

*Help: This needs to be
numbered out in standard manner.
From: It's checked out with
Suren & Marcuse
James M. Wilson, Jr.
Adrian de Graffenried
Andre Surena
Herman Marcuse*

MEMCON

Participants: Howard Willens
Michael Helfer

Subject: Marianas Covenant

Date: June 28, 1974

MPSC IV Willen's report on COM

I. ^a Wilson: If there is any MPSC report on MPSC IV, has MPS considered giving it to COM? Is important if COM to address status issue?

Willens: Have "up-dated" report for local brief ^{MPSC and Willen's MPSC on MPSC III} ^{Use} - MPSC will ^{US} ^{and} ^{the} ^{idea} ^{consider suggestion} ^{Willens supports} ^{idea} ^{MPSC will certainly}

II. ^a Wilson: ^{US Joint Land Committee} ^{ES Regs} ^{Willens} ^{MPSC may wish} to know: ^{to the U.S.-Marianas Joint Land Committee}

1. ^{US Proj Group} ^{in So/PA} ^{meeting 2/2/74 JCF} Organization session after Guam (15 July) to determine:

- a. Terms of Reference
- b. Agenda
- c. Tasks
- d. How to proceed

2. DOD ^{will provide} to get names of its members (and "advisers" to provide technical expertise as needed).

3. E. Rice for OMSN ^{will be actively working} AS J. Wilson's DEPUTY on Joint Land Cc

III. ^{Willen's} ^{drafting work}

Willens: Will stay in D.C. at least until last week of July and will go out to Marianas only if there is:

(1) ^a High degree of prospect for COM land legislation that makes MDL

land legislation necessary; OR

(2) ^a Legal group reaches high degree of progress to require Willens

to confer with MPSC to resolve some ^{outstanding} ^{legislative} issues.

AGENDA,
IV, DRAFTING GROUP

Wilson: On the matter of our agenda for Legal Group - does Willens have any problems ^{with US proposal?}

Willens: Agree to proposed U.S. agenda ^{on} understanding ^{US} agenda covers all MPSC topics if not explicitly ^{there} implicitly by topic-subject content.

Wilson: Yes. ^{As a matter of procedure, what is Willens reaction to} Lets discuss ^{first} Substance ^{on} all items, then ^{returning to} draft actual language ^{of each topic?}

Willens: Some problem. ^x Wish to draft ^{as we discuss.}

Wilson: No problem ^{along} with this approach.

Item 1. Political Relationship : US Sovereignty / Establishing Commonwealth

Wilson: U.S. felt that (1) establishing relationship more important and higher priority than ^{specifically the establishment of a government to Congress} establishing commonwealth, (2) US needs to understand ^{the} "give/take relationship" and U.S. draft accomplishes this. ^{we are forming}

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

MPSC draft has also:

- (1) deleted reference in Title II to latitudes/longitudes ^(2 is included in the number)
 - (2) established ^{an independent} commonwealth at different time than U.S., recognizing
 - (a) certain actions (U.S. sovereignty, citizenship) not possible until end without interference ^{violation} to trusteeship agreement; and
 - (b) ^{MPSC} desires for maximum applicability of provisions of the Commonwealth agreement ^{before the} Trusteeship Agreement ^{termination of the} termination of the relationship.
- ^{MPSC} Want U.S. guarantee that Marianas ^{will} get full benefits of ^{territorial} relationship prior to end Trusteeship Agreement ^{but} consistent with obligations of U.S. under Trusteeship Agreement.

effect, e.g., statement Commonwealth under U.S. sovereignty, elect^{ed} gov^{ernor} with
But there could be an
the understanding that the
but U.S. makes U.N. reports to the UN, etc.
still responsible for making
Willens: *we are* Not far apart then; so, *we* that if cannot resolve tough problems *we*
should find a mechanism so problems could be deferred until end of Trusteeship,
has agreed
e.g., immigration.

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

Wilson: On this whole issue, U.S. does understand MPSC concerns.

Willens: MPSC has specifically included this into §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 U.S. thought to change once people approved it. *Marshall and U.S. Congress have*

Wilson: Why include specific reference to U.N. in the provisions? *U.S. Section 14 agreement?*

Willens: *this* Is express provision that there will be no *status* agreement until approval by UNTC.

Helper: *this acts* *MPSC this* But as a public notice, only put into agreement to note publicly that we aren't trying to do something not permitted by T Agreement.

Surena: May cause problem with U.N. as drafted.

Wilson: *of this* Still this whole matter is a U.S. concern, no need to include in agreement.

sovereignty Willens: *As regards the sovereignty issue, those sections* Could U.S. identify precise MPSC laws challenging U.S. sovereignty? *draft that*

Wilson: *Section draft* §203 MPSC is troublesome, *is central* to concept U.S. is unqualified sovereign.

MPSC draft
Surena: Limitation on eminent domain coupled with §203 raises issue of whether other MPSC provisions might ^{also} restrict U.S. sovereignty. ^{she} ^{also wants to include eminent domain in mutual consent.} ^{things also speak for since the U.P.C.}
MPSC draft
Helfer: Mutual consent has no relationship to eminent domain. ^{U.S. sovereignty} ^{U.S.}

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 Marianas.

Wilson: Problem of sovereignty really arises ^{from} mutual consent ^{question} which we will discuss later.

