REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

The United States-Japanese Property Commission established pursuant to the Agreement of 12 June 1952 for the settlement of disputes arising under Article 15 (a) of the Treaty of Peace with Japan (United States, Japan) (29 June 1960, 23 July 1960)

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PROPERTY COMMISSIONS ESTABLISHED PURSUANT TO THE AGREEMENT OF 12 JUNE 1952 FOR THE SETTLEMENT OF DISPUTES ARISING UNDER ARTICLE 15 (*a*) OF THE TREATY OF PEACE WITH JAPAN SIGNED AT SAN FRANCISCO ON 8 SEPTEMBER 1951

TREATY[1] OF PEACE WITH JAPAN, SIGNED AT SAN FRANCISCO, ON 8 SEPTEMBER 1951

CHAPTER V

CLAIMS AND PROPERTY

Article 15

(*a*) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of each Allied Power and its nationals which was within Japan at any time between December 7, 1941 and September 2, 1945, unless the owner has freely disposed thereof without duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war, and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Govenment within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favourable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951.

CHAPTER VI

SETTLEMENT OF DISPUTES

Article 22

If in the opinion of any Party to the present Treaty there has arisen a dispute concerning the interpretation or execution of the Treaty, which is not settled by reference to a special claims tribunal or by other agreed means, the dispute shall, at the request of any party thereto, be referred for decision to the International Court of Justice. Japan and those Allied Powers which are not already parties to the Statute of the International Court of Justice [2] will deposit with the Registrar of the Court, at the time of their respective ratifications of the present Treaty, and in conformity with the resolution of the United Nations Security Council, dated October 15, 1946 [3], a general declaration accepting the jurisdiction, without special agreement, of the Court generally in respect to all disputes of the character referred to in this Article.

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[1] *United Nations Treaty Series*, vol. 136, p. 46. Came into force with respect to Japan, United States of America and Netherlands, respectively on 28 November 1951, 28 April and 17 June 1952.

[2] League of Nations, *Treaty Series*, vol. VI, p. 390.

[3] *Official Records of the Security Council*, first year, second series, No. 19, p. 467.

AGREEMENT FOR THE SETTLEMENT OF DISPUTES ARISING UNDER ARTICLE 15 *(a)* OF THE TREATY OF PEACE WITH JAPAN, OPENED FOR SIGNATURE AT WASHINGTON JUNE 12, 1952[1]

The Governments of the Allied Powers signatory to this Agreement and the Japanese Government desiring, in accordance with Article 22 of the Treaty of Peace with Japan signed at San Francisco on September 8, 1951, to establish procedures for the settlement of disputes concerning the interpretation and execution of Article 15 (*a*) of the Treaty have agreed as follows:

Article I

In any case where an application for the return of property, rights, or interests has been filed in accordance with the provisions of Article 15 (*a*) of the Treaty of Peace, the Japanese Government shall within six months from the date of such application, inform the Government of the Allied Power of the action taken with respect to such application. In any case where a claim for compensation has been submitted by the Government of an Allied Power to the Government of Japan in accordance with the provisions of Article 15 (*a*) of the Treaty and the Allied Powers Property Compensation Law (Japanese Law No. 264, 1951), the Japanese Government shall inform the Government of the Allied Power of its action with respect to such claim within eighteen months from the date of submission of the claim. If the Government of an Allied Power is not satisfied with the action taken by the Japanese Government with respect to an application for the return of property, rights, or interests, or with respect to a claim for compensation, the Government of the Allied Power, within six months after it has been advised by the Japanese Government of such action, may refer such claim or application for final determination to a commission appointed as hereinafter provided.

Article II

A commission for the purpose of this Agreement shall be appointed upon request to the Japanese Government made in writing by the Government of an Allied Power and shall be composed of three members; one, appointed by the Government of the Allied Power, one, appointed by the Japanese Government, and the third, appointed by mutual agreement of the two Governments. Each commission shall be known as the (name of the Allied Power concerned) —Japanese Property Commission.

[1] *United Nations Treaty Series*, vol. 138, p. 183. Entered into force between the United States of America and Japan on 19 June 1952, and between the Netherlands and Japan on 17 June 1952.

Article III

The Japanese Government may appoint the same person to serve on two or more commissions; Provided, however, that if, in the opinion of the Government of the Allied Power, the service of the Japanese member on another commission or commissions unduly delays the work of the commission, the Japanese Government shall upon the request of the Government of the Allied Power appoint a new member. The Government of an Allied Power and the Japanese Government may agree to appoint as a third member, a person serving as a third member on other commissions; Provided, however, that if in the opinion of either the Government of the Allied Power or the Japanese Government, the service of the third member on another commission or commissions unduly delays the work of the commission, either party may require that a new third member be appointed by agreement of the Government of the Allied Power and the Japanese Government.

Article IV

If the Japanese Government or the Government of the Allied Power fails to appoint a member within thirty days of the request referred to in Article II or, if the two Governments fail to agree on the appointment of a third member within ninety days of the request referred to in Article II, the Government which has already appointed a member in the first case, and either the Government of the Allied Power or the Japanese Government in the second case may request the President of the International Court of Justice to appoint such member or members. Any vacancy which may occur in the membership of a commission shall be filled in the manner provided in Articles II and III.

Article V

Each commission created under this Agreement shall determine its own procedure, adopting rules conforming to justice and equity.

Article VI

Each Government shall pay the remuneration of the member appointed by it. If the Japanese Government fails to appoint a member, it shall pay the remuneration of the member appointed on its behalf. The remuneration of the third member of each commission and the expenses of each commission shall be fixed by, and borne in equal shares by the Government of the Allied Power and the Japanese Government.

Article VII

The decision of the majority of the members of the commission shall be the decision of the commission, which shall be accepted as final and binding by the Government of the Allied Power and the Japanese Government.

Article VIII

This Agreement shall be open for signature by the government of any state which is a signatory to the Treaty of Peace. This Agreement shall come into force between the Government of an Allied Power and the Japanese Government [1] upon the date of its signature by the Government of the Allied Power and the Japanese Government, or upon the date of the entry into force of the

[1] 19 June 1952.

Treaty of Peace between the Allied Power whose Government is a signatory here to and Japan, whichever is the later.

Article IX

This Agreement shall be deposited in the archives of the Government of the United States of America, which shall furnish each signatory government with a certified copy thereof.

ALLIED POWERS PROPERTY COMPENSATION LAW
(JAPANESE LAW No. 264 OF 1951)

CHAPTER I

General Provisions

Article 1

Purpose

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.

Article 2

Definitions

In this Law, "the Allied Powers" means the Allied Powers as provided for in Article 25 of the Treaty of Peace with Japan (hereinafter referred to as "the Peace Treaty").

2. In this law, "Allied nationals" means the following:

(1) Individual persons who are nationals of Allied Powers;

(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 or this item hold the whole stock or capital investments apart from qualifying shares;

(4) In addition to those mentioned in item (2), religious juridical persons, non-profit juridical persons and other similar organizations controlled by the persons mentioned in the preceding three items or this item.

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 but not limited to the application of the old Enemy Property Custody Law (Law No. 99 of 1941), 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 to such property, patents, utility models, designs, trademarks, debts, shares, and other property rights and interests of a similar nature.

Article 3

Principles of Compensation

If the property owned in Japan by the Allied Powers or their nationals on December 8, 1941 (hereinafter referred to as "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, with regard to the properties of Allied nationals, such nationals either (*a*) were nationals of a country declared by the Japanese Government to be an enemy country in accordance with the provisions of the old Enemy Property Custody Law, or (*b*) were subjected to apprehension, internment or detention or to the seizure, disposal or sale of their property during the war.

2. In cases other than those mentioned in the preceding paragraph, if property owned in Japan at the time of the commencement of the war by Allied individuals who were not physically present in Japan or Allied corporations which were not in operation in Japan during the period of hostilities, has suffered the damage mentioned in Article 4 paragraph 1 item (1) or (5), the Japanese Government shall compensate for such damage.

3. In cases where a claim for restitution has not been filed for property in a state capable of restitution within the term fixed in the Peace Treaty, no compensation shall be made for its 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.

4. Those who may claim the compensation mentioned in paragraph 1 or 2 shall be, unless they are the Allied Powers, those 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.

5. In case 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 or 2. However, in cases where the successors have succeeded to property which has suffered damage, this shall apply only if they have succeeded to the claim for compensation for the relevant damage as well as to such property.

6. The provisions of the preceding five paragraphs shall not apply to those public loans and debentures and the interest right accrued to them to which the provisions of the old Law relating to the Treatment of Foreign Currency Bonds (Law No. 60 of 1941) have been applied.

Article 4

Scope of Damage and Location of Property

The damage suffered as a result of the war mentioned in paragraph 1 of the preceding Article shall be the damage listed in the following items:

(1) Damage caused by acts of hostility on the part of Japan or of any of the states which were at war or in a state of belligerency with Japan;

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

(3) Damage on account of lack of due care on the part of the administrator or possessor of the property concerned;

(4) Damage suffered owing to the inability of an Allied national to have the property insured in Japan on account of the war;

(5) Damage suffered while in use of the Occupation Forces owing to lack of due care on the part of the Occupation Forces or the inability of an Allied national to insure property.

2. 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 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

Article 5

Damage to Tangible Property

The amount of damage to restituted tangible property shall be a sum of money required at the time of compensation (meaning here and hereinafter the time of payment of compensation by the Japanese Government in accordance with the provisions of Article 16 paragraph 1 or 4) 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, in so far as the damages mentioned in paragraph 1 of the preceding Article are concerned; 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 in Japan of property of similar condition and value, in so far as the damages mentioned in paragraph 1 of the preceding Article are concerned.

3. The amount of damage to tangible property other than that falling under the preceding two paragraphs shall be a sum of money required at the time of compensation for the restoration of such property as of the time of the coming into force of the Peace Treaty to its status as of the time of the commencement of the war, in so far as the damages mentioned in paragraph 1 of the preceding Article are concerned.

Article 6

Damage to Use and to Lease of Immovable Property

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 in Japan.

Article 7

Damage to Debts

The amount of damage to pecuniary 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, has been extinguished by the war-time special measures or in cases where the object of these rights has been lost or destroyed as a result of the war shall be a sum of money equivalent to the amount due to the creditor which has been defaulted on account of the extinction of such right or loss or destruction of such object.

Article 8

Damage to Public Loans, Etc.

The amount of damage to those public loans, debentures, bonds issued under special laws by juridical persons, or public loans or debentures issued by foreign states or juridical persons (hereinafter referred to as "the public loans, etc.") which have been subjected to the war-time special measures and have not been restituted and for which the time of their redemption has arrived before the time of compensation shall be the total of the amount of the principal and the amount of the interest 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.

Article 9

Damage to Industrial Property Rights

The amount of damage to a patent which has had the exclusive licence established (meaning here and hereinafter the right of persons who have received the licence of exclusive use in accordance with the provisions of Article 5 of the old Industrial Property Rights War-time Law (Law No. 21 of 1917) shall be a sum of money equivalent to the patent working fee payable in cases where the exclusive licensee had worked the patent during the term of the patent, deducted by a sum of money equivalent to the patent fee payable to the Japanese Government, unless the Allied owner has waived right to patent working fee and damages for the said term in accordance with the provisions of Article 5 of the Order for Post-war Disposition of Industrial Property Rights Owned by Allied Nationals (Cabinet Order No. 309 of 1949) as amended.

2. The amount of damage to a patent which has been cancelled or transferred by the war-time special measures or without free consent of the Allied national concerned 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 to the Japanese Government during such term, unless the Allied owner has waived rights to patent working fee and damages for the said term in accordance with the provisions of Article 5 of the Order for Post-war Disposition of Industrial Property Rights Owned by Allied Nationals as amended.

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 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 to the Japanese Government during such term, unless the Allied owner has waived rights to patent working fee and damages for

the said term in accordance with the provisions of Article 5 of the Order for Post-war Disposition of Industrial Property Rights Owned by Allied Nationals as amended.

