

May 21, 1973

MEMORANDUM OF CONVERSATION

Participants: Howard Willens  
James White  
Herman Marcuse  
Tom Whittington  
Adrian DeGraffenried  
Tom Johnson

All of the lawyers for both delegations met to discuss the single issue of the extent to which the Marianas should be self-governing.

The first question dealt with was that of the connection between Mr. Willens' inquiry regarding the extent of local self-government and the extent to which Article 4, Section 3 of the Constitution would apply in the Marianas. Mr. Willens acknowledged that the difficulties of the MSC in regard to the self-government question arose substantially from the insistence of the U. S. Delegation that Article 4, Section 3, expressly be made applicable to the Marianas. However, Mr. Willens clearly did not want to foreclose the possibility of somehow dealing with the MSC's concern in some way other than carving out exceptions, either specific or general, to the applicability of Article 4, Section 3. He acknowledged that the problem might be dealt with by removing any reference to Article 4, Section 3, or by specifically stating that it did not apply to the Marianas.

In this regard, Mr. Marcuse asked whether the MSC wished to carve out areas in which the U. S. Congress would have no power to legislate or whether they were only concerned about such legislation affecting local matters as might be enacted pursuant to the Congress' power under Article 4, Section 3. Mr. Willens clearly affirmed that they were only concerned about exercises of power pursuant to Article 4, Section 3. They were not objecting to the exercise of any other Congressional powers

even where purely internal matters might be affected.

Early in the discussion Mr. Willens raised the point that we should use the various UN resolutions on the subject of self-government as a starting point for our definition of self-government. He thought such a definition was necessary, since he was unsure as to precisely what the U. S. Delegation was proposing in terms of self-government. The delegations lawyers did not object to the use of the UN resolutions as a point of reference but did attempt to explain that our concept of self-government for the Marianas was simply the same degree of self-government enjoyed by Puerto Rico with the caveat that Article 4, Section 3, would be made expressly applicable.

Messrs. Willens and White agreed that Article 4, Section 3, presently applies to Puerto Rico without limitation, even though it has not been made expressly applicable. However, it seemed clear that the MSC's difficulty in regard to Article 4, Section 3, was not simply cosmetic--that is, they were not merely worried about whether we said Article 4, Section 3, was applicable but rather they were concerned with the extent to which it was in fact applicable.

The clearest and probably most significant point to come out of the meeting was that Mr. Willens did not feel he was prepared during the present series of meetings to advise his client in regard to the proper way to deal with the question of the extent of local autonomy over internal affairs. He felt that the matter of precisely how the powers of Congress under Article 4, Section 3, needed to be limited was rather complex and would require a great deal of additional work in Washington.

He also stated clearly that if further consideration of this question could not be deferred, he believed it would be necessary to recess the present series of talks for several months.

Tom Johnson  
U. S. Delegation