Helfer: Might note that U.S. approach to "Applicable" provisions of U.S. Constitution raises ^{other questions} a problem regarding U.S. sovereignty, e.g., ArI Execut. Powers ^{of the President, Amendment 14, sentence five,} ~~Am 14~~, Trial/Jury, Fed. Cts. ^{we don't believe in the Marianas.}
These are ~~needed~~ needed. MPSC uses "Mink Amendments" ^{as authoritative list of provisions of U.S. Constitution} ~~plus~~ ^{included} a few others.
Need to get H. Marcuse to state why U.S. want each one in U.S. draft and need to know if U.S. ^{has} plans to apply this ^{provision} before end TA?

Willens ~~Does~~ ^{Does}: U.S. have its list of items ^{to be subject} for "mutual consent"?

Wilson: Before we get into that, it should be noted:

- (1) No need to put into ^{the} list those provisions which can't be changed (or taken away) anyway without ^{used} an amendment to U.S. Constitution, e.g., citizenship, public land returned to MD., ^{since Courts will enforce them.}
- (2) Don't plan to change ^{Assume how we will be} agreement prior to end TA ^{at that time} ~~at that time~~ ^{without} will change certain provisions only by mutual consent.
- (3) U.S. Congress ^{is} very sensitive to this issue ^{of limiting the} ~~of limiting the~~ ^{primary powers of the USC.}

US has no list for mutual consent but believes
So, in this light - following are up for discussion ^{of as possible candidates} ~~for~~ mutual consent ^{from}

- (a) establish ^{most of the} concept commonwealth within U.S.; ^{under Sec. 101} not force ~~commonwealth into a different political relation with U.S. without its mutual consent, e.g., §101. e.g. to force political union with Guam!~~
- (b) mutual consent idea itself ^(Third sentence of Sec. 102)
- (c) ~~§202 - renouncing citizenship in lieu of~~ ^{Ability to select} "National" status ^{in lieu of}
- (d) § 301 - ^{Right to own} Commonwealth Constitution ^{interoperability w/in six months of top end of}
- (e) § 305 - ^{U.S. approval of amendment to} no change Commonwealth Constitution
- (f) § 309 - ^{Must to establish & maintain} Local courts
- (g) § 401 - ^{10 sections of} applicability U.S. Constitution
- (h) § 402 - ~~sent 2~~ rest. land alienation
- (i) § 703(b) - eminent domain ^{safeguards}

Willens: To the extent U.S. provides mutual consent protect 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 a ^{in tandem to establish} grant of specific exception to the exercise of the ^{plenary} powers of USC so have problems with inclusion of "maximum self-government" within ^{US} concept of ^{maximum} right of local self-government as set out in U.S. 301.

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

Wilson: ^{max} Seemed want to say:

- (1) can't change:
 - (a) ^{of the} concept commonwealth in its political relationship with USA
 - (b) Commonwealth Constitution ^{without local consent.}

Helper: Clients concerns on mutual consent are to translated into MPSC

205(a) - 207(a) ^{which grants Mariana's power} ~~with~~ powers of a State and other ~~protections from US~~ ^{exercise of sovereign powers.}

Willens: M.H. ^{and he will be} is really talking about another issue. U.S. Congress's plenary power ^{MPSC concerned that} would exercise of local Commonwealth Legislative authority be protected against intrusions ^{by the} of exercise of federal ^{power} ~~power~~ which is that other than that exercised generally for the states, ^{e.g.} i.e., U.S. Congress could directly regulate garbage collection.

Wilson: Really are concerned about exercise of federal power in contravention of local constitution?

Willens: Yes.

de Graffenried: It seems ^(Willens) is concerned mostly about saleability to MPSC as regards protections for maximum self-government whereas U.S. concerned ^{concerned} now also about saleability to U.S. Congress. Puerto Rico issue has recently arisen that makes Congress more sensitive to restricting its plenary powers.

Helper: ^{Puerto Rico is asking for something different; i.e. wants to be excluded from legislation unless specifically named to include it} P. Rico not really a problem here because U.S. is already limited to refraining from legislating in P. Rico except to same extent ^{as a state. In Marianas, we are agreed U.S. will have plenary power to the extent as in a State plus as in a territory. So want to get out of area where U.S. will pass legislation only if specifically include Marianas and states it is required for a "compelling" national interest.} ^{MPSC has no objection to having Marianas included in general legislation for states, but want some special legislation for territories} ^{of national interest} ^{USC}

de Graffenried: ^{USC} Not share views on local self-government for P. Rico because U.S. Congress believes P. Rico is still a U.S. territory. And, Puerto Rico has noted that it wants U.S. Congress to not extend any further legislation except where it specifically includes Puerto Rico by name.

So MPSC position reflects Puerto Rican approach that now concerns US Congress.

Wilson: This matter is really a sensitive area to the Congress and we will have to examine it in greater detail.

Helper: Seems to be some differences in degree of coverage under mutual consent. Briefly, MPSC covers *basically it should include all part of MPSC* 207(a) and free other *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 (look at in light of earlier discussion regarding effective date for Commonwealth Constitution. Issue assurance in document or elsewhere?)
 - (and §1205)*

Willens: Pick up on mutual consent next time.

Wilson: take up substance in 1st 3 topics before start drafting language.