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, 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 may be taken into consideration in calculating the patent working fee payable by such persons.

6. The provisions of paragraph 2 to the preceding paragraph inclusive shall apply *mutatis mutandis* to utility models and designs.

Article 10

Damage to Trade Marks

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 good-will as at the time of the commencement of the war.

Article 11

Damage to Shares

The amount of damage relating to shares of stock other than those of which the issuing company is an Allied national mentioned in the provisions of Article 2 paragraph 2 items (2) and (3) shall be a sum of money, which is the amount of damage to the issuing company calculated in accordance with the provision of Article 12, multiplied by the ratio of the amount of the paid up shares of the stock which were owned by the Allied national 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.

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 shall 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.

Article 12

Calculation of Amount of Damage to Companies

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 Article 5 to the preceding Article 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 sums 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) as amended or the Financial Institutions Reconstruction and Reorganization Law (Law No. 39 of 1946) as amended, such loss has been made up by writing off liabilities, the amount of such writing-off of pre-war 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 othert han Allied nationals, the sum of such replenishment;

(3) If the current market value of the property owned by a company at the time of compensation, which was not owned by the company at the commencement of the war, exceeds the acquisition cost of the property, the sum of such excess.

Article 13

Amount of Damage to Shares of Company which Has Been Merged, Etc.

The calculation of the amount of damages to shares in case where the issuing company has been merged or divided after the commencement of the war shall be made in conformity with the provisions of preceding two Articles.

CHAPTER III

Payment of Compensation

Article 14

Amount of Compensation

The amount of compensation payable to a person who may claim compensation from the Japanese Government in accordance with the provision of Article 3 paragraph 4 or 5, (hereinafter referred to as "claimant") shall be a sum of money which is the amount of damage calculated in accordance with the provisions of the preceding Chapter deducted by the sums 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 in the custody of the Bank of Japan;

(2) A sum of money equivalent to the amount of the pre-war 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 of its fruits;

(3) If improvements have been made to property between the time ot the commencement of the war and the time of the restitution of the property, and if the owner does not elect to have the improvements removed, a sum of money equivalent to the value of the improvements at the time of compensation.

Article 15

Method and Term of Claiming Compensation

A claimant shall file a written claim for payment of compensation with the Japanese 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 establish the status of the claimant as a person capable of filing claims according to the provision of Article 3 paragraph 4 or 5 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.

Article 16

Payment of Compensation

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

2. If the Japanese 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 him of 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 by the Japanese Government.

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

Article 17

Payment of Compensation in *Yen*

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 recipients shall be subject to laws and orders relating to the foreign exchange.

2. In case where the amount of money of the debts, loans, etc. or patent working fee stipulated in Articles 7 to 9 inclusive has been designated in terms of currencies other than the *Yen* (hereinafter in this paragraph referred to as "foreign currency") and should have been paid in foreign currency or, although designated in the *Yen*, should have been paid in foreign currency at the fixed exchange rate in accordance with the term of contract 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 laws and regulations concerning the foreign exchange.

3. If, in the case mentioned in the preceding paragraph, the claimant accepts payment in the *Yen*, the Japanese government may make the payment of compensation in the *Yen* calculated at the exchange rate at the time of compensation.

Article 18

Objection to the Amount of Compensation

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

2. On request a claimant shall be entitled to a hearing before this Committee and to be represented by counsel if desired.

3. The provisions of the preceding two paragraphs shall not apply in cases where there is a special agreement between the Japanese Government and the Government of the Allied national concerned.

Article 19

Limitation of Payment in a Fiscal Year

If the total of sums of money payable for compensation exceeds ten billion (10,000,000,000) *Yen* in one fiscal year, the Japanese Government makes the payments involved in the excess in the following fiscal year.

CHAPTER IV

Allied Powers Property Compensation Examination Committee

Article 20

The Japanese Government shall establish in the Ministry of Finance an Allied Powers 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 Powers Property Compensation Examination Committee shall be provided for by Cabinet Order.

CHAPTER V

Miscellaneous Provisions

Article 21

Exception concerning Taxation

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

2. No tax shall be imposed on any Allied national in respect of compensation received in accordance with this law.

Article 22

Furnishing of Papers

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 Japanese Government shall furnish the papers so demanded to the claimant free of charge.

Article 23

Payment of Cost

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 Japanese Government has found the amount of money reasonable, it shall be paid to the claimant.

Article 24

Collection of Reports, Etc.

If the Japanese Government finds it necessary in connexion 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 the claimant who had or have a right or an obligation in regard to such property.

Article 25

Cabinet Order concerning Enforcement

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

Supplementary Provision

This Law shall come into force as from the day of the first coming into force of the Peace Treaty.

THE UNITED STATES-JAPANESE PROPERTY COMMISSION

Rules of Procedure of the United States-Japanese Property Commission

Article 1

SEAT OF THE COMMISSION

The United States-Japanese Property Commission constituted between the United States of America and Japan (hereinafter called the Commission) under "The Agreement for the Settlement of Disputes Arising under Article 15 (*a*) of the Treaty of Peace with Japan" shall have its seat at Tokyo.

Article 2

JURISDICTION

A. The Commission shall have jurisdiction over all disputes between the United States of America and Japan which may have arisen in the interpretation and execution of Article 15 (*a*) of the Treaty of Peace with Japan, and have been referred to the Commission pursuant to Article 1 of "The Agreement for the Settlement of Disputes arising under Article 15(*a*) of the Treaty of Peace with Japan", it being understood that the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951 and subsequently enacted as the Allied Powers Property Compensation Law (Law 264 of 1951) is part of the contents of Article 15 (*a*).

B. The Commission shall decide whether it has jurisdiction over a dispute which has been referred to it for determination.

Article 3

SITTINGS

A. No sitting of the Commission shall be held unless all the members are present, except as provided in paragraph B. The rulings and decisions of the Commission shall be rendered upon the concurrence of a majority of the members.

B. The members appointed by the Government of the United States of America and the Government of Japan may, in the absence from Japan of the third member, and if they are in agreement, make a ruling on behalf of the Commission on any question of a procedural nature.

C. The sittings of the Commission will be held at such places in Japan and at such times as the members may from time to time agree upon.

Article 4

DEFINITIONS

The word "Ruling" as used in the present Rules of Procedure shall refer to any ruling, order or other measure taken by the Commission of an interim character which does not relate to the merits of the dispute. The word "Deci-

sion" shall refer to the written record of any determination of the Commission affecting the merits of the dispute. The word "Pleading" shall be deemed to include a Petition, an Answer, a Reply and a Counter-Reply.

Article 5

LANGUAGES

A. The official languages of the Commission shall be English and Japanese.

B. Request for Rulings, Pleadings, and other similar documents, may be submitted in either English or Japanese. Supporting statements, affidavits, and other documentary evidence may be submitted in any language. If however, such evidence is in a language other than the language of the Party presenting the evidence, a translation shall be attached.

C. Oral proceedings before the Commission may be held in either English or Japanese.

D. The Rulings and Decisions of the Commission and its Register and Minutes shall be in English and Japanese.

Article 6

PARTIES AND AGENTS

A. The Parties before the Commission shall be the Government of the United States of America and the Government of Japan.

B. Each Party shall be represented before the Commission by an Agent. The Agent may be assisted by one or more Deputy Agents. The Party concerned shall notify to the Commission and to the other Party the names of such Agents and Deputy Agents. The term "Agent" as used in the present Rules of Procedure shall be deemed to include a duly appointed Deputy Agent.

C. Persons on whose behalf the proceedings are initiated or persons interested in a dispute, shall not be appointed Agents. Such restriction shall not, however, apply to attorneys who have not acted in a case before its reference to the Commission as a dispute between the Parties.

Article 7

SECRETARIAT

A. The Commission shall establish a Secretariat which shall be under the direction of a Secretary General to be selected by the Commission. The Secretary General may, with the approval of the Commission, and within the limits of available funds, appoint such assistants and clerks as may be required by him.

B. The Secretariat shall:

1. Keep a Register in which shall be entered the information enumerated below:

(*a*) The name of the case before the Commission;

(*b*) The name and address of the person, whether physical or juridical, on whose behalf the proceedings are initiated;

(*c*) The date of the presentation of each Request for a Ruling, Pleading and other similar document;

(*d*) The substance of the Rulings and Decisions made by the Commission;

(*e*) Such other matters as the Commission may prescribe;

2. Receive at the Secretariat Requests for Rulings, Pleadings and the written evidence pertaining to a dispute, as well as all other documents relating thereto;

3. Stamp every copy with the date of its receipt;

4. File the original in the archives of the Secretariat;

5. Translate the material received into the language of the opposite Party;

6. Transmit a copy and translation to each member of the Commission except as may be otherwise arranged;

7. Transmit a copy and translation to the Agent of each Party;

8. Take minutes of the progress and results of the proceedings of the Commission;

9. Provide such other interpreting and translating services as may be required by the Commission;

10. Attend to such other matters as may be prescribed by the Commission.

Article 8

SEAL OF THE COMMISSION

The Commission shall have its seal which shall be in the custody of the Secretary General. All notices, orders and other documents sealed with the Seal of the Commission shall be presumed to be official.

Article 9

INSPECTION AND COPYING OF DOCUMENTS

The Agent of either Party may in spect and copy at the Secretariatthe original of a Request for a Ruling, Pleading, and other similar document, and of the evidence relating to a dispute submitted to the Commission.

Article 10

PETITION

A. The proceedings before the Commission shall be initiated by the filing of a Petition by the Agent of the Government of the United States of America.

B. The Petition shall contain in separate paragraphs:

1. The name, address and nationality of the physical or juridical person on whose behalf the proceedings are initiated, and in the case of a juridical person, the qualification of such a person to receive the relief requested from the Commission:

2. The name, address and nationality of the legal representative, if any, of the person on whose behalf the proceedings are initiated, together with documentary evidence of the authority of such legal representative to act on behalf of his principal:

3. A clear and concise statement of the facts in the dispute with each material allegation set forth insofar as possible in a separate paragraph:

4. A clear and concise statement of the legal grounds upon which the responsibility of the Government of Japan is alleged:

5. A complete statement setting forth the reason why the Government of the United States of America has not been satisfied with the action taken by

the Government of Japan under Article 15 (*a*) of the Treaty of Peace with Japan with respect to the dispute referred to the Commission and the relief required, including, if any, the amount of compensation claimed.

Article 11

ANSWER

A. Within three months after the date of the filing of the Petition, the Answer to the Petition shall be filed by the Agent of the Government of Japan which Answer shall contain:

1. A clear and concise statement of the facts presented in the Petition of the Government of the United States of America which are admitted as true by the Government of Japan;

2. A clear and concise statement of any other element of fact upon which the Government of Japan is relying for its defence of the case;

3. A clear and concise statement of the legal grounds upon which the responsibility of the Government of Japan is denied.

B. The Agent of the Government of Japan may, at his option, refrain from setting forth the amount of damage the Government of Japan considers would be payable in the event its responsibility were established, and may confine himself to a general statement questioning the appropriateness of the amount claimed.

Article 12

REPLY AND COUNTER-REPLY

A. The Agent of the Government of the United States of America may file a Reply with the Secretariat within three months after the date of the filing of the Answer.

B. The Agent of the Government of Japan may file a Counter-Reply with the Secretariat within three months after the date of the filing of the Reply.

Article 13

EVIDENCE

A. Evidence shall be submitted simultaneously with the filing of the Pleadings. The Commission may nevertheless, upon good cause shown, authorize the submission of additional evidence at any time before the proceedings are concluded. Such additional evidence may be either written or oral. Oral evidence shall, however, be submitted only in those instances where the presentation of oral testimony would be advantageous to the consideration of the dispute by the Commission. If the Commission authorizes the submission of evidence by one Party additional to that submitted with the Pleadings, it shall make adequate provision to permit the submission of rebuttal evidence by the other Party.

