No. 309 of 1949) shall be a sum of money equivalent to the patent working fee payable in cases where the exclusive licensee has worked the patent during the term of the patent, deducted by a sum of money equivalent to the patent fee payable.

2. The amount of damage to a patent which has been cancelled by the war-time special measures and which has not been restored in accordance with the provisions of the Order for Post-war Disposition of Industrial Property Rights Owned by Allied Nationals shall be a sum of money equivalent to the patent working fee payable by the person who has worked it during the term for which it should have continued, deducted by a sum of money equivalent to the patent fee payable during such term.



3. The amount of damage to a patent which has become extinct on account of the non-payment of the patent fee or the expiration of its term of continuation and which has not been restored in accordance with the provisions of the Order for Post-war Dispositions of Industrial Property Rights Owned by Allied Nationals shall be a sum of money equivalent to the patent working fee payable by a person who has worked it during the term for which it would have continued if the patent fee had been paid or if the extension of its term of continuation had been applied for, deducted by a sum of money equivalent to the patent fee payable during such term.

4. In the case of the preceding three paragraphs, the patent working fee payable by a person who has worked the patent shall be calculated on the basis of the method of calculation of the working fee stipulated in the working contract existing at the time of the commencement of the war in case such working contract existed, and on the basis of the working fee stipulated in a working contract for a patent analogous to the patent concerned existing at the time of the commencement of the war in case there was no working contract for the patent concerned.

5. If stipulation has been made in the working contract mentioned in the preceding paragraph for the obligation to be performed by the patentee to the working-licensee or for the benefit receivable by the working-licensee from the patentee, a sum of money equivalent to the loss suffered by the person working the patent on account of the default of such obligation or the impossibility to receive such benefit during the term provided for in paragraphs 1 to 3 inclusive shall be deducted from the patent working fee payable by such person.

6. The provisions of Article 7, paragraph 4, shall be applied mutatis mutandis in cases where the patent working fee stipulated in the working contract mentioned in paragraph 4 is designated in terms of foreign currency.

(Damage to Trade Marks)

Article 10. The amount of damage to a trade mark which has become extinct on account of the cancellation by the war-time special measures or the expiration of its term of continuation shall be the total of a sum of money equivalent to the benefit obtained through its use

by the person who has used it and a sum of money equivalent to the cost required at the time of compensation for the restoration of its reputation to its status as of the time of the commencement of the war.

(Damage to Shares)

Article 11. The amount of damage relating to shares shall be a sum of money, which is the amount of damage to the issuing company calculated in accordance with the provisions of Article 12, multiplied by the rate of its capital as against its total assets, and divided by the total number of its shares at the time of compensation.

2. If, in cases where a company is in the course of liquidation, distribution has been made of its net assets for its shares before restitution, the amount of their damage may be a sum of money equivalent to the amount of the distribution made before the time of restitution, added to the sum of money mentioned in the preceding paragraph.

(Calculation of Amount of Damage to Companies)

Article 12. The amount of damage to a company shall be a sum of money which is the amount of the damage provided for in Article 4, paragraph 1, calculated in a manner conforming to the provisions of Articles 5 to 10 inclusive in regard to the property owned in Japan by the company at the time of the commencement of the war, and deducted by the following sum of money:

(1) If, in cases special loss or final loss has occurred to the company in accordance with the Enterprise Reconstruction and Reorganization Law (Law No. 40 of 1946) or the Financial Institutions Reconstruction and Reorganization Law (Law No. 39 of 1946), such loss has been made up by writing off liabilities, the amount of such writing-off of liabilities other than the capital;

(2) If, in cases where a company has decreased its capital to make up the loss suffered as a result of the war, its capital has been replenished with the capital increase through the payment by its shareholders other than Allied nationals, the sum of such replenishment;

(3) If a company has increased its assets after the time of the commencement of the war through good management, the sum of such increase.

## (Other Damages)

Article 13. The calculation of the amount of damages other than those provided for in the preceding Articles shall be made as provided for by Cabinet Order in conformity with these Articles.

