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MEMCON

Participants:

Howard Willens
Michael Helfer

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James M. Wilson Jr.
Adrian de Graffenried
Andre Surena
Herman Marcuse

Subj: Marianas Covenant

Date: June 28, 1974

I. MPSC IV

Wilson: Will Pangelinan and/or Guerrero report to COM Special Session on MPSC IV. Is important if COM to address status issue at special session.

Willens: MPSC and Wilmer, Cutler and Pickering have MPSC report for local briefing, e.g., DISTAD, District Legislature. --MPSC certainly will consider U.S. suggestion and Willens supports the idea.

II. Joint Land Committee

Wilson: As regards the U.S.-Marianas Joint Land Committee, Willens may wish to know:

1. U.S. proposing organization session in Saipan 15 July after Guam meetings with JCFS to determine:
 - a. Terms of Reference
 - b. Agenda
 - c. Tasks
 - d. How to proceed
2. DOD will provide names of its two members (and "advisers" to provide technical expertise as needed).
3. Emmett Rice will be joining OMSN as J. Wilson's Deputy

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on Joint Land Committee.

III. On-going drafting work

Willens: Will stay in D.C. at least until last week of July going out for Marianas District Legislature August session.

Will go out to Marianas earlier only if there is:

1. A high degree of prospect for COM land legislation that makes Marianas District Legislature land legislation necessary; or

2. if the legal group reaches a high degree of progress to require Willens to confer with MPSC to resolve some outstanding issues.

IV. Agenda, drafting group

Wilson: On the matter of our agenda for Legal Group - does Willens have any problems with U.S. proposal?

Willens: Agree to proposed U.S. agenda on the understanding U.S. agenda covers all MPSC topics if not explicitly, then implicitly by topic-subject content.

Wilson: Yes. As a matter of procedure, what is Willens reaction to discussing substance first, covering all items, then returning to draft actual language of each topic?

Willens: Some problem. Wish to draft as we discuss.

Wilson: No problem with this approach.

ITEM 1. Political Relationship:
U.S. Sovereignty/Establishing Commonwealth

Wilson: U.S. felt that (1) establishing relationship more important and higher priority than specifically the establishment of a commonwealth government (2) U.S. Congress needs to understand

the "give/take relationship" we are forming and U.S. draft accomplishes this.

Willens: This appears to reflect a slight difference in perspective. MPSC believes establishing Commonwealth is of paramount interest, but it is also clear from MPSC draft that Commonwealth will be a territorial relationship.

MPSC draft has also:

1. deleted reference in Title II to latitudes/longitudes (It is included in "definitions").

2. establishes Commonwealth at an earlier date than U.S. recognizing:

- a. certain actions (U.S. sovereignty, citizenship) not possible until end of Trusteeship without violating trusteeship agreement; and

- b. MPSC desires for maximum application of provisions of the Commonwealth agreement before the termination of the Trusteeship Agreement.

MPSC wants U.S. guarantee that Marianas will get full benefits of territorial relationship prior to end of Trusteeship Agreement but consistent with obligations of U.S. under Trusteeship Agreement.

Wilson: Question is what it is possible to effect prior to end of Trusteeship Agreement. These appear to be separate legal and political issues.

1. As regards legal issues, there are few limitations on U.S. authority that could be implemented. U.S. can put almost

everything into effect prior to end of Trusteeship Agreement except those provisions relating to:

- a. citizenship;
- b. sovereignty; and
- c. actual legal establishment of the "Commonwealth".

2. As regards political issues, U.S. wants to use its full authority under the Trusteeship Agreement to achieve a high degree of self government for the Marianas during the Trusteeship and as a practical matter is willing to go very far (see Article VIII).

Helper: No problem with this approach. A slight typographical error in Article VIII on what would be effective prior to the end of the Trusteeship Agreement had given rise to some misunderstanding. Is MPSC to understand then that all provisions of Commonwealth Constitution might come into effect prior to end of the Trusteeship Agreement?

Also understand that definition of term "Commonwealth" means "successor government" to interim government of the Mariana Islands.

Wilson: There may well be some provisions of the Constitution that are not fully effective until the end of the Trusteeship. Our definition of Government of the Northern Marianas is in Section 102.

Willens: Also had a problem with the full application of U.S. laws during pre-termination e.g., citizenship. Herman and he had discussed this at Marianas IV.

Marcuse: Yes. Citizenship indicates an attribute of sovereignty which U.S. cannot have during pre-termination phase.

Surena: We should take care to note that we do not want to indicate to the United Nations that the United States is extending sovereignty over Marianas prior to the end of the Trusteeship.

Wilson: Want to restate that Constitution would come into effect prior to end of the Trusteeship. Only a few provisions of the local constitution may not be in full effect, e.g., statement that the Commonwealth is under U.S. sovereignty. But there could be an elected governor with the understanding that the United States is still responsible for making reports to the United Nations, etc.