B. The Commission shall be free to determine the probative value of the evidence submitted.

C. Except as otherwise specifically provided or authorized by the Commission all written evidence shall be presented in original and five copies.

D. The Commission may, on its own initiative, or at the request of the Agent of either Party and for good cause shown, examine a witness present

in Japan. The witness shall, before testifying, take an oath in accordance with the practice of his country. The witness may be cross-examined by the Agent of the Party against which the witness renders testimony.

E. The Commission may appoint an expert and request him to submit an opinion in writing on any factual matter pertinent to the dispute. The Commission may, on its own initiative, and shall, at the request of the Agent of either Party, summon the expert to appear before the Commission. The expert may be challenged or cross-examined by the Agent of the Party against which the expert renders testimony.

Article 14

ARGUMENT AND EXPLANATION

The Commission may, on its own initiative or at the request of either Agent, call on either or both Agents for an oral or written argument, or an oral or written explanation on particular factual or legal matters pertinent to the dispute.

Article 15

TIME PERIODS

A. The Commission may, at the request of the interested Agent, extend in its discretion the period for the filing of any Pleading or other similar document when it is established to its satisfaction that the time provided by the present Rules of Procedure, or by a Ruling of the Commission, is insufficient.

B. Whenever, under the present Rules of Procedure, or by a Ruling of the Commission, a certain period is fixed for the accomplishment of a procedural act, the date from which the period begins to run shall not be counted, but the last day of the period shall be counted. If the last day falls on a Sunday, or on a legal holiday of either Party, the following day shall be the last day.

Article 16

SUBMISSION AND SIGNING OF PLEADINGS AND OTHER DOCUMENTS

All Requests for Rulings, Pleadings, and other similar documents, shall be submitted in original and five copies, each of which shall be signed by the Agent on behalf of this Government.

Article 17

ASSISTANCE TO THE COMMISSION

Each Government shall afford all possible assistance to the Commission at its request, and shall, in particular take all possible measures to provide for the attendance of witnesses present in Japan and for the production of documents.

Article 18

WITHDRAWAL OF PLEADING

At any stage of the proceedings, the Government of the United States of America may withdraw the Petition, or the Government of Japan may withdraw the Answer. In such event the Commission shall make a determination in favour of the opposite Party.

Article 19

COMPROMISE

A. The Commission may try to effect a compromise at any stage of the proceedings.

B. When a compromise is reached, the Commission shall render a Decision setting forth the terms of the compromise and declaring the dispute settled.

Article 20

DECISION

A. The Decision shall contain:

1. A declaration of the Commission's jurisdiction;

2. The name of the person on whose behalf the proceedings have been initiated;

3. The object of the dispute;

4. A statement of the material facts and legal arguments;

5. The determination and the grounds therefor, affirming or denying, in whole, or in part, the relief requested;

6. The signatures of the members of the Commission concurring in the Decision and the date such Decision is adopted.

B. The Decision shall be deposited with the Secretariat, which shall furnish certified true copies thereof immediately to the Agent of each Party.

C. The Decision shall be definitive and binding on the two Parties.

D. Where the determination relates solely to one or more points of law or fact and is not finally determinative of the dispute, the Decision shall contain only as many of the points listed under paragraph "A" as are relevant to the Decision.

E. Where a determination is made of all issues of law of fact other than those relating to the amount of compensation, and the responsibility of the Government of Japan has been established, the Parties shall have one month from the date of such determination to reach agreement as to a mutually agreeable sum. In the event the Parties are unable to agree upon such a sum, the Agent of the Government of Japan shall, within an additional period of two months, submit to the Commission a Statement setting forth the amount of compensation the Government of Japan considers to be due in payment of the claim. Such Statement shall be supported by appropriate written evidence.

F. The Commission shall render a determination with respect to the amount of compensation as soon as possible following the filing of such a Statement. If not satisfied with the evidence submitted with the Petition or the Statement, the Commission may call for additional evidence, oral or written, in accordance with the present Rules of Procedure.

Article 21

MINORITY OPINION

If a determination is not reached with unanimity, the member in the minority may state his views in a Minority Opinion.

Article 22

COSTS

Each Party shall bear its own cost of the proceedings.

Article 23

AMENDMENTS AND DEROGATIONS

A. The Commission shall have the right at any time to amend or complete the present Rules of Procedure either by a unanimous or by a majority decision.

B. The Commission may, in a specific case where both Parties agree, depart from the present Rules of Procedure.

DONE in the English and Japanese languages, both equally authentic, and adopted on the 31st day of March 1959.

Third Member

United States Member *Japanese Member*

Decisions [1] of the United States-Japanese Property Commission

STANDARD SEMPAKU KABUSHIKI KAISHA AND STANDARD VACUUM OIL COMPANY CASE—DECISION No. 2 OF 29 JUNE 1960

Claim for compensation for war damages—Settlement *pendente lite*—Effect on case before Commission.

Demande en indemnisation pour dommages de guerre — Transaction entre les parties — Effet en ce qui concerne le différend porté devant la Commission.

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising under Article 15 (*a*) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and Japan.

Having considered the "Request for Decision" in the above-mentioned cases filed with the Commission by the Agent of the Government of the United States of America and by the Agent of the Government of Japan, on June 14, 1960, reading as follows:

> The Agents of the Government of the United States and of the Government of Japan wish to inform the Commission that a compromise has been reached in settlement of the claims of Standard Sempaku Kabushiki Kaisha, a wholly owned subsidiary of Standard Vacuum Oil Company, (U.J.—No. 1) and Standard Vaccuum Oil Company (U.J.—No. 2). In accordance with the provisions of Article 19 of the rules of procedure of the Commission, the Agents of both Govern-

[1] Texts provided by the Permanent Representative of the United States to the United Nations.

ments wish to report the terms of the compromise to the Commission for appropriate action.

The claim of Standard Sempaku, K.K., a wholly owned subsidiary of Standard Vacuum Oil Company, is in the amount of 29,312,741 yen. It is a claim for loss or damage to eleven small vessels which were owned by Standard Sempaku K.K. at the outbreak of the war and which during the war were seized by the Japanese Government. The Japanese Government has denied any obligation to make compensation on the ground that the claimant should first have applied for review of prize court proceedings affecting the vessels and also on the ground that no loss or damage has been sustained.

The claim of Standard Vacuum Oil Company (SVOC) is in the amount of $778,557.44. It is based on the following allegations: That shortly before the outbreak of the war the Japanese Government issued permits authorizing Standard Vacuum Oil Company to purchase foreign exchange in the amount of $778,557.44 in payment for oil which was imported into Japan by SVOC in reliance upon the permits; that SVOC entered into forward exchange contracts with the Yokohama Specie Bank to purchase $778,557.44 at an exchange rate of 23 7/16 yen for one dollar; that the Japanese Government took no action upon an application by SVOC prior to December 7, 1941 for permission to withdraw yen funds from an account held in Japan to complete the forward exchange contracts; that the custodian which the Japanese Government placed in charge of the property of SVOC after the outbreak of the war cancelled the forward exchange contracts; and that consequently the debt for the price of the imported oil remained unsettled. The Japanese Government has denied the allegation that the custodian cancelled the forward exchange contracts after the outbreak of the warand has denied that it is under any obligation to compensate for the inability of Standard Vacuum to remit foreign exchange prior to the outbreak of the war.

After the completion of the filing of pleadings in the two cases mentioned above, the Agent of the Government of the United States made an offer to settle the claim of SVOC on the following terms: (1) the Japanese Government would permit SVOC to convert into dollars at the current exchange rate an amount of yen drawn from its resident account equivalent to $778,557.44 and would permit SVOC to remit such amount of dollars to its head office in the United States in settlement of the debt for the imported oil; and (2) the Japanese Government would recognize that SVOC is entitled to regard the exchange loss it has suffered in making the remittance at the current exchange rate rather that at the pre-war exchange rate specified in its forward exchange contracts as a business deduction for purposes of the Japanese Corporation Tax. The Agent of the Government of the United States later informed the Agent of the Government of Japan that the United States Government would be willing to accept the two actions of the Japanese Government described above in settlement of both the claim of Standard Sempaku K.K. and the claim of Standard Vacuum Oil Company.

The Government of Japan has now fulfilled its part of the compromise agreement. On June 9, 1960, the Foreign Exchange Bureau of the Ministry of Finance approved an application by Standard Vacuum to convert into dollars at the current exchange rate an amount of yen drawn from its resident account equivalent to $778,557.44 an to remit such amount of dollars to its head office in the United States in so far as the remittance is made in settlement of the above-mentioned unsettled debt. On May 24, 1960, the Tokyo National Taxation Agency notified Standard Vacuum Oil Company that it is entitled to regard the exchange loss it has suffered in making the above remittance at the current rate rather that at the pre-war exchange rate as a business deduction for purposes of the Japanese Corporation Tax.

As a consequence of the above actions, the Agents of the Government of the United States and of the Government of Japan request the Commission to render a decision setting forth the terms of the compromise and declaring the disputes in the two cases settled.

(Signed) Tatsuo SEKINE
Agent of the Government of Japan

(Signed) Arnold FRALEIGH
Agent of the Government of the United States

Having considered that a valid compromise has been reached in such cases, and that it is the duty of the Commission, under Article 19 of the Rules of Procedure of the Commission, to render a decision applicable to both cases setting forth the terms of the compromise and declaring the dispute settled,

Does hereby decide as follows:

The disputes in the cases of *The United States of America* ex rel. *Standard Sempaku Kabushiki Kaisha, a wholly owned subsidiary of Standard Vacuum Oil Company,* vs. *Japan*, and *The United States of America* ex rel. *Standard Vacuum Oil Company* vs. *Japan*, shall be considered settled in accordance with the terms of the Request for Decision quoted above.

This Decision is definitive and binding, and its execution is incumbent on the Government of the United States of America and the Government of Japan.

Tokyo, June 29, 1960

Torsten SALÉN
Third Member

Lionel M. SUMMERS
United States Member

Kumao NISHIMURA
Japanese Member

CONTINENTAL INSURANCE COMPANY CASE—DECISION No. 3 OF 20 JULY 1960

Payment—Loan—International contract—Bonds—Coupons—Payment in two or more currencies at the option of bondholders—Reference to decisions of international and domestic courts—Jurisdiction of Commission—Compliance with Peace Treaty and Compensation Law—Exclusion of decision *ex aequo et bono.*

Paiement — Prêt — Contrat international — Obligations — Coupons — Paiement en deux ou plusieurs monnaies — Option de change — Invocation de décisions rendues par des tribunaux internationaux et nationaux — Compétence de la Commission — Application du Traité de Paix et de la loi relative à la compensation — Exclusion d'une décision *ex aequo et bono.*

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising Under Article 15 (*a*) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and of Japan,

Having considered the Petition and Reply filed with the Secretariat by the Agent of the United States, Mr. Arnold Fraleigh, on March 10, 1959, and October 5, 1959, respectively, and the Answer and Counter Reply filed with the Secretariat by the Agent of the Government of Japan, Mr. Tatsuo Sekine, on July 27, 1959, and March 8, 1960, respectively, in the case of *The United States of America* ex rel. *the Continental Insurance Company* vs. *Japan*, and

Having determined that the Commission has jurisdiction over the dispute, has reached the following conclusions:

THE FACTS:

The Continental Insurance Company (hereinafter referred to as the "claimant") is an Allied national within the meaning of the Treaty of Peace and the Draft Allied Powers Property Compensation Law (hereinafter referred to as the "Compensation Law"), by virtue of being a corporation organized and existing under the laws of the State of New York, one of the States of the United States of America.

In the year 1906 the Imperial Government of Japan authorized, by virtue of Law 6 and Decree 19 of the Ministry of Finance, the issuance of the Imperial Japanese Government Four Percent Loan of 1910 in the amount of 450,000,000 French francs. Each one of the bonds of that issue was signed by S. Kurino, the Japanese Ambassador in Paris, and contained *inter alia* the following provisions:

. . .