## Chapter III Payment of Compensation

## (Amount of Compensation)

Article 14. The amount of compensation payable to a person who may claim compensation to the Government in accordance with the provisions of Article 3, paragraph 3 or 4, (hereinafter referred to as "a claimant") shall be a sum of money which is the amount of damage calculated in accordance with the provisions of Chapter II deducted by the sum listed in the following items:

(1) A sum of money withdrawn by a claimant or his agent out of the funds which belonged to the Special Property Administration Account administered in accordance with the provisions of Article 14 of the Special Property Funds Special Account Law (Law No. 86, 1943—abolished) in the custody of the Bank of Japan as entrusted funds belonging to the General Account of the Government Budget;

(2) A sum of money equivalent to the amount of the liabilities satisfied by way of the war-time special measures by property owned by a claimant at the time of the commencement of the war or its fruits;

(3) If the property owned by a claimant at the time of the commencement of the war and restituted had been physically improved at the time of restitution than at the time of the commencement of the war, a sum of money equivalent to the amount of the increment of value at the time of compensation.

## (Method and Term of Claiming Compensation)

Article 15. A claimant shall, if he is an individual, file a written claim for payment of compensation with the Government through the Government of the state to which he belongs within eighteen months from the time of coming into force of the Peace Treaty between such state and Japan.

2. The written claim for payment of compensation mentioned in the preceding paragraph shall be accompanied with papers which estab-

lish the status of the claimant as a person capable of filing claims according to Article 3 and the substance of the claim.

3. If a claimant fails to file a written claim for payment of compensation within the term mentioned in paragraph 1, he shall be regarded as having waived the claim for payment of compensation.

## (Payment of Compensation)

Article 16. If a written claim for payment of compensation has been filed by a claimant in accordance with the provisions of paragraph 1 of the preceding Article, the Government shall examine it and, if it has found that the sum of money claimed is payable, shall pay it to him in Japan without delay.

2. If the Government has found, as a result of the examination of a written claim for payment of compensation, that the sum of money claimed differs from that payable to the claimant, it shall notify to him the sum of money which it has found payable.

3. If there is no objection to the sum of money notified in accordance with the provisions of the preceding paragraph, the claimant may demand its payment to the Government.

4. If in accordance with the provisions of the preceding paragraph the payment of the sum of money mentioned in the same paragraph has been demanded to the Government, the Government shall pay it to the claimant without delay.

## (Payment of Compensation in Yen)

Article 17. The compensation payable in accordance with the provisions of the preceding Article shall be paid in the Yen, and its remittance abroad shall be subject to laws and orders relating to the foreign exchange.

## (Objection to the Amount of Compensation)

Article 18. If a claimant has an objection to the sum of money notified in accordance with the provisions of Article 16, paragraph 2, he may demand re-examination to the Allied Property Compensation Examination Committee provided for in Article 20 within five weeks after the date of receipt of the notification mentioned in the same paragraph.

2. The provisions of the preceding paragraph shall not be applied

in cases where there is a special agreement between Japan and any of the Allied Powers.

(Limitation of Payment in a Fiscal Year)

Article 19. If the total of sums of money payable for compensation exceeds ten billion Yen in one fiscal year, the Government makes the payments involved in the excess in the following fiscal year.

Chapter IV Compensation Examination Committee

Article 20. The Government shall establish in the Ministry of Finance an Allied Property Compensation Examination Committee which is to examine the demands for re-examination under the provisions of Article 18.

2. Necessary matters relating to the organization and operation of the Allied Property Compensation Examination Committee shall be provided for by Cabinet Order.

Chapter V Miscellaneous Provisions

(Exception concerning Taxation)

Article 21. No tax shall be imposed on the compensation received by Allied nationals in accordance with this Law.

(Furnishing of Papers)

Article 22. A claimant may, if necessary for making a claim for compensation, demand the Japanese Government through the Government of the state to which he belongs to furnish papers which are necessary for establishing such claim.