Willens: We are not far apart then; so, if we cannot resolve tough problems we should find a mechanism so problems could be deferred until the end of the Trusteeship, e.g. immigration.

This raises another issue: changes in the agreement prior to the end of the Trusteeship Agreement.

Wilson: On this whole issue, United States does understand MPSC concerns.

Willens: MPSC has specifically included this in §201: "mutually binding" when entered into. So agreement is a final document and is not subject to unilateral change.

Wilson: Agree, but is not legally necessary to expressly include this. No United States thoughts to change once the Marianas people and the U.S. Congress have approved it. Why does MPSC include specific reference to U.S. action in the United Nations in the agreement?

Willens: This is an express provision that there will be no status agreement until approval by the United Nations Trusteeship Council.

Helfer: This acts as a public notice. MPSC only put this into agreement to note publicly that we are not trying to do something not permitted by the Trusteeship Agreement.

Surena: May cause problem with United Nations as drafted.

Wilson: This whole matter is a U.S. concern and there is no need to include it in the agreement.

Willens: As regards the sovereignty issue, could the U.S. identify those precise sections of the MPSC draft that challenge United States sovereignty?

Wilson: Section 203 of the MPSC draft is troublesome. Is contra to concept that U.S. is unqualified sovereign.

Surena: MPSC draft limitation on eminent domain coupled with MPSC draft §203 raises the issue of whether other MPSC provisions might also restrict U.S. sovereignty. This is also significant since the MPSC also wants to include eminent domain in mutual consent.

Helfer: Mutual consent on eminent domain has no relationship to U.S. sovereignty. The United States has already agreed to limit its exercise of eminent domain in the "Wild Rivers Act" and no one states this limits U.S. sovereignty. So in essence, U.S. restriction on the exercise of its powers of eminent domain in the Marianas has no relation to U.S. sovereignty over the Marianas.

Wilson: Problem of sovereignty really arises in mutual consent provision which we will discuss later.

Helper: Might note that U.S. approach to "applicable" provisions of U.S. Constitution raises other questions regarding U.S. sovereignty. e.g., Article I. Executive Powers of the President. Amendment 14, sentence five, Trial/Jury, Federal Courts.

We don't believe these are needed in the Marianas. MPSC uses "Mink Amendments" as authoratative list of provisions of U.S. Constitution to be extended plus a few others. Need to get H. Marcuse to state why U.S. wants each one as listed in the U.S. draft and need to know if the U.S. has plans to apply this provisions before the end of the Trusteeship Agreement.

Willens: Does the U.S. have its list of items to be subject to "mutual consent"?

Wilson: Before we get into that it should be noted

1. No need to put into the list those provisions which cannot be changed (or taken away) anyway under U.S. Constitution, e.g., citizenship, public land returned to Marianas District, since courts will enforce them.

2. Assume there will be no changes in the agreement prior to the end of the Trusteeship Agreement without mutual consent.

3. U.S. Congress is very sensitive to this issue of limiting the plenary powers of the U.S. Congress.

U.S. has no list for mutual consent but believes the following might be discussed as "possible candidates" for inclusion in the mutual consent provision:

1. establishment of the commonwealth within the U.S.; under Section 101 implying an inability to change this political relation without mutual consent e.g., to force political union with Guam;

2. mutual consent idea itself (third sentence of Section 102);

3. Ability to select "national status" in lieu of citizenship within six months after the end of the trusteeship;

4. §301 - Right to own constitution;

§305 - No U.S. approval of amendment to Commonwealth Constitution

§309 - right to establish and maintain local courts

5. §401 - applicable sections of U.S. Constitution;

6. §402 - land alienation;

7. §703(b) - eminent domain safeguards.

Willens: To the extent U.S. provides mutual consent protection for Marianas constitution, need to provide protection for authority of local government over internal affairs and its authority over local legislation. Marianas wants to protect its right to maximum self-government and would like to see this included in the mutual consent section.

Wilson: This is intended to establish specific exceptions to the exercise of the plenary powers of the U.S. Congress so have problems with inclusion of "maximum self-government" within U.S. concept of Marianas right of local self government.

Willens: Want to emphasize concern of clients for maximum local self-government.

Helper: Clients concerns on mutual consent are translated in MPSC 205(a)-207(a) which grants the Marianas the same powers as a State and other protections for U.S. exercise of sovereign powers.

Wilson: This matter is an area of real sensitivity to the Congress and we will have to examine it in greater detail.

Helfer: There seem to be some differences in the degree of coverage under mutual consent. Briefly, the MPSC thinks it should include 207(a) and all other parts of MPSC Title II

- citizenship
- applicability of certain U.S. laws--maritime, etc.
- Phase II
- U.S. land requirements
- Washington representative

There are also two other areas:

- §1203 & §1205: Look at in the light of earlier discussion regarding the effective date for the Commonwealth's Constitution. Issue assurance in document or elsewhere?

Willens: Pick up on mutual consent next time.

Wilson: Take up substance in first three topics before starting to draft language.