3. The payment of semi-annual coupons and the reimbursement of the capital of the present certificate which shall be effected in Paris, at Messrs. Rothschild Bros., in France for the amount indicated respectively on the certificate and the coupons; in London at the office of the Yokohama Specie Bank, Ltd. at the rate of exchange of the day on Paris; in Brussels at the exchange of the day on Paris at the office of the firm which Messrs. Rothschild will designate; in Japan at the same dates as in Paris on the basis of 100 yen gold for 258 francs payable.

4. Except in cases of anticipated reimbursement provided for below the capital of the present certificate will be reimbursed the 15 May 1970.

5. The interest shall be paid against the return of the coupons falling due on the capital and return of the present certificate accompanied by all its coupons not falling due. The amounts of the missing coupons not falling due shall be deducted from the capital to be reimbursed to bearer.

. . .

12. The certificates and coupons of the present loan belonging to persons not residing in Japan are exempt forever of any Japanese tax present or future.

On three occasions between 1923 and 1934 the claimant purchased bonds of the above-mentioned issue. Specifically, the claimant purchased bonds in

the amount of 180,000 francs on July 2, 1923, through the branch office of the National City Bank in Tokyo; bonds in the amount of 354,000 francs on May 2, 1934 through the Guaranty Trust Company of Paris; and bonds in the amount of 173,500 francs on April 3, 1934 through the National City Bank in Paris.

Prior to December 7, 1941, all of the foregoing bonds purchased by the claimant were on deposit with the Tokyo Kyotakukyoku (Tokyo Deposit Bureau). The deposits had been made to comply with the regulations of the Government of Japan which required insurance companies doing business in Japan to make deposits of securities to guarantee their financial capacity and as a reserve against unearned premiums.

On or about February 10, 1942, the property of the claimant located in Japan, including the above-mentioned bonds and the coupons appertaining thereto, was sequestered and placed under the administration of a custodian of enemy property appointed by the Government of Japan.

On March 23, 1951, bonds and coupons of the above-mentioned loan similar in value to those sequestered from the claimant were restored to the claimant with the exception of the coupons covering the period from May 15, 1942 through November 15, 1950. The latter coupons were not restored, and form the subject matter of this claim.

On July 27, 1956, the Government of Japan and the Association Nationale des Porteurs Français de Valeurs Mobilières, representing a group of French bondholders holding bonds of the same issue as those owned by the claimant, reached an agreement for the payment and redemption of the bonds and coupons held by the members of the Association at the rate of twelve times the face value in francs of the bonds and coupons. (For convenience, that agreement will hereinafter be referred to as the "Bondholders Agreement".) The Bondholders Agreement was made as a result of recommendations rendered by Mr. Nils Von Steyern to whom the question of providing equitable relief to the bondholders had been submitted for consideration by the Government of Japan and the Bondholders Association. Article X of the Bondholders Agreement stipulated that:

> Both the payments and the repurchase of bonds by the Government, described in this agreement, are applicable only to bonds and coupons meeting the following three conditions:
>
> (1) They must not be owned by Japanese nationals on the date on which this agreement becomes effective.
>
> (2) They must not be circulating in Japan on the aforesaid date.
>
> (3) They must be submitted by the bondholders to the agents, for the purpose of receiving the payments described in this agreement or for the purpose of repurchase, the bondholders thus confirming their acceptance of the Government's offers.

Originally the Government of the United States of America claimed compensation on behalf of the claimant in the amount of 99,634,381.63 yen based on the supposition that the bond instruments contained a gold clause. Later, however, that position was abandoned. Instead, claim was made in the amount of 3,056,400 French francs which represented the face amount of the francs payable under the coupons multiplied by twelve, the multiplier used in the Bondholders Agreement. The Government of the United States of America predicates the right to demand payment on the basis of twelve times the face amount of the coupons expressed in francs on the argument that the Government of Japan cannot under international law differentiate between various

types of bondholders; and that having agreed to pay certain bondholders twelve times the amount of the face value of the coupons expressed in francs it must extend the same treatment to all foreign bondholders. The treatment that it affords its own nationals is, of course, a matter of municipal law.

THE ISSUES:

In essence, therefore, the Commission is faced with three possible solutions. In effect, it may order the Japanese Government to pay to the claimant:

(1) the face amount of missing coupons payable in yen; or

(2) the face amount of the missing coupons payable in francs; or

(3) the face amount of the missing coupons payable in francs multiplied by twelve.

In any event, however, a sum of 10,968.98 yen withdrawn by the claimant from the Special Property Account must be deducted from the amount payable.

DISCUSSION:

The Commission turns first to the discussion of the first two alternatives. The bonds in question are of a type that has been widely used in international finance as a means of guaranteeing the investor against currency depreciation. The provisions of such a bond guaranteeing payment in two or more currencies at the option of the bondholder have been held valid by numerous international and domestic courts. [See for example *Charles R. Crane (United States)* vs. *Austria and City of Vienna*, decided by the Tripartite Claims Commission (United States, Austria and Hungary) constituted under the Agreement of November 26, 1924, and reported in *Reports of International Arbitral Awards (Recueil des Sentences Arbitrales)* vol. VI, United Nations (Nations Unies), page 244; *Compagnie Electrique de la Loire et du Centre* c. *Rondeleux et autres*, Cour de cassation (France), *61 Journal du droit international* (1934), page 939- at 940-941; *McAdoo* vs. *Southern Pacific Co.* (1935), District Court, N.D. California, S.D. (United States), 10 Federal Supplement 953 at 954.]

In at least one case it has been held that payment may be made in a local currency provided that payment is equivalent in value, at the then rate of exchange, to the value that would have been received by the bondholder if he had obtained payment in the foreign currency stipulated in the bond (See Loan of the *Crédit Foncier franco-canadien*, Judgement of June 3, 1930 of the Cour de cassation, *Journal du droit international*, 1931 at page 102).

In the present case, the Government of Japan alleges that since the coupons are being presented for payment in Japan, this payment, under the terms of the contract itself, should be made in yen. It appears to be clear, however, from the pleadings and from the statements made at the oral hearings, that the claimant was prohibited from exporting the coupons from Japan so that in effect the Government of Japan, through its own unilateral action, prevented the bondholder from obtaining the benefit of the option it was entitled to exercise under the terms of the bond instrument.

It seems probable that the Government of Japan, in the exercise of its sovereign power to control foreign exchange, could insist that a bondholder holding the bonds in Japan receive payment in yen. In such a case, however, the bondholder would appear to be entitled to receive yen in an amount equivalent in value to the francs the bondholder would have received had it not been prevented from exercising the option of presenting the bonds for payment in French francs in Paris. The Commission does not, however, have to decide this par-

ticular question as the liability of the Government of Japan is determined in this case by the terms of the Treaty of Peace and the Compensation Law rather than by the general provisions of international law.

The pertinent provisions of the Treaty and of the Compensation Law read respectively as follows:

TREATY OF PEACE WITH JAPAN

Article 15

(*a*) In cases where such property (the property of each Allied Power and its nationals) was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, 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.

. . .

DRAFT ALLIED POWERS PROPERTY COMPENSATION LAW

Article 8

The amount of damage to those public loans, debentures, bonds issued under special laws by juridical persons, or public loans or debentures issued by foreign states or juridical persons (hereinafter referred to as "the public loans, etc.") which have been subjected to the wartime special measures and have not been restituted and for which the time of their redemption has arrived before the time of compensation shall be the total of the amount of the principal and the amount of the interest 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.

. . .

Article 17

. . .

2. In cases where the amount of money of the debts, loans, etc. or patent working fee stipulated in Articles 7, 8 and 9, has been designated in terms of currencies other than the Yen and should have been paid in foreign currency or, although designated in the Yen, should have been paid in foreign currency at the fixed exchange rate in accordance with the term of contract, 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 laws and regulations concerning the foreign exchange.

As may be seen, Articles 8 and 17 of the Compensation Law, which by the terms of Article 15 (*a*) of the Treaty of Peace, are for all intents and purposes made a part of the Treaty, provide that where an amount of money payable under public loans, bonds and debentures has been designated as payable in a currency other than yen, payment shall be made in such currency. In this case, payment is specified both in francs and yen, but the option to determine which currency shall be received lies wholly with the bondholder so that if the bondholder demands payment in francs the situation is the same as if payment were stipulated in francs alone. The Compensation Law is clear and specific and, therefore, the Government of Japan is obligated to make the francs avail-

able to the claimant at the earliest date permitted by the Japanese foreign exchange position; that is, to pay the claimant 254,700 francs, less the value in francs at the date of payment of 10,968.98 yen.

The question whether the claimant is entitled to twelve times the amount of francs stipulated on the face of the coupons is more difficult to resolve. It will be noted that Article 8 of the Compensation Law quoted above refers specifically to the *amount* of principal and the *amount* of interest as the measure of compensation. That law is the law controlling upon the Commission and it is bound by its terms in rendering a decision. Hence, the only manner by which it could hold that the claimant is entitled to twelve times the amount of francs stipulated in the coupons would be to find that the face amount of the coupons was automatically changed from the value set forth therein to twelve times that value by virtue of the Bondholders Agreement. The Commission is in grave doubt whether it could make such a finding in view of the specific provisions of the law even if under international law it were convincingly established that the benefits of an agreement such as the Bondholders Agreement applied equally and automatically to all bondholders not withstanding the provisions of Article X of that Agreement.

In any event, in the present instance, it has not been convincingly established that the claimant may under applicable principles of international law invoke the Bondholders Agreement and its benefits, the Agent of the United States of America not having been able to produce any precedent that would shed light on the problem. In view of the foregoing, the Commission does not believe that it is justified in interpreting the word "amount" as used in the Compensation Law, as meaning anything other than the face amount stipulated in the bonds and coupons.

The Government of the United States also invokes the benefit of the Bondholders Agreement on grounds of equity.

Article 22 of the Treaty of Peace provides, *inter alia,* that a special claims tribunal may be established to settle disputes concerning the interpretation or execution of the Treaty.

The "Agreement for the Settlement of Disputes Arising Under Article 15 (*a*) of the Treaty of Peace with Japan" was entered into in accordance with that Article. Pursuant to the request made to the Government of Japan, in conformity with Article II of that Agreement, the present Commission was established to pass upon the disputes referred to it by the Government of the United States of America under Article I.

Neither the Treaty of Peace nor the Agreement for Settlement of Disputes referred to above contains any authorization which would permit the Commission to act as an *amiable compositeur.* Instead, Article 15 (*a*) of the Treaty of Peace provides that compensation will be made in terms not less favourable than the terms provided in the Compensation Law. In the Compensation Law, special rules have been given for the calculation of the amount of damage to specific properties, including damage to public loans, etc. (See Article 8 quoted *supra.*)

Failing a specific provision authorizing the Commission to decide a case *ex aequo et bono,* the Commission cannot base its decisions on purely equitable grounds. It is bound to apply the rules laid down in the Treaty of Peace and the Compensation Law.

DETERMINATION OF THE COMMISSION:

In view of the foregoing the United States-Japanese Property Commission determines that the Continental Insurance Company is entitled to an award in the amount of 254,700 francs, the face amount of the missing coupons,

minus the value in francs of 10,968.98 yen, the amount of the sum withdrawn by the claimant from the Special Property Account. Needless to say the francs to which reference is made are the ones that were in circulation prior to January 1, 1960, when the new so-called "heavy franc", worth one hundred of the old francs, went into circulation.

This decision shall be definitive and binding and its execution incumbent upon the Government of Japan.

SIGNED in the City of Tokyo on this 20th day of July, 1960.

Torsten SALÉN
Third Member

Lionel M. SUMMERS
United States Member

Kamao NISHIMURA
Japanese Member

TIDEWATER OIL COMPANY CASE AND OTHERS— DECISION No. 4 OF 20 JULY 1960

Compensation for losses and damages sustained as the result of the war by American shareholders in Japanese Companies—State responsibility—Excessive depreciation and cancellation of contracts.