2. If the demand mentioned in the preceding paragraph has been made, the Government shall furnish the papers so demanded to the claimant free of charge.

(Payment of Cost)

Article 23. If a claimant has defrayed in Japan necessary cost to establish his claim, he may demand its payment to the Japanese Government through the Government of the state to which he belongs.

2. If, in cases where the demand mentioned in the preceding paragraph has been made, the Government has found the amount of money reasonable, it shall be paid to the claimant.

(Collection of Reports, etc. and Inspection by Entry)

Article 24. If the Government finds it necessary in connection with the investigation of the amount of damage suffered by the property of Allied nationals, it may, within the extent of such necessity, collect reports or data from persons who had or have a right or an obligation in regard to such property, or have the officials concerned enter the offices of such persons or the places they administer and inspect the state of business or property, or books and papers, or other articles relating to business or property.

2. In cases where the officials concerned enter and/or inspect in accordance with the provisions of the preceding paragraph, they shall carry with them a certificate showing their status and show it if requested by the persons interested.

(Cabinet Order concerning Enforcement)

Article 25. Necessary matters in enforcing this Law may be provided for by Cabinet Order.

Chapter VI Penal Provisions

Article 26. A person who in violation of the provisions of paragraph 1 of Article 24 has failed to make reports or submit data, or has made false reports, or has refused, obstructed or evaded the entry and/or inspection by the officials concerned shall be punished with a fine of not more than one hundred thousand Yen.

Article 27. If a representative of a juristic person, or an agent, employee or other worker of a juristic person or of an individual person has perpetrated any of the acts of violation mentioned in the preceding Article, not only the perpetrator shall be punished, but also the juristic or individual person shall be liable to the fine mentioned in the same Article; provided that this shall not apply to those juristic or individual persons regarding which it has been proved that reasonable care and supervision over the business concerned have been exercised in order to prevent the act of violation concerned by their agents, employees, or other workers.

Supplementary Provisions

The date of enforcement of this Law shall be the date of first coming into force of the Peace Treaty.

附録 23

1951年6月29日連合国財産補償法案に関する第1回専門家会

議で米側の提出した意見及び提案

U.S. COMMENTS ON JAPANESE DRAFT OF ALLIED POWERS  
PROPERTY COMPENSATION LAW

General Comments

Since it will be necessary to refer to the text of this legislation in a provisions of the peace treaty, we should like to know how the text can be identified. The present treaty provision states that Japan will provide compensation for damage to Allied property in Japan in accordance with law No. \_\_\_\_\_, enacted on \_\_\_\_\_ date. Pending the enactment of the legislation, we assume that the proposed legislation can be referred to in the peace treaty as the proposed Allied Powers Property Compensation Law approved by the Cabinet on \_\_\_\_\_ and to be submitted to the Diet at the next session.

It is difficult to tell from the arrangement of the proposed law to which article certain of the subparagraphs and clauses belong. It is suggested that the words, "Article 1", "Article 2", etc. be placed in the center of the page, and that any subparagraphs of the article be lettered (a), (b), etc., and that any further subdivisions be numbered (1), (2), etc.

As a general comment, we consider that no substantive provisions of the legislation be left to be determined by Cabinet Order.

Article 2

It is suggested that the following be added to the first sentence: "Other states may be considered to be Allied Powers for purposes of this law by agreement between Japan and the state concerned."

It is suggested that clause (1) of subparagraph 2 be changed to read: "Individual persons who are nationals of the Allied Powers."

It is suggested that there be added to clause (3) of paragraph 2 the phrase "apart from qualifying shares."

It is suggested that some formula be adopted to insure that compensation be provided in cases of damage to property of corporations owned

by Japanese corporations which are controlled by Allied nationals.

It is also suggested that Allied nationals be defined in such a way as to cover non-profit organizations and religious organizations.

In the definition of war-time special measures in subclause 4, it is suggested that the phrase "but not limited to" be inserted after the word "including".