Indemnisation pour pertes et dommages subis du fait de la guerre par des actionnaires américains de Compagnies japonaises — Responsabilité de l'Etat — Dépréciation excessive et résiliation des contrats.

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising under Article 15 (*a*) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin; Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and Japan.

Having considered the pleadings filed in the above entitled cases by the Agent of the Government of Japan and the Agent of the Government of the United States and having heard the oral arguments presented by such Agents, and;

Having deemed it desirable to consider all of the cases together since the same issues of law are presented in most cases and those issues were considered together in the General Reply and General Counter Reply and at the oral hearings;

The Commission has reached the following conclusions:

The Commission is satisfied that it properly has jurisdiction over all of the above entitled claims. They are based on losses and damages sustained as the result of the war by Japanese companies in which the claimants, both corporations and individuals, held shares of stock.

The nationality and qualifications of the claimants are not seriously contested in a single case. The Commission has also satisfied itself as to the nationality and qualifications of the claimants so there is little to be served by dwelling on the subject further.

The responsibility of the Government of Japan is predicated upon Article 15 (*a*) of the Treaty of Peace and more particularly upon the Draft Allied Powers Compensation Law (hereinafter referred to as the "Compensation Law") which is incorporated by reference into Article 15 (*a*).

The cases vary somewhat and some present issues that are not found in others. Generally speaking, the claims are brought under four headings, namely bomb damage to inventory, bomb damage to fixed assets, including construction in process, damage owing to excessive war time deprecation and damage owing to the cancellation of war time contracts on the termination of hostilities.

The amount of the damages allowed is subject in each case to the deductions specified in Article 12 item 3 of the Compensation Law.

There has been disagreement between the two Governments as to the liability of the Government of Japan for inventory losses. Inventory was constantly changing and little, if any, of the original inventory on hand in 1941 was still on hand at the time of the bombings that led to the loss. Hence the Government of Japan asserts that the property was not in Japan at the commencement of the war which is specified in the Compensation Law as condition for claiming compensation with respect to such property. On the other hand, the Government of the United States maintains that inventory, which is a commercial concept, must be looked upon as a continuing, although shifting, entity.

There is agreement on the whole as to responsibility for losses to fixed assets although the Agent of the Government of Japan has objected to the inclusion of construction in process in the calculation of fixed assets, and the application of the depreciation rate used by the Agent of the Government of the United States of America. There are also a few other minor issues related to the basic problem of responsibility for war damage to fixed assets.

There has been disagreement as to the liability of the Government of Japan for excessive war time depreciation and for cancellation of war time contracts. The latter two issues are complicated by the fact that in the largest case before the Commission from a monetary standpoint (Case No. 6) claims for excessive depreciation and cancellation of contracts were not filed within the time limit for the filing of claims.

There has also been disagreement as to the interpretation of Article 12 item 3, such disagreement revolving around a variety of issues. Among them are whether replacement properties constitute new acquisitions, whether property acquired since the time of the coming into effect of the Treaty of Peace should be taken into account, what are the proper methods of calculating acquisition costs and current market values and whether inventory as well as fixed assets should be used in calculating deductions. Moreover the question of the property of making a global comparison of existing properties and total acquisitions as a means of determining the deductions, when it becomes manifest that an

individual property survey is impossible for practical reasons, has been discussed at length.

The Commission has given careful study to the various issues as expounded in the volumious pleadings filed by both parties. It also profited from the arguments advanced during eight days of oral hearings at which time certain additional material was made a matter of record.

As a result of its deliberations the Commission concluded that the commercial concept of inventory as a separate, albeit continually changing entity, should be recognized and that the Government of Japan was responsible for damage to inventory not exceeding in value the inventory on hand at the commencement of the war even though the items constituting the inventory at the time of its destruction were not the precise items as those that were in existence at the beginning of the war. As has been stated there is generally agreement as to the liability of the Government of Japan for damages to fixed assets. On the minor issues relating to fixed assets, such as the inclusion of construction in process, the Commission concurs with the position of the Agent of the United States of America.

On the other hand the Commission believes that it has to disallow claims for excessive depreciation and cancellation of contracts for a variety of reasons. In at least one case (Case No. 6) those items of claim had not been submitted to the Government of Japan within the requisite period for the filing of claims. Moreover there is insufficient evidence to establish that all of the damages under these two items could be considered as having occurred as the result of the war. Moreover some of the excessive depreciation may have been compensated for at the time it occurred by increased sales with concomitant profits.

After having reached the foregoing conclusions and having considered the deductions provided for by Article 12 item 3 the Commission entered into discussions with the parties, including the representatives of the claimants, to determine the proper award in each case. As a result of such discussions and the Commission's own estimate of the various losses, it has arrived at the conclusion that payment to the claimants of record should be made as listed below:

To Tidewater Oil Company in Case No. 5, the sum of . .	295,000,000
To General Electric Company—doing business as International General Electric Co. in Case No. 6 the sum of. .	3,820,000,000
To International Standard Electric Corporation in Case No. 8 and No. 9 the sum of.	2,270,000,000
To American Trading Company of Japan, Ltd., in Case No. 10 the sum of.	614,000
To Burnham S. Colburn, Myra Colburn Perry and William B. Colburn, heirs at law and residual legatees of the estate of May E. C. Keane, deceased, successors to Fiduciary Trust Co. of New York, executor of the estate of May E. C. Keane in Case No. 10 the sum of. .	39,805,000
To Myra Colburn Perry, Burnham S. Colburn, Jr., Evelyn Colburn Thorn, Mary Louise Colburn Glenn and First Union National Bank of North Carolina as trustee for Jean Wrayford Willmer and Derek Franklin Wilmer, residual legatees of the estate of William L. Keane, deceased and successors to William L. Keane in Case No. 10 the sum of.	36,792,000
To William White, Jr. and Sanford D. Beecher, executors of the estate of John R. Geary, deceased and successors	

to Henry L. Geary and Sandford D. Beecher as executors of the estate of John R. Geary in Case No. 10 the sum of.	149,463,000
To Henry R. Geary, executor of the estate of Emma R. Geary, deceased, successor to Emma R. Geary in Case No. 10 the sum of.	2,577,000
To Henry R. Geary as executor of the estate of Henry L. Geary, deceased and successor to Henry L. Geary in Case No. 10 the sum of.	52,319,000
To Henry R. Geary in Case No. 10 the sum of	2,577,000
To John V. Geary in Case No. 10 the sum of	2,577,000
To Veronica M. Geary and Lillian Geary, sole heirs at law of Catherine F. Geary in Case No. 10 the sum of .	2,577,000
To E. Gerli and Company, Inc. in Case No. 10 the sum of	6,136,000
To Georgina T. Goff in Case No. 10 the sum of.	21,400,000
To Agnes R. Grimmesy in Case No. 10 the sum of . . .	59,640,000
To Anne Frazar Hawkins in Case No. 10 the sum of . . .	1,718,000
To Noel E. Macksey in Case No. 10 the sum of	5,197,000
To Carlisle Chandler McIvor and Frederick Winant, executors of the last will of Elizabeth G. McIvor in Case No. 10 the sum of.	9,862,000
To Abby F. Warner in Case No. 10 the sum of	9,954,000
To Rosemary G. Eitzen in Case No. 11 the sum of. . . .	415,000
To William White, Jr. and Sanford D. Beecher, as co-executors of the estate of John R. Geary in Case No. 11 the sum of.	197,000
To Wheeler Sammons in Case No. 12 the sum of.	125,000
To Maria Laffin in Case No. 12 the sum of	1,200,000
To William White, Jr. and Sanford D. Beecher as executors of the estate of John R. Geary in Case No. 12 the sum of.	3,775,000
To E. Gerli & Company, Inc. in Case No. 13 the sum of	4,500,000
To American Trading Company of Japan, Ltd. in Case No. 15 the sum of.	140,000
To William White, Jr. and Sanford D. Beecher as executors of the estate of John R. Geary in Case No. 16 the sum of.	1,440,000

In arriving at the foregoing sums the deductions provided for under Article 14 of the Compensation Law have been taken into consideration so that such sums are free and clear of such deductions.

The Commission has been given to understand that the amount provided in the national budget of Japan for the payment of claims during the present Japanese fiscal year is not sufficient. The claimants are cognizant of the situation and are not insisting upon immediate payment. If, however, full payment is not made within one year from the date of this Decision, interest at the rate of 5%, which is the rate provided as the usual rate in Article 404 of the Civil Code of Japan, should be payable on the unpaid balance.

In view of the foregoing the Commission, acting in accordance with the authority vested in it by the Treaty of Peace, and the Agreement for the Settlement of Disputes arising under Article 15 (*a*) of the Treaty of Peace with Japan, and in pursuance of Article 20 of the Rules of Procedure does hereby make the following determinations:

1. The Government of Japan shall pay to each claimant as compensation

the amount previously set forth in the prior part of this Decision not later than one year from the date of this Decision.

2. If after the expiration of that period, all or a part of an award remains unpaid, interest shall be paid at the rate of five per cent per annum on the unpaid balance commencing from the day marking the expiration of that period until payment has been made in full.

3. The present Decision settles all claims or demands incidental or related to the present claims of the Government of Japan against the respective claimants on whose behalf this Decision is rendered as well as all similar claims and demands of the claimants against the Government of Japan.

This Decision is definitive and binding and its execution is incumbent upon all of the parties hereto.

SIGNED in the City of Tokyo on this 20th day of July 1960.

Torsten SALÉN
Third Member

Lionel M. SUMMERS
United States Member

Kumao NISHIMURA
Japanese Member

FRANK HARON HILLEL CASE—DECISION No. 7 OF 23 JULY 1960

Compensation for war damage—Nationality of claimant—Time limit for filing of claim—State responsibility—Compulsory sale of property effected pursuant to orders issued by government—Measure of damages.

Indemnisation pour dommage de guerre — Nationalité du réclamant — Délai pour la présentation de la réclamation — Responsabilité de l'Etat — Vente forcée effectuée par ordre du gouvernement — Détermination du montant de l'indemnité.

The United States-Japanese Property Commission established pursuant to the "Agreement for the Settlement of Disputes Arising Under Article 15 (*a*) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, president of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by

mutual agreement of the Governments of the United States of America and of Japan,

Having considered the Petition and Reply as well as the additional evidence filed with the Secretariat by the Agent of the United States, Mr. Arnold Fraleigh, on June 12, 1959, December 9, 1959 and June 29, 1960 respectively, and the Answer and Counter Reply filed with the Secretariat by the Agent of the Government of Japan, Mr. Tatsuo Sekine, on September 8, 1959 and March 7, 1960 respectively, in the above entitled case; and

Having heard testimony at an oral hearing held in Kobe, Japan, on July 18, 1960 relating to certain aspects of the dispute; and

Having determined that the Commission has jurisdiction over the dispute, has reached the following conclusions:

PRESENTATION OF CLAIM:

The claim is presented on behalf of Frank Haron Hillel who became a national of the United States of America by naturalization on February 16, 1945 and who, according to the Petition and Reply filed by the Agent of the United States of America, was a national of Iraq at the time of the commencement of the war. Compensation is requested pursuant to Article 15 (*a*) of the Treaty of Peace with Japan and the Draft Allied Powers Property Compensation Law referred to in that Article, hereinafter referred to as the "Compensation Law".

THE QUESTION OF NATIONALITY:

Article 15 (*a*) of the Treaty of Peace with Japan confines itself on the question of nationality to a reference to "each Allied Power and its nationals". The Compensation Law, on the other hand, contains a number of provisions concerning nationality. Those provisions are found in Article 3, paragraphs 1, 2 and 4 which read respectively 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 damage as a result of the war, the Japanese Government shall compensate for such damage, provided that, with regard to the properties of Allied nationals, such nationals either (*a*) were nationals of a country declared by the Japanese Government to be an enemy country in accordance with the provisions of the Enemy Property Custody Law, or (*b*) were subject to apprehension, internment or detention or to the seizure, disposal or sale of their property during the war.
>
> 2. In cases other than those mentioned in the preceding paragraph, if property owned in Japan at the time of the commencement of the war by Allied individuals who were not physically present in Japan or Allied corporations which were not in operation in Japan during the period of hostilities, has suffered the damage mentioned in Article 4, paragraph 1, item (1) or (5), the Japanese Government shall compensate for such damage.
>
> . . .
>
> 4. Those who may claim the compensation mentioned in paragraph 1 or 2 shall be those 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.