Article 3

It is suggested that the proviso at the end of the first sentence be eliminated so that all Allied nationals will be eligible to receive compensation.

It is not clear whether subparagraph 2 requires an Allied national to file a claim for restitution in a case where a claim was filed during the occupation period. Should not some provision be made to make it clear that duplicate claims need not be filed?

Subparagraph 3 should be expanded to refer to juridical persons.

Article 4

It is suggested that there be added to clause (1) the phrase "or preparations for acts of hostility."

It is suggested that a clause be added to cover any damage against which Allied nationals could have protected themselves by insurance.

It is suggested that a clause be added to cover damage suffered to property while it was in the hands of the occupation forces.

It is not clear why subparagraph 2 is necessary. It should not be necessary to determine by Cabinet Order whether a piece of property was in Japan.

Article 5

It is suggested that the ending of the sentence in subparagraph 2 be changed to read "for the purchase of property of similar condition and value."

Article 7

It is believed that the legislation should not attempt to provide yen compensation for foreign currency obligations. A holder of a foreign currency obligation can, of course, at any time agree to accept yen in satisfaction of the obligation. The holder should not, however, be com-

pelled to accept yen, since it is not possible for him at this time to convert yen into foreign currency.

As an alternative to the Japanese draft of Article 7, it is suggested that debts be treated along the following lines:

In cases where the Japanese Government or its agent discharged persons in Japan of obligations to Allied nationals or Allied Powers the Japanese Government recognizes its liability to the Allied nationals or the Allied Powers for the amount of the obligation in the currency in which the obligation was expressed. In such cases, any mortgage, pledge or lien given to secure the obligation should be extinguished.

In all other cases where obligations are owed by persons in Japan to Allied nationals or Allied Powers, the Japanese Government guarantees the obligations, and recognizes its liability to discharge the obligations in the event the creditors are unable to collect from their debtors.

#### Article 8

Since subparagraph 3 of this Article would provide yen compensation for certain foreign currency obligations, there is the same objection as is stated with respect to Article 7. In any case where action of the Japanese Government has deprived an Allied national of a foreign currency obligation, the Japanese Government should recognize a liability in terms of the foreign currency. The question of when the foreign currency obligation will be discharged will depend, of course, on Japanese foreign exchange regulations.

#### Articles 9 and 10

These Articles will be the subject of later comments.

#### Article 11

It is believed that the measure of damage to shares is not satisfactory, and that it should remain as stated in the outline of the legislation previously submitted by the Japanese Government. In the outline it was stated that compensation for shareholders should bear the same proportion to the loss or damage suffered by the company as the beneficial interests of the shareholders in the company bore to the total capital thereof at the date of the commencement of the war. It is recognized that such a formula for measuring damage to shareholders is not entirely fair in cases where the corporation has suffered heavy

war damage and at the same time had substantial pre-war obligations to creditors which would, to some extent, be satisfied out of any compensation payable to the corporation. In spite of the fact that the formula is not entirely fair, any other formula would be complex and difficult to work out.

#### Article 12

It is suggested that the word "pre-war" be inserted before the word "liabilities" in clause (1).

We would appreciate information on the justification for the deduction provided in clause (2).

It is still not clear how the deduction mentioned in clause (3) will be computed. It is believed that this deduction should be eliminated.

#### Article 14

It is believed that clause (3) will not work out satisfactorily. A property owner may consider some of the "improvements" to his property to be undesirable. It is suggested that he be permitted to elect to have the improvements removed at the expense of the Japanese Government and to have his property restored to its condition as of December 7, 1941. If he elects to retain the improvements to his property, then it is recognized that there should be deducted from any compensation due to him an amount equivalent to the value of the improvements at the time of compensation.

It is suggested that the word "pre-war" be inserted before the word "liabilities" in clause (2).