It will be noted that under paragraph 4, a person, in order to be eligible to maintain a claim, must be an Allied national at the time of the coming into force of the Treaty of Peace.

Iraq was one of the signatories to the Treaty of Peace with Japan which it

ratified on August 18, 1955 and is, therefore, an Allied Power within the meaning of Article 25 of the Treaty of Peace, and paragraph 1, Article 2 of the Compensation Law. Needless to say, the United States of America is also an Allied Power. Hence, the claimant, whose American nationality is not disputed, partake of the quality of a national of an Allied Power, that is, have the status of an Allied national within the meaning of the Treaty of Peace and the Compensation Law, if it should be established that he was in fact an Iraqi national at the commencement of the war as alleged in the Petition and Reply.

The circumstances that he may have been a national of one Allied Power at the commencement of the war, and a national of another Allied Power at the time of the coming into force of the Treaty of Peace is not material, and has not been raised as an issue by the Agent of the Government of Japan.

The evidence submitted by the Agent of the Government of the United States of America with the pleadings concerning the Iraqi nationality of the claimant consists of a letter from N. A. Oldi of the United States Department of Justice to the American Consul in Tokyo submitted with the Reply as Exhibit T. That letter, including its letterhead, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

70 Columbus Avenue
New York, 23, New York
November 20, 1959
NYC 76/95.9
HILLEL, FRANK Haron III

American Consul
American Consulate
Tokyo, Japan
Re: War Loss Claim of Frank Haron Hillel

Dear Sir,

We have been requested by Frank Haron Hillel of Park Drive South, Rye, New York, to furnish verification of his Iraqian nationality from December 7, 1941 until the day he obtained United States citizenship on February 16, 1945, in connection with his War Loss Claim against the Japanese Government. He stated he is represented by Mr. Arnold Fraleigh, Agent for the United States American Embassy, Tokyo, Japan.

The records of this service show that one Efraim (Frank) Hillel, an Iraqian National, then residing at 4 Manor Lane, Woodmere, New York, submitted an Application for a Certificate of Arrival and Preliminary Form for a Declaration of Intention on August 15, 1941. When he submitted an Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization on January 20, 1944, he stated that he was born January 1, 1905 in Bagdad, Iraq, and that he was Iraqi National. At the time he submitted his Immigrant Identification Card which showed his nationality on August 15, 1938 as Iraqian.

Very truly yours,

(Signed) N. A. OLDI, *Chief*
Record Administration
and Information Section

On the basis of a request filed by the Agent of the Government of the United States of America on June 15, 1960, permission was given by the Commission on June 28, 1960 to file an affidavit by Hillel concerning his Iraqi nationality and an identification card issued by the United States Coast Guard on November 29, 1942. On that identification card, it is stated that Hillel was born in Bagdad on January 1, 1905 and that he was an Iraqi national.

In his own statement of claim executed in October 1953, Hillel says:

> I am informed and verily believe that I was not considered to be a national of Iraq on December 7, 1941.

Nevertheless in the affidavit submitted pursuant to the above-mentioned request, Hillel asserts that he was in error in making that statement and that, in fact, he was an Iraqi national until his naturalization in the United States of America.

The Commission has also examined the Iraqi Nationality Law of October 9, 1924 and the "Ordinance No. 62 of August 15, 1933 for the Cancellation of Iraq Nationality." While that legislation provides for expatriation under certain conditions, it does not appear that any of these conditions operated to divest the claimant of his Iraqi nationality.

Moreover the Coast Guard identification card issued after December 7, 1941 states that Hillel was then an Iraqi national.

In view of the foregoing, the Commission concludes that Hillel was an Iraqi national on December 7, 1941.

TIME LIMIT FOR FILING OF THE CLAIM:

The original claim on behalf of Hillel was filed with a note from the American Embassy in Tokyo on October 28, 1953, to the Ministry of Foreign Affairs of the Government of Japan.

In a letter of December 9, 1953, from the Claims Officer at the American Embassy addressed to the Chief, Fourth Section, International Cooperation Bureau, Ministry of Foreign Affairs, Tokyo, referring to the claim on behalf of Hillel, it was stated that, after an investigation had been made, it was disclosed that Hillel did not have the status of an Allied national on December 7, 1941, that the Government of the United States did not consider it appropriate to espouse his claim and that therefore, the Embassy requested that the claim be returned.

Thereupon, in a *note verbale* of December 16, 1953, the Ministry of Foreign Affairs notified the Embassy that the claim for compensation by Hillel was returned in accordance with the Embassy's note of December 9th.

In a letter of March 18, 1954, Mr. Martin Evans of New York City, attorney for Hillel, submitted the claim directly to the Ministry of Finance of the Government of Japan explaining that in December 1941, Hillel had been a resident of the United States for some time, that in August 1941 he had applied for American citizenship and that "Although his application for citizenship had been entered prior to December 1941, he was a national at that time of Iraq. Therefore, I have no other means to make application in this connexion except directly to the Finance Department".

In a *note verbale* of June 1, 1954, the Ministry of Foreign Affairs notified the American Embassy of the claim submitted directly on behalf of Hillel explaining that his claim did not come "under the cases for re-examination provided in paragraph 1, Article 18 of the Allied Powers Property Compensation Law, nor under any of the other claims provided in that Law" and that the written claim had been returned directly to Mr. Martin Evans.

With a note of May 4, 1956, the American Embassy resubmitted the claim originally filed on October 28, 1953 on the grounds that Iraq had in the meantime ratified the Treaty of Peace.

In a *note verbale* of October 1, 1957, the Ministry of Foreign Affairs advised the Embassy that the competent office of the Government of Japan had found that the present claim for Hillel could not be considered to have been filed within the time limit prescribed in paragraph 1, Article 15 of the Compensation Law. It was pointed out that although the claim had been filed by the closing date for the filing of claims by American nationals, i.e., October 28, 1953, it had been withdrawn by the Claims Officer of the Embassy.

In its note of April 4, 1958, the Embassy informed the Ministry of Foreign Affairs that the Government of the United States of America referred the claim to the Commission for final determination.

In his pleadings, the Agent for the Government of Japan maintains that the first claim is null and void as having been withdrawn and that the renewed filing of the claim occurred after the time limit for the filing of claims on behalf of American nationals.

The Agent for the Government of Japan bases his contention on Article 15, paragraphs 1 and 3, of the Compensation Law, which reads as follows:

Article 15

A claimant shall file a written claim for payment of compensation with the Japanese Government through the Government of the state to which he belongs within 18 months from the time of the coming into force of the Peace Treaty between such state and Japan.

. . .

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.

In the consideration of this question, Article 3, paragraph 4, of the same law is also important. It reads as follows:

Article 3

. . .

4. Those, who may claim the compensation mentioned in paragraph 1 or 2 shall be, unless they are the Allied Powers, those 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.

Further, Allied nationals are defined in Article 2, Paragraph 2, of the Compensation Law, to include individual persons who are nationals of Allied Powers. The same Article, paragraph 1 defines the Allied Powers to mean the "Allied Powers as provided for in Article 25 of the Treaty of Peace with Japan". That Article 25 provides in its turn that the Allied Powers shall be "The States at war with Japan . . . provided that in each case the State concerned has signed and ratified the Treaty".

From these provisions it is clear that, in order to be able to assert a claim, a claimant must show, *inter alia*, that on December 7, 1941, he was a national of an Allied Power which had ratified the Treaty of Peace.

Such a showing is not possible before the ratification has actually taken place. Hence it would be incorrect to consider that in a case like the present one where the claimant has changed his nationality, he should lose his rights because of the fact that the state of which he previously was a national had not ratified the Treaty of Peace before the closing term for the filing of claims

relating to persons belonging to the state which later granted his naturalization.

Consequently, the time limit of eighteen months stipulated in Article 15, paragraph 1, of the Compensation Law for the submission of claims must be considered to begin to run only from the time of the ratification of the Treaty of Peace by the Government of Iraq. That action took place on May 18, 1955 and the renewed claim was duly filed within eighteen months from that date.

The objection to the claim as having been filed too late is therefore rejected.

THE SUBSTANCE OF THE CLAIM:

In the pleadings of the Agent for the Government of the United States of America, it is explained that Hillel was a partner with a one third interest in each of two partnerships doing business in Japan jointly but under the two names of F. H. Hillel and Company and Capelouto and Ashkenazi. The other two partners were Capelouto and Ashkenazi. None of the partners were present in Japan during the war. They had entrusted the management of their office and commercial goods to a Japanese national named Takiichi Okuda. They had not corresponded with him after the outbreak of the war.

Actually the evidence is not entirely consistent with the pleadings as the evidence shows that the two partnerships were merged into one partnership. Nevertheless, apparently for business reasons, the new partnership operated under the names of the former partnerships. In fact, statements are made that property was owned by one of the old partnerships, when it is manifest that it was owned by the new combined partnership. For convenience and in order to conform to the pleadings, the Commission will follow the same practice.

The first item in the Petition relates to the destruction by bombing of certain furniture belonging to the partnership valued by the claimant at $2,320.00 or 835,200 yen, apparently as of April 28, 1952.

The furniture in question, consisting of 38 items, had been located in the office of the partnership at the Nippon Building, 29 Kyo-machi, Kobe, Japan. Later however, the office was moved to 105 Naka Yamatedori, 2-chome, Kobe-ku, Kobe, a fact that is admitted by the Agent for the Government of the United States of America. The new location was apparently the residence of one of the partners. According to the oral testimony received by the Commission in Kobe from an official of the Hyogo Prefectural Government, the latter address was destroyed in the bombing of Kobe. Hence the furniture was presumably lost as a result of the war.

The only question left for decision therefore is the question of valuation.

In paragraph (6) of the Reply, the Agent of the Government of the United States of America has stated:

> With respect to the amount of office furnishings owned by the partnerships at the commencement of the war, the respondent Government has admitted in paragraph (21) of the answer that furniture and fixtures owned by the partnership of F. H. Hillel and Co. at the outbreak of the war had a replacement cost in 1953 of 528,632 yen, while the claimant has stated that the furnishings owned by both partnerships, F. H. Hillel and Co. and Capelouto and Ashkenazi, at the outbreak of the war had a replacement cost in 1952 of 835,200 yen. The respondent Government has assumed in paragraph (22) of the answer that the furnishings reported to have been owned by F. H. Hillel and Co. included also the furnishings owned by Capelouto and Ashkenazi. The respondent Government believes that such an assumption is not justified and that the difference between the figures of the respondent Government and that of the claimant Government is due to the failure of the respondent Government to take into account office furnishings owned by the partnership of Capelouto and Ashkenazi.

In paragraph 6 of the Counter Reply, the Agent for the Government of Japan has stated:

> The claimant Government contends that the difference in views between the claimant Government and respondent Government with respect to the kind and quantities of office furniture and fixtures has arisen from the fact that the respondent Government did not take into account the office furniture and fixtures owned by Capelouto and Ashkenazi. However, as we mentioned in paragraph 3, F. H. Hillel & Company and Capelouto and Ashkenazi were not separate partnerships, but were merely two firm names of one partnership. Accordingly, it is inconceivable that in addition to the property owned by F. H. Hillel & Company, there should have existed the property owned by Capelouto and Ashkenazi. Moreover, according to the statements made in Exhibit "V" of the Reply, it is unthinkable that there were separate offices respectively under the above-mentioned two firm names. In fact, it is clear by Exhibit "C" of the Petition that the office of Capelouto and Ashkenazi had also been situated in the Nippon Building, 29 Kyo-machi Kobe-ku, Kobe. Therefore, it is natural to assume, as the respondent Government asserted in paragraph 22 of its Answer, that the furniture and fixtures reported as the office furniture and fixtures owned by F. H. Hillel & Co. constitute the entire office furniture and fixtures of the company in this case.

From the foregoing it would appear that the Agent of the Government of Japan has admitted that the furniture had a valuation of 528,632 yen in 1952. Taking into consideration the valuation placed on some of the items by the claimant, which seem to be very high such as $300.00 for a telephone, the figure of 528,632 yen appears to correspond more closely to the realities of the situation. Moreover the Commission agrees with the Agent of the Government of Japan that there was not any distinction between the furniture attributed to F. H. Hillel & Co. and that attributed to Capelouto and Ashkenazi as the partnerships had been merged. In fact paragraph 6 of the partnership agreement provided that "that capital with which the partnership shall begin business shall amount to Japanese Yen one hundred thousand (100,000.00 yen) *representing all of the net assets of the aforesaid two consolidated firms*" (italicizing supplied).

Since 1952 prices have not changed appreciably, the valuation placed on the property in 1952 would still be approximately correct. Hence the claimant is entitled to receive one third of 528,632 yen or 176,211 yen for the loss of the furniture in question.

The next item of claim concerns textile goods owned by F. H. Hillel & Co. packed in 88 crates which had been placed on a ship that was recalled to Japan prior to December 7, 1941. On the return of that ship, the goods were unloaded in Japan. In the Petition it is alleged that sometime between December 7, 1941 and September 1943, those goods had been purchased through a compulsory sale by the Japan Textile Export Association (Nippon Memshi Fu Yushutsu Kumiai) which, in fact, was a government institution. The value of those goods was at the time 57,196.80 yen.

It is further alleged in the Petition that at the outbreak of the war on December 7, 1941, Capelouto and Ashkenazi owned certain textile goods valued at 12,813.90 yen which also had been the object of a compulsory purchase by the Association between December 7, 1941 and September 1943. They were packed in two sets consisting respectively of 26 and 19 crates.

The cost of replacing those goods on April 28, 1952 was alleged to be 200 times the cost of the goods in 1941 or 11,439,360 yen for the goods owned by

F. H. Hillel & Co. and 2,562,780 yen for those owned by Capelouto and Ashkenazi.

The Agent for the Government of Japan asserts that the Japan Textile Exporters Association was an association formed among merchants and exporters of Japanese Textile goods established according to the provisions of Article 9 of the Trade Association Law of 1932. It was a kind of guild formed with the object of exercising voluntary control and providing facilities for its members. The purchase of cotton textile goods from the members by the Association was made in the interest of the members according to the provisions of the above-mentioned law and of the by-laws of the Association. The Association could not be considered as having the power to exercise official authority as an agency of the Government of Japan.

The partnerships in which Hillel held an interest were members of that Association. In order to stabilize the market, prevent dumping and to relieve the financial situation of the members rising out of the difficulties owing to the war, the prohibition of transportation from Japan and the freezing of foreign accounts order of July 1941 instituted by certain foreign countries as well as by Japan, the Association took emergency measures. Those measures provided for the making of loans to members of the Association on the security of the goods—title of which was transferred to the Association and which were in the language of the pleadings "shelved". The transfer to the Association of the 88 cases belonging to F. H. Hillel & Company and of the 26 cases belonging to Capelouto & Ashkenazi originally took place under that shelving system. The transactions were initiated before the outbreak of the war and in any event the shelving was not made under compulsion.

As to the 19 other cases belonging to Capelouto and Ashkenazi, the Agent of the Government of Japan admits that they were purchased by the Association in April 1942 in pursuance of a decision of the Board of Directors to purchase the goods shelved and to effect a compulsory purchase of all goods owned by the members, a decision taken in conjunction with the execution of the "Essential Goods Mobilization Plan under National General Mobilization Law".

As has been indicated, the Commission considers that the shelving of the goods contained in the 88 and 26 cases was carried on voluntarily on the part of the Administrator of the partnerships. Consequently, such shelving did not generate any responsibility on the part of the Government of Japan. Furthermore the shelving was effected in the form of a sale with a result that the partnerships divested themselves of the title of the goods and transferred ownership thereof to the Association. Therefore when those goods were definitely purchased according to the above mentioned directives, the partnerships did not hold title to the goods. Hence a claim for the loss of the property cannot be made. On the other hand, the partnerships acquired a pecuniary claim to the remainder of the purchase price, since, at the shelving, they had only received 60% of the value of the goods. The payment of the part of the price relating to the goods owned under the name of F. H. Hillel and Company is shown by the fact that in the reports presented by the manager of the firm of Hillel & Company, Masaharu Takeda, a sum of 34,318.14 yen is listed as a "loan from the Japan Cotton Textile Exporters Association". The remainder of the price can be assumed as having been paid and accounted for through the entry in the F. H. Hillel and Company's account with the Yokohama Specie Bank, Kobe office, of the amount of 14,868.68 yen on November 20, 1942 which is approximately equivalent to the unpaid balance of 40%. The difference in figures can be explained by the interests, storage, insurance and other costs. In effect that payment terminated the transaction voluntarily initiated by the partnerships at the period prior to the war.

The fact that in the reports of Takeda relating to F. H. Hillel and Company merchandise for 52,196.90 yen apparently corresponding to the goods in the 88 cases, was listed as assets of that firm and the money received at the shelving as "loan "cannot alter the fact that under the conditions for the transaction, the title was transferred to the Association. The ownership was never recovered by F. H. Hillel and Company or Capelouto and Ashkenazi respectively.

The price paid for the 26 cases shelved under the "second purchase" and held by Capelouto and Ashkenazi is shown as being 8,428.40 yen. That figure represents apparently 60% of the full price. The Commission has no doubt that the amount as well as the additional 40% of the full price have been paid at the time according to the directives of the Government of Japan although through the destruction of documents, the actual act of payment cannot be shown.

In accordance with the reasons set out above the Commission holds that no compensation is due for the goods contained in the 88 and 26 cases respectively.

Concerning the goods contained in the 19 cases it has been shown that they were purchased under the so-called "third purchase" which, for the reasons stated in the case of *The United States of America* ex rel *Frank Sassoon* vs. *Japan* (Case No. 18), was a compulsory sale effected pursuant to orders issued by the Government of Japan. Hence the Government of Japan is under obligation to pay compensation for those goods.

The purchase price of those goods at the time of purchase (1942) was 4,335.50 yen. As shown in the decision in case No. 18 the magnification factor of 162.01 should be applied to bring the value up to the price level for the goods in 1952. Consequently the compensation in 1952 prices amounts to 702,131.45 yen less 4,335.50 yen, which is assumed to have been paid. Of this sum Hillel is entitled to one third or 229,795.95 yen.

DETERMINATION OF THE COMMISSION:

In view of the foregoing the United States-Japanese Property Commission determines that the Government of Japan should pay the claimant the sum of 229,795.95 yen for the purchase from the claimant of certain cotton textiles in which the claimant has an interest and the sum of 176,211 yen for the destruction of certain furniture in which the claimant had an interest or the total sum of 406,006.95 yen.

This decision shall be definitive and binding and its execution incumbent upon the Government of Japan.

Signed in the City of Tokyo on this 23rd day of July, 1960.

Torsten SALÉN
Third Member

Lionel M. SUMMERS
United States Member

Kumao NISHIMURA
Japanese Member

FRANK SASSOON CASE—DECISION No. 8 OF 23 JULY 1960

Compensation for war damage—Nationality of claimant—Loss of property—Requisition—Ownership of property claimed—Evidence—Measure of damages.

Indemnisation pour dommage de guerre — Nationalité du réclamant — Perte de biens — Réquisition — Propriété des biens réclamés — Preuve — Détermination du montant de l'indemnité.

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising Under Article 15 (*a*) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and of Japan,

Having considered the Petition and Reply filed with the Secretariat by the Agent of the United States, Mr. Arnold Fraleigh, on October 1, 1959, and February 17, 1960, respectively and the Answer and Counter Reply filed with the Secretariat by the Agent of the Government of Japan, Mr. Tatsuo Sekine, on February 10, 1960 and May 28, 1960, respectively in the case of the *United States of America* ex rel. *Frank Sassoon* vs. *Japan*, and

Having heard testimony on certain aspects of the dispute at an oral hearing held in Kobe, Japan, on July 18, 1960, and

Having determined that the Commission has jurisdiction over the dispute, has reached the following conclusions:

INTRODUCTION:

The Claimant, Frank Sassoon, was a national of Iraq on December 7, 1941, but became a national of the United States of America by naturalization on January 31, 1950. He is therefore an Allied national entitled to maintain a claim under the Treaty of Peace and the Draft Allied Powers Property Compensation Law, hereinafter referred to as the "Compensation Law".

With a note of October 22, 1953, the American Embassy transmitted to the Japanese Ministry of Foreign Affairs, on behalf of Frank Sassoon, two claims for compensation for war damage, one, in the amount of 21,444,000 yen, covering the alleged loss of office furnishings, fixtures and samples and the loss of merchandise owned by him on December 7, 1941, which he had been forced to sell to the Japan Cotton Textile Exporters Association, hereinafter referred

to as the "Association", and the other in the amount of 99,862,613.10 yen covering the alleged loss of certain cotton textile merchandise purchased by Frank Sassoon from Maruima Sangyo.

The Ministry of Foreign Affairs in a note of March 12, 1957, gave notice to the Embassy of the preliminary rejection of the claim, which notice was confirmed in a note of April 13, 1957. Although the Ministry referred to one "claim" it is clear that both claims were meant. From there on the claim has always been referred to in the singular.

The Embassy thereupon in a note of October 11, 1957, notified the Government of Japan that it referred the claim to the Commission for determination.

In the Petition, the Agent of the Government of the United States of America, on behalf of Frank Sassoon has modified the claim in the following manner:

	Yen
Loss of office furnishings	298,000
Loss of merchandise on hand in 1941 having a value of 40,000 yen	7,954,000
Loss of merchandise purchased from Maruima Company	44,398,488
	52,650,488

THE CLAIM FOR THE LOSS OF FURNITURE:

In 1931 the claimant, Frank Sassoon, opened an office in the Toyo Building, 16A Harima Machi, Kobe, rented from the firm Nakamura & Company and maintained the office till the building was destroyed by bombing by the United States Air Force on June 5, 1945. In an affidavit, Sassoon refers to the Bank of Japan, Kobe, the Post Office and the Telephone Office, Kobe, as well as to the Association in order to confirm the existence of his office. Further, Frank Sassoon relies upon an affidavit executed by Marie Phend, born Toku Emoto, a native of Kobe, who testifies to the effect that she had visited Frank Sassoon in his office at the indicated address between the first bombing of Kobe in March 1945 and the second one on June 5, 1945, and gives as description of the office consisting of a large, partially partitioned room with furniture and shelves.

The Agent for the Government of Japan denies that Frank Sassoon maintained his office in the Toyo Building until the bombing on June 5, 1945. In so doing he relies on a statement of Shigeo Imawaki, Managing Director of the Maruima Commercial Co. Ltd., which is written in answer to his questioning by an administrative official of the Ministry of Finance in which he states that in March 1945, Sassoon did not have an office in the Toyo Building. In his statement, Mr. Imawaki also declares that at the time of the transactions with Frank Sassoon concerning the merchandise sold by the Maruima Company (in the beginning of 1942) he had visited Frank Sassoon's office, which was a small room furnished with two office desks and chairs, two small chairs for guests, two shelf cabinets for trade samples, a single leaf screen, all extremely shabby looking, as well as a second-hand typewriter. The value, even as brand new, would, according to Mr. Imawaki, have been less than 1,000 yen "in the current price of the time". The statement, however, betrays considerable animosity against Mr. Sassoon and therefore has relatively little probative value.

In view of the detailed references given by Frank Sassoon in his sworn affidavit, which would have been easy to refute if incorrect, and to the fact that the telephone was still carried in the name of Frank Sassoon on June 5, 1945, the Commission considers it to be established that Frank Sassoon maintained

his office at that time and that the furniture, fixtures and samples were destroyed by the bombing.