#### Article 15

Since the current provision of the peace treaty permits claims for the return of property to be filed within nine months of the coming into force of the treaty, and since Japan, pursuant to the treaty provision has six months from the date of the application within which to return the property it may now be undesirable to require a claimant to file a claim for compensation within 18 months from the time of coming into force of the peace treaty. It may be desirable, also, to amend the peace treaty provision to make time limits on applications for the return of property run from the time of coming into force of the peace treaty

between each state and Japan, rather than from the time of the first coming into force of the peace treaty.

#### Article 24

This Article would appear to authorize the Japanese Government to make investigations of Allied business enterprises. It is not clear why such investigations are necessary. If satisfactory proof of claim is not provided by the claimant, the Japanese Government can reject the claim. It is not customary, however, to authorize the Government to investigate the business enterprises merely because they have undertaken to present a claim against the Government.

#### Articles 26 and 27

As Article 24 is omitted, it is believed that Articles 26 and 27 can also be omitted. It is not clear why penalties have to be provided.

#### Omissions from proposed law

It is believed that the proposed law should state that disputes arising under the provisions of the legislation should be settled in accordance with agreements between Japan and the Allied Power or Allied Powers whose nationals are concerned.

It is suggested that there be specified the points to be included within jurisdiction of any international tribunal established to settle disputes under the legislation.

#### 附録 24

1951年7月3日第2回専門家会議でわが方の提出した回答

(和文及び英文、英文を交付)

#### 一般的意見

平和条約におけるこの法律の引用方法については、別途定められる予定である。

主要条文を政令に委任しないようにとの貴提案に従う。ただ、この法律に規定すべき事項で規定もれとなつていものが発見された場合にその規定をおくため、又は、この法律に規定されている事項を実施するために必要な事項を規定するため第25条は残しておく。

#### 第2条

1. 貴提案を受諾し難い。その理由は次のようである。
  - (1) 必要な場合においては、これらの国と日本国との間に個別の協定を締結することにより、このような字句を加えるのと同様の効果が得られること。
  - (2) このような国を連合国の範囲に入れることは、この法律の体系を混乱させること。
2. 異議なし。
3. 貴提案に従い第3号を次のように改める。
 

前号に掲げるものを除く外、前2号若しくは本号に掲げる者が、資格株を除き株式若しくは持分の全部を所有している法人その他の団体又は第1号に掲げる者が支配している宗教法人その他の営利を目的としない法人その他の団体。
4. 異議なし。

#### 第3条

1. 貴提案の主旨に沿い第1項を次のように改める。
 

連合国又は連合国人が開戦時に本邦内に有していた財産につき戦争の結果蒙つた損害として第4条第1項各号に掲げる損害を蒙つたときは、日本政府は、その損害について補償するものとする。但し、連合国人の財産については、当該財産又はその財産を有していた者が戦時特別措置の適用を受けた場合に限る。

第2項として次の1項を加える。

前項に規定するものの外、連合国人が開戦時に本邦内に有していた財産で戦争のため連合国人が自ら保全することができなかつたものにつき第4条第1項第1号に掲げる損害を蒙つたときは、日本政府は、その損害について補償するものとする。
2. 異議なし。返還法の中で、二重に返還要求をしなくて済むよう規定する。
3. 貴提案に従い、法人をも含ませるため、第3項中“individual”を削る。

#### 第4条

1. 貴案の“preparation for act of hostility”とは、何をいうものか実例を示されたい。なお、第1項第2号を参照されたい。
2. 異議なし。第4号の代りに、次の損害をおきかえる。
 

当該連合国人が戦争のため当該財産を保険に付することができなかつたことにより蒙つた損害。

3. 占領軍の行為により生じた損害について補償することは受け入れ難い。かかる損害の補償は、若しそれが要請された場合においても、この法律とは別個の法律によつて処理されるべきものとする。
4. 異議なし。

#### 第 5 条

異議なし。

#### 第 7 条

1. 貴提案の主旨に沿うため第 7 条第 3 項を削るとともに第 17 条に次の項を加える。
2. 第 7 条又は第 8 条に規定する債権又は公債等の全部が円貨以外の通貨（以下「外貨」という。）により表示されている場合又は円貨で表示されているが外貨により支払われるべきものである場合においては、日本政府は、補償金の外貨による支払を承認するものとし、日本の為替状態の許す最も早い時期において、外国為替に関する法令の規定に従い、請求権者に対しその外貨による取得を可能ならしめなければならない。
3. 前項の場合において、請求権者が円貨による支払を承認したときは、その補償金を補償時の為替換算率により換算した円貨額を支払うことができる。
2. 債務者の資力不足による損害をも補償することは受諾できない。

#### 第 8 条

第 7 条において述べたと同様である。

#### 第 11 条

貴提案の主旨に沿い第 1 項を次のように改める。

株式に関する損害額は、当該株式の発行会社について第 12 条の規定により計算した損害額に開戦時における会社の総資産に対する資本金額の割合を乗じて得た金額に、開戦時における当該会社の払込済資本金の額に対し連合国人が開戦時において有していた当該会社の株式の払込済株金額が有する割合を乗じた金額とする。但し、第 12 条の規定により計算した損害額が開戦時における当該会社の資本金額に満たないときは、その損害額に開戦時における当該会社の払込済資本金の額に対し連合国人が開戦時において有していた当該会社の株式の払込済株金額が有する割合を乗じた金額とする。

#### 第 12 条

1. 異議なし。“such writing off of liabilities”を“such writing off of pre-war liabilities”に改める。
2. たとえば、開戦時に資本金 100 万円の会社があり、その発行株式 2 万株の 2 割 4,000 株を連合国人が有していたとする。この会社が戦争の結果 90 万円の損害を蒙つたため、資本金を 10 分の 1 に減少した後、更に連合国人以外の者の払込により 100 万円の資本金にもどしたとする。  
 この場合、現行の株式回復の政令では、連合国人は、払込をせず 400 株でなく 4,000 株を返還されることとなつてゐる。従つて会社の損害額からは、連合国人以外の者の払込によつて補填された分を除くべきである。
3. 別途説明する。

#### 第 14 条

1. 連合国人が財産の返還を受ける際、価値増加分をも含めて返還されることを欲しないときはその除去を要求できることは返還法に規定する。現行の返還の政令でも連合国人はこの要求ができることとなつてゐる。  
 なお、この趣旨を明らかにするため第 3 号中、  
 「その価値を増加していたときは」とあるのを「請求権者の使用目的にてらしその価値を増加していたときは」と改める。
2. 異議なし。

#### 第 15 条

貴提案の主旨が明らかでないので意見を留保する。

#### 第 24 条、第 26 条及び第 27 条

貴提案の主旨に沿い第 24 条第 1 項を次のように改め、同条第 2 項を削る。

政府は、連合国人の財産に生じた損害額の調査に関し必要があると認めるときは、その必要の範囲内において、その財産について権利又は義務を有していた者又は有している者で請求権者以外の者から報告又は資料を徴することができる。

第 26 条を次のように改める。

前条の規定に違反して報告をせず、資料を提出せず又は虚偽の報告をした者は、10 万円以下の罰金に処する。

第27条は原文のままとする。

法文の欠缺

貴提案の主旨は、第18条第2項の規定により充分満足されていると考える。

# Observations on “U. S. Comments on Japanese Drafts of Allied Powers Property Compensation Law”

(Paragraphs in “U. S. Comments” are referred to as “a,” “b,” “c,” etc.)

## General Comments

- a. Concerning the question how to identify the text, our views have been presented elsewhere.
- c. No objection. However, we would like to retain Article 25, in order that we can fill the omissions which may be found later in this law and also make provisions for procedural matters to be required for the execution of the law.

## Article 2

- a. We believe that the suggested addition (“Other states may be considered to be Allied Powers for purposes of this law by agreement between Japan and the state concerned”) had better not be made for the following reasons:

- (1) It is not necessary because, in any case, international agreements supersede domestic laws.
- (2) It is likely to be misinterpreted by certain states other than Allied Powers which are interested in the Japanese peace settlement for their own reasons.