It is true that an affidavit has been supplied with the Counter Reply to indicate that the furniture had been moved from the office prior to the bombing. At the oral hearing in Kobe, however, the value of that affidavit was demonstrated to be questionable.

The Commission has noted that the value of the furniture as of 1952 was, according to the claimant, 298,000 yen. It is difficult to be precise in the absence of specific evidence but it appears to the Commission that some of the values attributed by the claimant to the furniture, fixtures and samples may be somewhat high. In the circumstances the Commission feels it proper to deduct 1/3 from the value of the furniture and to find its value to be 198,667 yen.

CLAIM FOR COTTON GOODS REQUISITIONED FROM MARUIMA:

During the period from March 1942 to March 1943 the Japanese Cotton Textile Exporters Association requisitioned certain cotton merchandise allegedly owned by the claimant from Maruima Sangyo K.K., a trading firm in Kobe. The claimant states that as a consequence of the requisition of the property, compensation is due him under the Treaty of Peace and the Compensation Law. The first question which must be determined is whether the claimant can establish an ownership or other interest in the merchandise which would give him a right to present the claim.

An examination of the record shows that on February 6, 1942, Maruima wrote a letter to the claimant which contained the following passage:

> It is to be understood that as there is at the present time no means available to communicate with the actual party to the contract, Mr. Ezra M. Sassoon, Bagudaddo City, Iraq, no attempt will be made in this respect.

In reply the claimant on February 10, 1942, stated:

> Although I am aware of the fact that it is difficult to communicate with Ezra M. Sassoon in Bagudaddo, it was made known to you that I had been acting as his agent. In addition, as his agent I have the formal power of attorney, that is, the document approved and signed by the Minister of Foreign Affairs and the Minister of Justice of Iraq and certified and signed by Honorable Yoshiro Miyazaki, the Minister Plenipotentiary of Imperial Japan, resident in Iraq at that time.

The Commission has never seen the power of attorney to which reference is made. It has, however, no reason to doubt its existence. In any event the exchange of correspondence constitutes a contemporaneous record presumably reflecting the true situation. Certainly if the claimant had been acting for himself, and not as agent there would not have been any necessity for the preparation of a power of attorney executed and certified to with all of the formalities prescribed by law and international usage.

It is true that evidence has been submitted later to demonstrate that his father and his family considered that the claimant was actually operating on his own behalf and was himself the owner of the goods.

However, the internal relations between Ezra Sassoon and Frank Sassoon whatever they may have been are irrelevant to the case, because, according to the correspondence quoted above, it is clear that the contract of sale of

the merchandise in question was entered upon between Maruima and Ezra Sassoon with Frank Sassoon acting as agent for Ezra Sassoon. Consequently, in relations to Maruima and third parties, such as the Government of Japan, Frank Sassoon has no claim to ownership of the merchandise and, therefore, his claim for compensation under this item must be rejected.

PURCHASE OF COTTON GOODS FOR 40,000 YEN:

In his own sworn affidavit of October 8, 1953, Frank Sassoon declares that in the summer of 1941 he was the owner of a quantity of cotton piece goods of various qualities having an acquisition cost of approximately 40,000 yen, the goods being stored in a bonded warehouse. He further declares that under the pressure exercised upon him by the Japan Cotton Textile Exporters Association, an agency of the Government of Japan, having no other alternative and fearing further repressive measures he turned the warehouse receipts over to the Association, which in return deposited in his name in a blocked account with the Bank of Taiwan, Kobe, the sum of 46,000 yen.

In the Petition the Agent for the Government of the United States of America considering that the purchase of the goods by the Association was accomplished in its capacity as an agency of the Government of Japan, requests the payment of compensation for the loss of the merchandise in an amount of 7,954,000 yen. That figure had been arrived at by multiplying the purchase price of the goods by 200, the alleged approximate rate of the rise in price levels during the period from 1941 to 1952, and by subtracting the sum of 46,000 yen received for the goods.

As proof of the forced nature of the purchase the Agent for the Government of the United States of America relies upon the affidavit of Frank Sassoon and upon a letter of September 30, 1946, from the Association to the Judicial Affairs Division, Supreme Headquarters of the Allied Army of Occupation. That letter deals with the question of the merchandise purchased from the Maruima Company referred to above which had annulled the contract with Sassoon in February 1942 and thereupon sold the same merchandise to the Association. In its letter of September 30, 1946, the Association textually declares: "At that time Mr. Sassoon had another lot of merchandise besides the goods involved in this case (viz. goods purchased from the Maruima Company) and that lot was requisitioned by the Association".

The Government of Japan observes that in the affidavit there is no information relating to the items and quantities of the merchandise nor as to the name of the party from whom it was purchased or of the warehouse where it was stored. It also observes that the statement of Frank Sassoon was unreliable. It is further stated that the books and documents concerning the purchases of the Association were all destroyed by bombing except for a copy of a list of merchandise which the Association bought from its members in which list there is no indication that the Association bought any merchandise from Frank Sassoon. It is suggested that the mention in the letter of September 30, 1946, from the Association of another lot of merchandise must have been made on the ground of the assertion made by Frank Sassoon himself in his claims brought after the war.

The Agent of the Government of Japan goes on to say that even if it is granted for the sake of argument that the merchandise was purchased by the Association that purchase is not a measure envisaged by Article 4, Paragraph 1, item 2 of the Compensation Law. He argues that the Association was an association voluntarily established according to the provisions of Article 9 of the Trade Association Law with the object of providing common facilities to the

members for the development of foreign trade. The Association in accordance with its statutes and with a decision of its Board of Directors decided to obligate its members to sell their cotton textile goods to the Association but, although compulsory on each member under the statutes of the Association, it was not a compulsory measure imposed by the Government.

Adumbrating on the nature of the purchases the Government of Japan relies on a report of an investigation presented to the Chief of Foreign Property Section, Property Custodian Bureau, Ministry of Finance, dated June 5, 1956. In that report it is stated that the Association carried out a compulsory purchase of designated cotton piece goods owned by its members as of April 1942, adding that the Association carried out these compulsory purchases in conjunction with the Resources Mobilization Program implemented by the Government of Japan under the National Mobilization Act with the primary aim of securing and increasing the stock of essential goods in the country as well as making the most efficient and appropriate use thereof. Nevertheless, designated foreign nationals were not eligible. Hence Frank Sassoon who was a designated foreign national since January 26, 1942, when Iraq was declared to be a designated country under the "Law Implementing Regulations for the Control of Transactions Related to the Persons of Foreign Nationality" of July 1941, was excluded from among the persons eligible for such purchase. The reason for that exclusion was that the business of such persons was practically prohibited through the "Regulations" just quoted. Permission for the execution of already existing contracts was also impossible to obtain from the competent Minister. On the request of the Association the Government of Japan on February 12, 1942, issued directives to the effect that the designated foreign nationals should be dismissed from the Association. The Board of Directors of the Association thereupon on February 21, 1942, decided to dismiss the designated foreign nationals and to purchase cotton textiles held by such persons "as designated cotton yarns and cotton textiles pursuant to the Control Regulations Concerning Purchase and Export of Designated Cotton Yarns and Designated Cotton Textiles". Consequently, the exclusion of goods owned by the designated foreign nationals from the compulsory purchase of goods owned by other members "was for no other reason than for carrying out purchase of such goods [owned by designated foreigners] separately in accordance with the said directive issued in the name of the Director of Foreign Trade Bureau and the decisions of the Board of Directors".

Finally, the Agent for the Government of Japan contends that in any case Frank Sassoon did not suffer any damage from the alleged purchase since the Agent for the Government of the United States of America declares that Frank Sassoon was paid 46,000 yen covering the price of the merchandise and the costs connected therewith.

The contention of Frank Sassoon as to the facts is strongly supported by the above mentioned letter of September 30, 1946, in which the Association admitted having requisitioned certain merchandise from Frank Sassoon. Nothing in that letter indicates that this mention on the part of the Association was based on the post war claims made by Frank Sassoon himself, especially so as the Association very carefully set out the facts about the merchandise bought from the Maruima Company and rejected its responsibility in that respect. Frank Sassoon has further specifically pointed out that the Association paid to a blocked account in his name with the Bank of Taiwan, Kobe the sum of 46,000 yen as a price for the merchandise under this heading. That assertion has not been specifically challenged by the Government of Japan although it should have been possible to verify the matter with the bank or the successor to its interests.

The fact that the merchandise may not have been found on the list of goods requisitioned by the Association cannot be a decisive argument against the admission on the part of the Association of having requisitioned certain merchandise from Frank Sassoon personally, especially since most of the books and documents of the Association are said by the Government of Japan to have been destroyed during the war. The lack of details in the affidavit about the purchase and storing of the goods can be explained by the fact that all the documents in Frank Sassoon's office have been destroyed. On these grounds the Commission accepts as established the fact that the merchandise was requisitioned by the Association

That the Association in making the purchases, including those from the designated foreign nationals, acted as an agent for the Government of Japan is made abundantly clear by the report produced as Exhibit 2 to the Answer. It is stated in that exhibit that the Board of Directors decided to purchase the textiles held by these persons pursuant to the Control Regulations concerning Purchases and Export of Designated Cotton Textiles and that the purpose of the exclusion of those persons from the compulsory purchases incumbent on the members was to establish that the purchases to which designated foreign nationals were subjected would be considered separately in accordance with the directives issued in the name of the Director of the Foreign Trade Bureau.

The measures under Article 4 Paragraph 1 item 2 giving cause to compensation for damage arising therefrom are not limited to the war-time special measures as defined in Article 2 Paragraph 4 of the Compensation Law but include also "other measures of the Government of Japan and its agencies".

War-time special measures are defined in Article 2 Paragraph 4 of the Compensation Law to mean measures "toward the enemy". These measures are, however, not the only ones under Article 4 Paragraph 1 item 2 which give rise to compensation. The fact that these "other measures", contrary to the "war-time special measures", are not qualified as having been "taken towards the enemy" leads to the conclusion that for these "other measures" there is no corresponding qualification, namely that they should have been "taken against the enemy".

The merchandise at issue was lost by Frank Sassoon by virtue of the compulsory sale. The amount of damage in such a case is specified in Article 5 Paragraph 2 of the Compensation Law, where it is stipulated that this amount shall be a sum of money required at the time of compensation for the purchase in Japan of property of similar condition and value. The intention is thus clearly expressed to assess the compensation at the actual value in yen at the time of payment and not at the value in yen at the time of the taking.

It is noted that in the Petition the Agent of the Government of the United States requests the payment of compensation in the amount of 7,954,000 yen for the loss of the merchandise with an acquisition cost of approximately 40,000 yen and for which the claimant has received 46,000 yen. The figure of 7,954,000 yen was determined by multiplying the purchase price of the goods by 200, the approximate rate of the rise in price level during the period from 1941 to 1952, and by subtracting the sum of 46,000 yen which was received for the goods. In actual fact, however, according to the Statistics Department of the Bank of Japan, the rise in the wholesale price index of textiles for the period 1941 to 1959 is 162.01. Therefore, the Commission finds that the actual magnification factor of 162.01 rather than the general magnification factor of 200 should be used. As the price level has remained stable since 1952 the Commission finds that the claimant is entitled to receive the sum of 6,434,400 yen for the above mentioned merchandise.

DETERMINATION OF THE COMMISSION:

In view of the foregoing the United States Japanese Property Commission determines that the Government of Japan should pay the claimant the sum of 198,667 yen for the loss of his furniture, fixtures and samples and the sum of 6,434,400 yen for the merchandise he was obligated to sell, a total of 6,633,067 yen.

This decision shall be definitive and binding and its execution incumbent upon the Government of Japan.

SIGNED in the City of Tokyo on this 23rd day of July, 1960.

Torsten SALÉN
Third Member

Lionel M. SUMMERS
United States Member

Kumao NISHIMURA
Japanese Member