- b. No objection.

- c. } No objection. Accordingly, paragraph 1, item (3) will be amended
- d. } as follows:
- e. }

In addition to those mentioned in the preceding item, those corporations and other associations in which the individuals or corporations or associations mentioned in the preceding two items or in this item hold the whole stock or capital investment apart

from qualifying shares, or religious juridical persons, non-profit juridical persons and other organizations controlled by the persons mentioned in the first item.

- f. No objection.

## Article 3

- a. In accordance with your suggestion, the first paragraph will be partially amended and a new paragraph will be added, as follows:

If the property owned in Japan by the Allied Powers or their nationals at the time of the commencement of the war has suffered the damage listed in Article 4, paragraph 1, as a result of the war, the Japanese Government shall compensate for such damage, provided that, with regard to the properties of Allied nationals, the property concerned or its owner had been subjected to the war-time special measures.

Besides those mentioned in the preceding paragraph, if the property owned in Japan by an Allied national at the time of the commencement of the war, which he could not take care of, has suffered the damage mentioned in Article 1, paragraph 1, item (1), the Japanese Government shall compensate for such damage.

- b. No objection. In a law covering restitution, it will be so provided that duplicate claims need not be filed.
- c. No objection. The word individual in “The individual persons who ……” will be deleted. (It was a typographical mistake.)

## Article 4

- a. We would appreciate it if what is meant by “preparations for acts of hostility” is explained by examples. Also, please see paragraph 1, item (2).

- b. No objection. Instead of the present item (4), the following will be inserted:

(4) Damage suffered owing to the inability of the Allied national to have the property insured on account of the war.

- c. We cannot accept the suggestion that compensation be made for damages caused by the acts of the Occupation Forces. Even in case it were to be made, it should be provided for by another piece of legislation.



d. No objection. Paragraph 2 will be deleted.

#### Article 5

No objection. The ending of paragraph 2 will read “for the purchase of similar condition and value” instead of “for the purchase of similar property.”

#### Article 7

a. In accordance with your suggestion, Article 9, paragraph 6 will be deleted and the following two paragraphs will be added to Article 17.

2. In cases where the amount of money of the debts or public loans, etc., stipulated in Articles 7 and 8, has been designated in terms of currencies other than the Yen (hereinafter referred to as “foreign currency”) or, although designated in the Yen, should have been paid in foreign currency, the Japanese Government shall recognize its liability to make compensation in foreign currency and make it available to the claimant at the earliest date permitted by the Japanese foreign exchange position and in accordance with the regulations concerning the foreign exchange.

3. If, in the cases mentioned in the preceding paragraph, the claimant has accepted payment in the Yen, the Government may make the payment of compensation in the Yen calculated at the exchange rate at the time of compensation.

b. We cannot accept the suggestion that the Japanese Government should compensate for the damage due to the inability of the debtor to discharge the obligations.

#### Article 8

As in the case of Article 7, paragraph 3 of this Article will be deleted.

#### Article 11

In accordance with your suggestion, paragraph 1 will be amended as follows:

The amount of damage relating to shares shall be a sum of money which is the amount of damage to the issuing company calculated in accordance with the provisions of Article 12, multiplied by the ratio of the amount of its capital to its total assets at the

time of the commencement of the war, and again multiplied by the ratio of the amount of the paid-up shares of its stock which were owned by the Allied nationals at the time of the commencement of the war to the amount of its paid-up capital at the time of the commencement of the war. However, if the amount of damage calculated in accordance with the provisions of Article 12 is less than the damage of the capital of the company at the time of the commencement of the war, the damage relating to shares shall be a sum of money which is the amount of damage so calculated, multiplied by the ratio of the amount of the paid-up shares of its stock which were owned by the Allied nationals at the time of the commencement of the war to the amount of its paid-up capital at the time of the commencement of the war.

#### Article 12

a. No objection. The word “pre-war” will be inserted and the last part of item (1) will be amended to read: “such loss has been made up by writing off liabilities, the amount of such writing off. of pre-war liabilities other than the capital”.

b. By way of illustration, suppose:

that there was a company whose capital was ¥ 1,000,000 at the time of the commencement of the war and 4,000 of whose shares totaling 20,000 were owned by Allied nationals;

that this company suffered damages amounting to ¥ 900,000 on account of the war;

that, accordingly, it reduced its capital to one-tenth of the original amount, and then restored it to ¥ 1,000,000 through the payment by persons other than Allied nationals.

In this case, according to the present Cabinet Order concerning the recovery of shares, those Allied nationals are to be given back not 400 but 4,000 shares without making any payment. Therefore, the sum of such replenishment should be deducted.

c. As for item (3), amendment is being considered.

#### Article 14

a. It will be provided in a law concerning restitution that, in case where an Allied national does not wish to recover his property as improved at

the time of restitution, he can demand the improvements to be removed. This is also the practice under the present setup.

In order to make it clear in the present law, item (3) will be amended as follows:

(3) If the property owned by a claimant at the time of the commencement of the war and restituted had been physically improved in the light of his purposes of use at the time of restitution than at the time of the commencement of the war, a sum of money .....

b. No objection. The item (2) will be amended to read “A sum of money equivalent to the amount of the pre-war liabilities satisfied by way of .....”.

#### Article 15

It is quite clear what your suggestion will be under the new conditions described herein.

#### Article 24

In view of your suggestion, paragraph 1 will be amended as follows and paragraph 2 will be deleted.

If the Government finds it necessary in connection with the investigation of the amount of damage suffered by the property of Allied nationals, it may, within the extent of such necessity, collect reports or data from those persons other than claimants who had or have a right or an obligation in regard to such property. (The latter part concerning entering, etc. is deleted)

#### Article 26 and 27

In line with the above, Article 26 will be amended as follows:

A person who in violation of the provisions of paragraph 1 of the preceding article has failed to make reports or submit data, or has made false reports, shall be punished with a fine of not more than one hundred thousand yen. (Reference to entry or inspection deleted)

Article 27 will remain as it is.

#### Omissions from proposed law

We believe that the purpose of your suggestion is satisfied by the provisions of Article 18, paragraph 2.

#### Corrections

In Article 3, paragraph 3, “the preceding article” will read “paragraph 1”.

In Article 15, the words “if he is an individual” will be deleted.

In Article 16, the words “in Japan” will be deleted.

In Article 17, the following changes will be made:

The compensation payable in accordance with the provisions of the preceding Article shall be paid in Japan in the Yen, and its remittance abroad by the recipient shall be subject to laws and orders relating to the foreign exchange.

#### 附録 25

##### 連合国財産補償法案に関する専門家会議議事要録

第1回	1951年6月29日
第2回	“ 7月3日午前
第3回	“ 7月3日午後
第4回	“ 7月5日

連合国財産補償法案に関する打合せ(第1回)(昭.26.6.29)

##### 出席者

Mr. Arnold Fraleigh (State Dpt.), Mr. D. H. Blake (CPC), Mr. R. Gillies (ESS), Miss M. L. Smith (CPC), Mr. W. Stier (CPC), Mr. J. Bassin (LS), Mr. R. B. Finn (DS)

西村条約局長、藤崎条約課長、内田大蔵省管財局長、佐々木外国財産課長

6月26日当方からDSボンド氏に提出した本法案に対し、先方から別添のCommentsを提示し、これについて論議した。問題になった主要な点は、(1)この法案に平和条約案でリファーする場合の方式、これに関連して、SCAPIN—ポツダム政令の方式を採用することの適否、(2)補償されるべき人、財産、損害の範囲、(3)占領期間中に占領軍により連合国人に加えられた損害のうち、いかなるものがこの法律でカバーされるべきか、(4)株式の損害の算出方法等である。

これらの点及びその他のこまかい問題について、先方の意見で受け容れられるものについては、次回(7月3日午前)までに当方で本法案の修正案を作成して提出することにな